

**ALASKA STATE LEGISLATURE**  
**HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

February 14, 2006

3:06 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Paul Seaton, Vice Chair  
Representative Tom Anderson  
Representative Carl Gatto  
Representative Vic Kohring  
Representative Sharon Cissna  
Representative Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

OVERVIEW: OFFICE OF CHILDREN'S SERVICES

CS FOR HOUSE BILL NO. 393(HES)

"An Act requiring that certain health care insurance plans provide coverage for the costs of colorectal cancer screening examinations and laboratory tests; and providing for an effective date."

- MOVED CSHB 393(HES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 414(HES)

"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 CSHB 414(HES) OUT OF COMMITTEE

HOUSE BILL NO. 271

"An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 393

SHORT TITLE: INSURANCE FOR COLORECTAL CANCER SCREENING

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

01/25/06 (H) READ THE FIRST TIME - REFERRALS  
01/25/06 (H) L&C, HES  
02/03/06 (H) L&C AT 4:15 PM CAPITOL 17  
02/03/06 (H) -- Meeting Canceled --  
02/06/06 (H) L&C AT 3:15 PM CAPITOL 17  
02/06/06 (H) Moved CSHB 393(L&C) Out of Committee  
02/06/06 (H) MINUTE(L&C)  
02/08/06 (H) L&C RPT CS(L&C) 5DP 1NR 1AM  
02/08/06 (H) DP: CRAWFORD, LYNN, LEDOUX, GUTTENBERG,  
ANDERSON;  
02/08/06 (H) NR: KOTT;  
02/08/06 (H) AM: ROKEBERG  
02/14/06 (H) HES AT 3:00 PM CAPITOL 106

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

**WITNESS REGISTER**

TAMMY SANDOVAL, Deputy Commissioner  
Office of Children's Services  
Department of Health and Social Services  
Juneau, Alaska

POSITION STATEMENT: Provided an overview of the Office of  
Children's Services.

HEATH HILYARD, Staff  
to Representative Anderson  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 393, Version Y, on behalf of  
Representative Tom Anderson, sponsor.

EMILY NENON, Director  
Alaska Government Relations  
American Cancer Society (ACS)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support for CSHB 393, Version Y.

MARIANNE BURKE

Anchorage, Alaska

POSITION STATEMENT: Testified in strong support of HB 393.

REED STOOPS, Lobbyist

Aetna and American Health Insurance Plans (AHIP)

Juneau, Alaska

POSITION STATEMENT: Proposed amendments to CSHB 393, Version Y, on behalf of Aetna and AHIP.

REPRESENTATIVE PETE KOTT

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 414.

JOSH FINK, Director

Office of Public Advocacy

Department of Administration (DOA)

Anchorage, Alaska

POSITION STATEMENT: Testified on HB 414.

DEAN GUANELI, Chief Assistant Attorney General

Legal Services Section

Criminal Division

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Testified on HB 414.

#### **ACTION NARRATIVE**

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at [3:06:27 PM](#). Representatives Wilson, Anderson, Kohring, Gardner, and Cissna were present at the call to order. Representatives Seaton and Gatto arrived as the meeting was in progress.

OVERVIEW: Office of Children's Services

[3:07:13 PM](#)

CHAIR WILSON announced that the first order of business would be the overview by the Office of Children's Services (OCS).

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TAMMY SANDOVAL, Deputy Commissioner, Office of Children's Services, Department of Health and Social Services (DHSS), began by providing an update on the agency's performance improvement plan, which the agency has worked on with the federal government since 2003. August 31, 2005, completed the two-year period during which OCS was measured. She related that OCS was able to complete 100 percent of its action steps and 100 percent of its benchmarks. However, OCS was only able to complete 18 of 23 outcomes set by the federal government. One of the outcomes that wasn't met was the timeliness of investigation, which is the time period after which a report is received and assigned for investigation. The agency has one more year to meet the timeliness outcome before penalties are instituted. Ms. Sandoval explained that the agency must meet the goal two consecutive quarters and at the end of the week she expected to receive news that the goal was met. Two other outcomes that weren't met were the worker visits with the child and worker visits with the parents. Again, she expected that the agency will meet those two goals. Ms. Sandoval noted that OCS wasn't able to achieve two national indicators, which are reunification in less than 12 months and adoption in less than 24 months. The aforementioned are data measures that come out of the data management information system, ORCA. She expected that OCS would meet those goals by the end of August. She related that the federal government wrote a very complimentary letter with regard to how OCS has shored up its quality assurance system, which OCS believes to be the foundation for how the department will continue to measure itself long after the federal government relaxes its oversight.

MS. SANDOVAL then related that in July 1, 2003, some prevention programs came under the purview of OCS, which has resulted in review as to how best to integrate prevention and child protection services. Therefore, the agency has a number of initiatives and projects to better connect the two processes.

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MS. SANDOVAL then informed the committee that in the past year there was review of a three-year strategic plan of 2004 performed under the former deputy commissioner. The three-year strategic plan, the federal outcomes and goals, and the agency's own goals were broken down into one-year increments. She noted that before the committee is a draft of this year's "road map." She highlighted the following critical success benchmark:

moving from investigation to initial assessment such that the OCS staff review who the family is and determine what it needs. This initiative will train workers to be initial assessment workers rather than investigators. She mentioned that supervisors will also be [trained] to be more involved with what is happening with workers, which she predicted will increase worker morale and decrease turnover. The other main initiative is continued work on resource family assessment, which is the new term for recruiting foster and adoptive families. She related her expectation that putting more time in at the beginning will save time and problems in the end. The aforementioned are two of the main initiatives for which the one-time training money from the legislature is being utilized.

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REPRESENTATIVE CISSNA explained her experience with foster family work since 1988, which she characterized as families being ground up and spit out. Therefore, she opined that the training money would need to be ongoing to help sustain a pool of trained foster parents, and thus she asked if OCS needs a legislative commitment for funds.

MS. SANDOVAL related that part of OCS's success can be attributed to the new positions that it has acquired, which has allowed caseloads to be lowered. Furthermore, the training of the resource family assessment process and the initial assessment process is occurring statewide and being built into the training academy at the University of Alaska - Anchorage to train future new staff. The aforementioned provides a sustainable foundation through the training academy, she opined. Moreover, this philosophy maintains the [goal] of, whenever possible, serving children and their families in their homes as that is the best way. Therefore, front-line social workers are equipped to make better assessments in the beginning and thus will sustain the progress and continue improvement.

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MS. SANDOVAL related that in the past three years there have been many changes with OCS in the following ways: reorganization of the office, the federal review, and initiative work. She expressed the need for OCS to now have time to implement and experience the benefits that are to come. She highlighted that the new positions, which were mainly front-line social workers, have been crucial to the success of OCS this last year. The next biggest increase in staff at OCS was the

licensing positions. Other positions that were filled were independent living positions, of which there is one in each region for a total of four were filled. She explained that these independent living specialists help those who are graduating or moving out of the system due to age to prepare for adulthood. Two positions were quality assurance positions, which she suggested is the area in which the federal government has probably noticed the most improvement. Having a strong quality assurance unit within OCS allows the agency to constantly review and evaluate the agency. New positions were also included in support of ORCA, the new automated system to track case monitoring.

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MS. SANDOVAL concluded by pointing out that the OCS brochure she provided the committee includes the five goals the agency views as its most important goals, which are as follows: strengthening families; keeping children safer; decreasing disproportionality; having a quality and stable work force; and improving community partnerships. If OCS achieves the aforementioned goals, the other smaller pieces will come along, she opined.

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REPRESENTATIVE GARDNER requested that Ms. Sandoval discuss the ways in which OCS is addressing the disproportionality issue.

MS. SANDOVAL informed the committee that OCS has partnered with the tribal leaders statewide as well as Casey Family Programs to take on the issue of the disproportional amount of Alaska Native children in the system. Since November 2004 when OCS learned of this disproportionality, OCS was committed to determining why with the help and funding of Casey Family Programs. Three times a year this partnership group gathers for "courageous conversations" during which tribal leaders challenge state employees to review their policies, procedures, and practices. These conversations also further the partnerships between the groups as well as recognize that [the disproportional] problem isn't all about OCS. She related that 15 local teams have been assembled to develop plans and strategies. There is also a Breakthrough Series Collaborative that utilizes experts on the issue of disproportionality to create a structure that can be utilized to test ideas on a local scale. This is about the ground up rather than the top down; the people in the field are

empowered to inform leadership what needs to happen on the ground, she explained.

[3:36:06 PM](#)

REPRESENTATIVE GARDNER asked if the aforementioned has eliminated the situation in which after there is a permanent placement outside the home the tribe would disagree with the placement and everything would halt and start over again.

MS. SANDOVAL said that remains part of the work ahead. She emphasized the importance of OCS ensuring that the tribal partners have been engaged early. She reiterated that doing a better job during the initial assessment phase will result in the identification of deficiencies and work to remedy them will occur. Therefore, better decisions will be made for the children all through the process.

[3:37:54 PM](#)

REPRESENTATIVE GARDNER asked if a better job of establishing paternity and tracking relatives is occurring early on.

MS. SANDOVAL opined that OCS is doing better, although finding absent parents remains one of the agency's goals.

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REPRESENTATIVE GATTO turned attention to the information in the brochure that specifies that 60 percent of the children in OCS are Native, but the exit rates are lower. He asked if there is a corrective factor that specifies that OCS is on task and identifies the problem as the crowding or exit rates.

MS. SANDOVAL related her belief that Alaska does have a disproportionality problem. For instance, at the beginning of this work in Juneau 80 percent of the children in foster care were Alaska Native, although that isn't proportional to the Alaska Native population in the area. The same is true of Anchorage. Until more data is available on disproportionality, OCS will continue the work on the disproportionality problem as if it's as large as reported in November 2004.

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REPRESENTATIVE GATTO inquired as to what would be the correct proportion.

MS. SANDOVAL indicated that what has to be reviewed is why a disproportionate number of Alaska Native children are placed in foster care when there isn't a disproportionate number of calls made about Alaska Native children.

CHAIR WILSON asked if part of the problem could be that perhaps not enough services are being provided to the Native communities, and thus there are more problems. She questioned whether there could also be cultural differences that should be considered. Chair Wilson then suggested that perhaps some early childhood development tools could bring about change.

MS. SANDOVAL noted her agreement with Chair Wilson and specified that OCS is merely questioning why the [disproportionality exists] and trying to determine what can be done to address the situation.

[3:43:25 PM](#)

REPRESENTATIVE SEATON pointed out that there is a significant amount more children in the Native population than in the general population and thus he presumed that's being considered. He then recalled a recent presentation from Petersburg Mental Health during which the organization expressed the need to cut its clients by half due to reporting requirements and the reporting system problems. Therefore, he inquired as to how the ORCA system is working for OCS. He further inquired as to whether in remote locations, the automated reporting requirement is causing less services to be provided as is the case in Petersburg.

MS. SANDOVAL acknowledged that there are problems [with the automated reporting system], but emphasized that it doesn't impact OCS's level of service because the work has to be done. However, she did agree that there is a connectivity problem in remote locations and the department's technology staff continues to work on improving the situation. In the meantime, a regional input system is being utilized for new reports.

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REPRESENTATIVE SEATON suggested that OCS's level of service would be impacted because if it takes longer than it should to do a report and those reports have to be done, then staff isn't available to perform other work. He then related his recent understanding that the notes and personal information that was

thought to have been required to be entered in the electronic database due to the Health Insurance Portability and Accountability Act (HIPPA) requirements isn't necessary. He explained that the electric database merely has to specify that the notes are in the file. He suggested that the aforementioned may simplify the process and allow the agency to provide more service.

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MS. SANDOVAL, in response to Representative Gatto, specified that everything in the brochure is part of the three-year strategic plan under the former deputy commissioner. The brochure the committee has specifies what OCS believes to be the most critical to the agency's success for this year's road map. In further response to Representative Gatto, Ms. Sandoval opined that by working on the five goals in the brochure and the [federal] goals, OCS will come closer to accomplishing the goals of the three-year strategic plan.

HB 393-INSURANCE FOR COLORECTAL CANCER SCREENING

[3:50:53 PM](#)

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 393, "An Act requiring that certain health care insurance plans provide coverage for the costs of colorectal cancer screening examinations and laboratory tests; and providing for an effective date."

[3:51:13 PM](#)

REPRESENTATIVE ANDERSON, speaking as the prime sponsor, introduced HB 393 and paraphrased from his sponsor statement [original punctuation provided]:

Colon cancer (technically known as colorectal cancer) is the second leading cause of cancer deaths in Alaska and across the nation. An estimated 57,000 Americans died from the colon cancer in 2005. Screening has the potential to drastically reduce this number. Consider these facts:

When caught through routine screening at the localized stage, the 5-year survival rate from colon cancer is over 90%.

If not caught until it has distant metastasis, when symptoms are likely to appear, the 5-year survival rate is only 10%.

Colonoscopy is over 90% effective at detecting colon cancer and can remove pre-cancerous polyps, actually **preventing cancer** from ever developing.

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REPRESENTATIVE ANDERSON moved to adopt proposed committee substitute (CS) for HB 393, Version 24-LS0780\Y, Bailey, 2/13/06. There being no objection, Version Y was before the committee.

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HEATH HILYARD, Staff to Representative Anderson, Alaska State Legislature, explained the key changes between CSHB 393(L&C) and Version Y; directing the committee's attention to page 2, line 3. This change establishes the American Cancer Society standards as the guidelines for colorectal cancer screening, and removes the United States Preventative Services Task Force guidelines reference from the bill. In addition, he pointed out that the word "current" was removed [in this section] as a suggestion from the legal drafters, who opined that including the word "current" would require Alaska law to comport with an outside standard; an unconstitutional delegation of authority.

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EMILY NENON, Director, Alaska Government Relations, American Cancer Society (ACS), echoed Representative Anderson's sponsor statement adding that with the colonoscopy screening method, precancerous polyps can be immediately removed, making this the only screening tool that can actually prevent cancer. She said that for the average risk patient, the ACS guidelines recommend this procedure every 10 years after the age of 50. She pointed out that this could limit an insurance plan from having to pay for more than two of these procedures, as Medicare coverage would apply after age 65. She highlighted that the cost savings of early diagnosis and prevention versus contracting cancer and undergoing cancer treatment, are significant.

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MS. NENON pointed out that colon cancer occurs more frequently in Alaska than in the general U.S. population and is the second leading cause of cancer death. She said that the Alaska Native population represents an anomaly, with the single highest rates of colon cancer of any population group in America; double that of the U.S. white population. The ACS and the Alaska Native Tribal Health Consortium are researching this phenomenon; however, she reiterated that the screening tools and procedures are available to prevent this cancer.

[4:02:47 PM](#)

REPRESENTATIVE GARDNER asked Ms. Nenon to estimate the number of Alaskan lives that might be saved if this bill passes and what the diagnosis frequency represents.

MS. NENON said that colon cancer screening increases survival rates by 80 percent, and provided that 5-10 percent of the general population will develop colorectal cancer.

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REPRESENTATIVE GATTO stated that the cost for screening is about \$2,500.00, including the hospital fees, and that about 3 percent who come in for screening have polyps removed during the procedure. In comparison, he noted the high cost of cancer treatment. He also noted that, with these facts and figures before them, it is evident that this bill is a benefit to the population and the insurance companies.

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REPRESENTATIVE ANDERSON, pointing out whom this bill will effect, stated that current State of Alaska employees are already covered for this screening, along with other self-insured employers such as Providence Medical Center, adding that this bill targets retirees. He also noted that there are three types of screening procedures, with various degrees of invasiveness.

MR. HILYARD added that this screening is subject to policy plan provisions already in place with regard to co-pay and deductible requirements.

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MARIANNE BURKE stated strong support for HB 393, saying that this coverage should be mandated. She said that from a humanistic and financial point of view, "it is a no-brainer" to mandate insurance coverage for a procedure that can eliminate colon cancer. Having served as the director of the Division of Insurance for the State of Alaska, she said that she has upheld the belief that personal choice issues should not be covered by statute. However, she opined, that this issue goes beyond personal choice given the fiscal and life-saving impacts.

REPRESENTATIVE ANDERSON asked whether Ms. Burke, as former director of the Division of Insurance, would concur with the zero fiscal note issued from the Division of Insurance.

MS. BURKE said that she would concur, and further stated that there would be no impact on the state as the state's insurance coverage is not affected by this bill.

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REED STOOPS, Lobbyist, Aetna and American Health Insurance Plans (AHIP), presented a proposal for an amendment to HB 393. He said that the amendment will serve to reflect the updates of screening standards by ACS and prevent the need to change state statute accordingly. He also proposed an amendment to allow health plan administrators to notify policyholders of this screening coverage in conjunction with other health care communications/mailings. He pointed out that this mandate will only apply to a small number of Alaskans who are not insured or whose coverage does not already encompass this procedure. In answer to a question, he clarified that the "legislature can't mandate coverages on any self-insured program or federally funded programs that don't come through the state." To a further question, he stated that it is hard to project who will take advantage of this screening coverage.

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REPRESENTATIVE ANDERSON directed the committee's attention to the amendment to CSHB 393(L&C).

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MR. HILYARD described the two versions of the same amendment, explaining that the concern was who would be responsible for notification of coverage to policyholders and the frequency of

notification. He pointed out that the amendment inserts the word "annually," and the word "current" is omitted.

[4:22:21 PM](#)

VICE CHAIR SEATON moved to adopt Amendment 1, which read [with handwritten changes]:

Page 2, Lines 21-25

(f) Each [HEALTH CARE INSURER OR] health benefit plan shall notify each enrollee annually of the coverage for colorectal cancer screenings and provide the [CURRENT] American Cancer Society guidelines for colorectal cancer screenings. The notice shall be [DELIVERED BY MAIL UNLESS THE ENROLLEE AND HEALTH CARRIER HAVE AGREED ON ANOTHER METHOD OF NOTIFICATION] included in health benefit handbooks or be provided by written or electronic communication between health plan administrators and enrollees.

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE CISSNA asked for clarity regarding how the state will be informing policyholders of this benefit.

CHAIR WILSON explained that the state plan already covers employees for colorectal screening procedures and this bill will encompass state retirees as well.

REPRESENTATIVE CISSNA said she was inquiring about the broadcast of information regarding colorectal screening procedures and the screening coverage.

CHAIR WILSON said that Amendment 1 specifies that each enrollee will have to be notified annually of the coverage provided from colorectal cancer screenings and provide the ACS's guidelines for colorectal cancer screening.

REPRESENTATIVE ANDERSON offered that Aetna and Blue Cross should not be mandated to provide monthly/annually notification to policyholders versus the electronic correspondence and [edited/issued policy pamphlet].

[4:26:58 PM](#)

REPRESENTATIVE CISSNA clarified that she wants to ensure that the ACS guidelines are contained in the current information provided to state employees.

MR. HILYARD stated that this information is currently in the state insurance pamphlet.

[4:27:47 PM](#)

CHAIR WILSON reiterated that in the long run this procedure will save human suffering and the insurance company's money. She relayed her personal experiences relating to colorectal screening and cancer.

[4:30:16 PM](#)

REPRESENTATIVE SEATON moved to report CSHB 393, Version 24-LS0780\Y, Bailey, 2/13/06, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes.

REPRESENTATIVE GATTO objected to the effective date of the bill and asked how this date was established.

MR. STOOPS explained how the employees, who sign up for insurance after this legislation passes, will receive the information in their handbook at that time. The bill allows for "other communication," which may be used by the employer during the interim of issuing the updated annual handbook.

REPRESENTATIVE GATTO removed his objection.

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CHAIR WILSON stated that there being no objection, CSHB 393(HES) was reported out of the House Health Education and Social Services Standing Committee.

#### HB 414-INTERCEPTION OF MINOR'S COMMUNICATIONS

CHAIR WILSON announced that the final order of business would be 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."

[4:33:15 PM](#)

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 414, Version 24-LS1565\G, Wayne, 2/13/06, as the working document. There being no objection, Version G was before the committee.

REPRESENTATIVE PETE KOTT as prime sponsor introduced HB 414 paraphrasing from his sponsor statement [original punctuation provided]:

The Committee substitute for House Bill 414 will protect minors from predators and other insalubrious characters. HB 414 amends AS 12.37.030 to allow a parent or guardian of a minor to consent to the interception of communications of the minor under certain, specific circumstances. Specifically, where the parent of the minor has a good faith and objectively reasonable belief that it is necessary for the welfare, and in the best interest of the minor to do so, he or she may consent on behalf of the child to the interception of a communication by the minor. The parent's properly given consent may be utilized by a judge to grant an ex parte order permitting the proper authorities to monitor and intercept the minor's communications.

HB 414 also amends AS 42.20.320 to permit the parent of the minor in question to himself or herself [to] intercept the communication without fear of criminal prosecution. Under current law, no person who is not party to the communication may intercept any portion of a communication between others. To do so constitutes a criminal offense in Alaska. Section 3 of HB 414 creates an exception that allows the parent of a minor child to intercept a minor child's communications.

With passage of this legislation, we allow parents and guardians to protect their children, and we provide them the tools to do so.

REPRESENTATIVE KOTT pointed out that in Section 4 of the bill, "minor" is defined as under the age of 18 and not emancipated; emancipated minors are exempt from HB 414.

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CHAIR WILSON asked if a parent observed a child in an Internet chat room and deemed the content inappropriate, will this bill allow the parent to call the police for investigative purposes.

REPRESENTATIVE KOTT answered that HB 414 provides for appropriate parental intervention, although there is an inherent weakness in this legislation given our state's constitutional right to privacy. He submitted that privacy is not an absolute right when given the compelling need to override that right to protect children. He stated that certain insalubrious individuals prey on children over the Internet, and although there are computer programs for purchase to provide monitoring capabilities, using these programs does not allow parents to intercept the messages or intervene on a legal level. He maintained that HB 414 will assist parents who are faced with raising today's children and provide them with the tools and the authority to act responsibly on their child's behalf. He explained that while parents are legally responsible for the actions of their minor children, they are not provided the "tools" to assist them in monitoring their child's activity in a way that could help to stem a situation. He provided several examples of how parents are at a disadvantage due to today's technologically connected children. He assured the committee that this bill does not run afoul of the federal Omnibus Crime Control and Safe Streets Act [1968]. Although not tested in the 9th Circuit Court of Appeals, he opined, that if these measures are placed in statute and challenged they would be viewed favorably in the courts.

CHAIR WILSON instructed the committee to look at this bill not in a judicial light, but whether HB 414 creates a good policy for the state.

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REPRESENTATIVE GARDNER stated support for HB 414 as it provides a formalization and legal authority to what here-to-fore has been a parent's assumed privilege in providing for their child's safety and well-being. She maintained that when parents are not afforded appropriate means to manage their child's welfare, they are crippled and may abdicate responsibility.

REPRESENTATIVE KOTT acknowledged the importance of the informal, nonconsensual, eavesdropping measures historically employed by parents.

REPRESENTATIVE CISSNA interjected that there is a difference in what occurs at home informally, and what is being discussed in HB 414; information that may be gathered and presented as evidence in a court case. She asked how this bill would effect a situation involving a divided home with opposing parents.

REPRESENTATIVE KOTT answered that the intent of the bill is to provide for the welfare and safety of a child, and protect the child from engaging in dangerous behavior. He conceded, however, that it does not ensure against opposing parents construing the opportunity for their own interests. He pointed out that some states do have variations of this bill in place and their circuit courts generally uphold the vicarious consent ruling; other states maintain the two-party consent rule.

[4:46:37 PM](#)

JOSH FINK, Director, Office of Public Advocacy, Department of Administration (DOA), stated that adding the exception for the minor's attorney or guardian ad litem was an important addition to this bill. He called the committee's attention to the Alaska Rules of Evidence 501-506, where the policy decision as to what communications are confidential has previously been addressed. He explained that the Rules expand the confidentiality exemption to cover discussions with a therapist, physician, or clergyman, and he asked the committee to consider what exception policy it would deem appropriate.

[4:48:51 PM](#)

REPRESENTATIVE SEATON asked, considering custody and divorce situations, should the language on page 1, [line 9], include the term "custodial" prior to parent or guardian.

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), clarified that in custody situations one of the parents is often restricted to visitation rights, and either parent may have some need to monitor conversations in the child's best interest. He stated:

There's certainly a good policy basis for extending these same rights to someone who has legal custody as opposed to simply physical custody. ... It would come as a shock to ... parents that they can't ... pick up the phone and listen in to a conversation, or read their child's e-mail, or tape record a conversation,

but given our eavesdropping statute and the breadth of it ... all of those things are problematical ... and this bill fixes that.

REPRESENTATIVE SEATON explained the importance of ensuring against custodial manipulation that may result in overturning parental custody of a child; stressing the need for this aspect to be addressed as a policy or clarified/considered when the bill is reviewed by the House Judiciary Standing Committee.

MR. GUANELI stated that there is an option to provide the rights of HB 414 only to the parent with physical custody. In agreeing that this area of the bill requires further attention, he explained that when parental rights have been terminated by court order it presents a different question than when visitation is allowed. In response to a question of how parents might manipulate this right to monitor communications between a child and the opposing parent, he answered that the way the bill is written either parent would have the ability to listen in on conversations. He stated that the issue to consider is how information is gathered, by whom it is gathered, and how it may be used in a court of law. Further, he questioned the wisdom to "allow a system to persist if it is a disincentive for parents to fully exercise their parental rights..."

[4:56:00 PM](#)

REPRESENTATIVE SEATON asked that the bill sponsors clarify the eavesdropping language of HB 414 between parents in custodial situations in which one parent may inadvertently have more rights than the other.

[4:57:20 PM](#)

REPRESENTATIVE ANDERSON moved to report CSHB 414, Version 24-LS1565\G, Wayne, 2/13/06, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 414(HES) was reported from the House Health, Education and Social Services Standing Committee.

[4:58:01 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:58 p.m.