

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

April 11, 2006

1:36 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative John Coghill  
Representative John Harris  
Representative Vic Kohring  
Representative Lesil McGuire  
Representative Ethan Berkowitz  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Pete Kott

**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 CSHB 414(RLS) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 27

Urging the United States Congress to pass legislation amending the Alaska Native Vietnam Veterans Allotment Act to allow deserving veterans to obtain allotments of vacant land within the State of Alaska; and to reopen and legislatively approve allotments in the Tongass National Forest.

- BILL HEARING CANCELED

**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

**WITNESS REGISTER**

MICHAEL O'HARE, Staff  
 to Representative Pete Kott  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Presented HB 414 on behalf of the sponsor,  
 Representative Kott.

REPRESENTATIVE MAX GRUENBERG  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: During discussion of HB 414, assisted with  
 the presentation of the proposed committee substitute (CS),  
 Version C, and suggested a change.

**ACTION NARRATIVE**

**CHAIR NORMAN ROKEBERG** called the House Rules Standing Committee meeting to order at [1:36:12 PM](#). Representatives Rokeberg, Coghill, Kohring, McGuire, Berkowitz, and Guttenberg were present at the call to order. Representative Harris arrived as the meeting was in progress. Representative Kott was also in attendance.

HB 414 - INTERCEPTION OF MINOR'S COMMUNICATIONS

[1:36:27 PM](#)

CHAIR ROKEBERG announced that the only 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." [Before the committee was CSHB 414(JUD).]

[1:36:39 PM](#)

REPRESENTATIVE COGHILL moved to adopt the proposed committee substitute (CS) for HB 414, Version 24-LS1565\C, Wayne, 4/10/06, as the working document.

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion.

REPRESENTATIVE BERKOWITZ withdrew his objection.

CHAIR ROKEBERG, upon determining there was no further objection, announced that Version C was before the committee.

[1:37:30 PM](#)

MICHAEL O'HARE, Staff to Representative Pete Kott, Alaska State Legislature, spoke on behalf of the sponsor, Representative Kott. Mr. O'Hare relayed that HB 414 is intended to protect children from predators. He highlighted that today children are more sophisticated and communicate via the Internet, chat lines, telephones, and cell phones. Currently, it is legal for a member of a party talking on the phone to record the conversation. However, it's currently illegal for a parent who suspects his/her child is in danger to intercept communications in order to protect the child. This legislation allows the court to enter into an ex parte order upon determining there is probable cause, which may include a finding that a parent of a minor has consented in good faith to intercept communications when it's in the welfare and best interest of the minor to

authorize law enforcement to intercept communications. This legislation also allows a parent or guardian of a minor to intercept private communication of that minor if the parent is also acting in good faith and reasonably believes that he/she is doing what is in the best interest of the child.

MR. O'HARE noted that the sponsor worked with Representative Gruenberg, who had concerns regarding circumstances in using this information in family law issues, divorce proceedings, and child custody proceedings. The aforementioned has resulted in Version C, which allows parents to intercept the communications of the minor unless the communication is between the minor and his/her attorney, guardian ad litem, or the child custody investigator. Version C also states that evidence obtained may be considered by a guardian ad litem, child custody investigator, or judge based on the fact that the parents have met the requirements specified in the legislation. Mr. O'Hare related that although the sponsor recognizes the potential issues with regard to the right to privacy, the sponsor contends that it's not an absolute right. The sponsor further contends, Mr. O'Hare relayed, that children need to be protected.

[1:40:38 PM](#)

REPRESENTATIVE COGHILL inquired as to the current process to go before the court for an ex parte order.

[1:41:01 PM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, relayed that an ex parte order is one that can be issued without notice to the [opposing] side.

REPRESENTATIVE COGHILL clarified that he is interested in the difference between CSHB 414(JUD) and Version C.

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REPRESENTATIVE GRUENBERG relayed that Version C should have had an amendment on page 1, line 10, such that "include" be replaced with "be based upon". He related that in the House Judiciary Standing Committee it was made clear that the judge could find probable cause based solely on a finding that the parent had consented in good faith to the interception based on the parent's objective reasonable belief that it was necessary for the welfare of the minor and in the minor's best interest.

MR. O'HARE noted that the sponsor is amenable to that change.

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 1, as follows:

Page 1, line 10:

Delete "include"

Insert "be based upon"

1:43:55 PM

REPRESENTATIVE McGUIRE asked if Representative Gruenberg wanted to include the term "solely" also.

REPRESENTATIVE GRUENBERG answered that although he would have no problem with that, he was concerned that if the term "solely" was included, then it couldn't be based on anything else. Therefore, he said he prefers to leave Amendment 1 as stated.

CHAIR ROKEBERG objected to the motion to adopt Amendment 1.

CHAIR ROKEBERG withdrew his objection to Amendment 1. There being no further objections, Amendment 1 was adopted.

1:45:09 PM

REPRESENTATIVE GRUENBERG, turning to Representative Coghill's earlier question, pointed out that the changes on page 3 specify that the interception can occur if the parent is acting in good faith and has an objectively reasonable belief that the interception is necessary for the welfare of the minor and is in the best interest of the minor. Representative Gruenberg clarified that as long as the aforementioned [requirements have been met] a court order of any kind is not required and the parent is not violating the law.

REPRESENTATIVE GRUENBERG, in response to Representative Berkowitz, confirmed that HB 414 is addressing the current situation in which a parent isn't allowed to listen to his/her child's conversations.

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REPRESENTATIVE GRUENBERG explained that the remainder of the new language on page 3 of Version C doesn't allow an interception between the child and his/her attorney, guardian ad litem, or child custody investigator.

REPRESENTATIVE GRUENBERG highlighted that an issue raised by family law attorneys was in regard to whether the intercepted conversation should be admissible in court. He explained that if one wants to submit such as evidence, the court must rule and find that the parent did act in good faith and have a objectively reasonable belief that the interception was necessary for the welfare of the child and in the best interest of the minor. He noted that one doesn't have to make a motion in advance; the aforementioned could be performed during the course of the trial. This would be in addition to any other objections that would be raised as hearsay. Version C was expanded to include official proceedings, which are defined on page 4 to include "legislative, judicial, administrative, or other governmental body". "We didn't want them to be able to 'end run' the whole process by just feeding the information to a GAL [guardian ad litem] or a custody investigator and so we had the same standard there if the GAL or custody investigator determined that the requirements of the paragraph have been satisfied," he said.

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REPRESENTATIVE BERKOWITZ turned attention to subparagraph (B) and surmised that evidence obtained from listening in could be used in a proceeding that wasn't directly related to the child's welfare.

REPRESENTATIVE GRUENBERG replied yes, but only if the requirements of the statute are met.

REPRESENTATIVE BERKOWITZ surmised then that the threshold requirement that the parent can listen to a minor's conversation if the child's welfare is at issue doesn't limit the extent to which the evidence obtained can be used in a subsequent judicial proceeding. Therefore, he further surmised that such evidence could be used in a criminal proceeding.

REPRESENTATIVE GRUENBERG specified that the aforementioned could occur only if the other Rules of Evidence allow its use and only if the court finds that when the parent [intercepted communications] that he/she was acting in good faith and had an objectively reasonable belief that the interception was necessary for the welfare of the minor and in his/her best interest. However, in a criminal case, one must go back to the first section [of the bill]. He noted that a criminal proceeding would fall under Title 12.

REPRESENTATIVE BERKOWITZ pointed out that the judicial proceeding doesn't have to be related to a custody dispute or a child in need of aid (CINA) case. Therefore, this offers another opportunity to obtain evidence that is currently inadmissible.

REPRESENTATIVE GRUENBERG replied that technically that's correct because AS 42.23.028 normally precludes such from happening unless one of the other subsections arise. However, it would still have to be admissible under the Rules of Evidence. This [legislation] provides an additional protection and allows the court to do it.

[1:52:39 PM](#)

REPRESENTATIVE BERKOWITZ relayed that he is considering adding a conceptual amendment to the provision such that on page 3, line 26, it would say "this paragraph has been satisfied and the judicial proceeding directly involved the welfare of the child".

REPRESENTATIVE GRUENBERG opined that the House Judiciary Standing Committee did not intend to limit the bill to custody cases or those cases involving the welfare of the child. For example, in a fraudulent transfer case in which a parent informs his/her child of a transfer of bonds to the parent's partner in order to avoid the Internal Revenue Service (IRS). In such a situation, if the requirements of this statute are met, that evidence and the Rules of Evidence are met. Therefore, the evidence can come in at least under state law, although there may be a prohibition at the federal level.

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REPRESENTATIVE BERKOWITZ opined that HB 414 is designed with a narrow scope to protect the welfare of the children. Therefore, it seems to be beyond the scope of the bill to specify that evidence obtained can be used in a proceeding that doesn't impact the child's welfare. He opined that the aforementioned is broader than necessary to address the policy involved. For example, parents who are listening in to a child's conversation could hear the child admit to the commission of a crime. In such a situation, he asked if that evidence could be used in a criminal proceeding. Representative Berkowitz opined that the situation is further complicated because Alaska doesn't have a parent-child privilege.

REPRESENTATIVE GRUENBERG posed another hypothetical situation in which a child is on trial in a delinquency case or waiver situation during which the child makes an admission that would be otherwise admissible. In such a case, the requirements of both AS 42.30.320(a) and AS 12.30.030 would have to be met. Therefore, there would probably have to be both a finding and the ex parte order authorizing the interception because it's in a criminal case. The criminal statute is broader than the Title 42 statute because it allows third parties to [intercept communications] based on the parents' permission while [AS 12.30.030] speaks solely for a parent to intercept the child's conversation.

The committee took an at-ease from 1:56 p.m. to 1:57 p.m.

[1:57:43 PM](#)

REPRESENTATIVE GRUENBERG said that he may not be correct and said that he didn't believe parents have to meet the requirements of AS 12.30.030. The only requirements that a parent have to meet are specified in Section 2 of the bill, which allow the judge to admit [evidence]. Representative Gruenberg related his understanding that the admission of any evidence is always discretionary with the court.

REPRESENTATIVE BERKOWITZ expressed concern that if one is going to listen in and invade someone's privacy and use the evidence gained from that, it should be limited to the narrow scope of the legislation. Representative Berkowitz then offered the following conceptual amendment:

Page 3, line 26, following "satisfied":

Insert "and the judicial proceeding directly involves the welfare of the child"

CHAIR ROKEBERG objected for purposes of discussion.

[1:59:26 PM](#)

REPRESENTATIVE MCGUIRE inquired as to what would happen if the interception is based on the parent's good faith belief that the child is interacting with an unsavory character. After listening to a series of conversations, the parent overhears the unsavory character admit to or describe a murder that he/she had already committed. She acknowledged that a good defense attorney could argue that it doesn't have a direct relationship to the welfare of the child. She then asked if Representative

Berkowitz's conceptual amendment would prohibit the use of the conversation in that case.

REPRESENTATIVE BERKOWITZ answered, "Through this provision." He clarified that he is more concerned with a situation in which law enforcement officials know that the parents are listening to the child's conversation and the law enforcement official approaches the parents and asks what was said in the conversation.

[2:00:44 PM](#)

REPRESENTATIVE COGHILL referred to page 3, line 15, which says: "reasonable belief that the interception is necessary for the welfare of the minor" and Section 2(a)(9)(A)-(C) both of which specify that evidence obtained in the interception may be considered if the guardian ad litem or child custody investigator, judicial officer, or presiding official find that the requirements of the paragraph have been satisfied. Therefore, Representative Coghill opined that the legislation seems to be narrowly drafted.

[2:01:23 PM](#)

REPRESENTATIVE BERKOWITZ said that paragraph (9) establishes the criteria by which a parent can intercept a communication while subparagraph (B) specifies [in which circumstance] the intercepted communication can be used. He explained that with his amendment he is trying to limit when an intercepted communication can be used. Representative Berkowitz opined that he didn't want parents who are operating in the best interest of the child to be compelled to be witnesses against the child.

REPRESENTATIVE GUTTENBERG asked if the language in the amendment should refer to "a" child rather than "the" child in order to address when the interception captures communications between the child and other children.

REPRESENTATIVE BERKOWITZ opined that parents don't have a parental responsibility to other children. He further opined that he would like to protect the parent-child relationship as much as possible. He then suggested that his amendment should refer to the "minor" instead of "the child" in order to remain consistent with the language of the legislation. He related his belief that the amendment helps protect the parent-child relationship because although the parent has the option of

disclosing the information, the parent shouldn't be compelled to do so.

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REPRESENTATIVE McGUIRE turned attention to the language "the welfare of the child" and opined that getting the child to "own up to" or face state sanctions for a crime the child committed may be in the best interest and welfare of the child. She questioned whether separate legislation should be introduced to create a parent-child privilege.

[2:04:56 PM](#)

REPRESENTATIVE COGHILL said that he tended to agree with Representative Berkowitz with regard to what is intended and he questioned whether that's already been done. Representative Coghill related his understanding that under the criminal law the court may enter into an ex parte order only if it determines probable cause based on the parent of a minor consenting in good faith with objectivity.

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REPRESENTATIVE GRUENBERG noted that the delinquency statutes are based on a child's welfare and the court reviews the child's welfare and rehabilitation much more than the penal system would. He opined that the delinquency proceeding would meet the criteria.

REPRESENTATIVE BERKOWITZ withdrew his amendment.

[2:07:17 PM](#)

REPRESENTATIVE BERKOWITZ moved to report the proposed CS for HB 414, Version 24-LS1565\C, Wayne, 4/10/06, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 414(RLS) was reported from the House Rules Standing Committee.

#### **ADJOURNMENT**

[2:07:37 PM](#)

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 2:07 p.m.