

HOUSE FINANCE COMMITTEE
March 10, 2008
6:09 p.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [6:09:09 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Les Gara
Representative Mike Hawker
Representative Mike Kelly
Representative Bill Thomas Jr.

MEMBERS ABSENT

Representative John Harris
Representative Mary Nelson
Representative Reggie Joule

ALSO PRESENT

Representative John Coghill.

PRESENT VIA TELECONFERENCE

Kim M. Boidiker, Fairbanks; Heather Andrulli; Annie Dougherty, Fairbanks; Jason Soigers, Fairbanks; Rachelle Renner, Fairbanks; Mark Renner, Fairbanks; Clover Simon, CEO, Planned Parenthood of Alaska, Anchorage; Brittany Goodnight, Planned Parenthood of Alaska; Greg Schmidt, Board, Alaska Family Council; Robin Smith, Anchorage; Karla Utter, Anchorage; Kathleen Gustafson, President, Planning Clinic, Homer; Anne Lindsley, Student, Portland, Oregon; Jim Minnerey, President, Alaska Family Council, Juneau; Pamela Samash, Juneau; Debbie Joslin, Eagle Forum Alaska, Delta Junction; Cathy Cotton, Delta Junction; Janet Crepps, Deputy Director, Legal Center for Reproductive Rights; Lauren Bretz, Alaska Family Council; Kate Lindsley, Haines; Michelle Tarrott, Haines; Wayne Hunter, Right to Life.

SUMMARY

HB 364 "An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating

to reporting of abortions performed on minors; amending Rule 24(a), Alaska Rules of Civil Procedure, amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

HB 364 was HEARD and HELD in Committee for further consideration.

#hb364

HOUSE BILL NO. 364

"An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating to reporting of abortions performed on minors; amending Rule 24(a), Alaska Rules of Civil Procedure, amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

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REPRESENTATIVE JOHN COGHILL, SPONSOR, introduced HB 364 as the culmination of a ten-year debate in the courts. The Parental Consent Act (PCA) was legislated in 1997. That same year and again in 2007, the Alaska Supreme Court determined that the PCA was unconstitutional because the right to privacy extended to minors.

Representative Coghill reminded the Committee that the issue of the bill is not abortion but the role of parents in the decision of a minor to have an abortion. He read from the Sponsor Statement: "HB 364 enacts the notification process that the Court determined is the least restrictive means" (Copy on File).

Representative Coghill pointed out that the current bill leaves intact the four exemptions from parental consent: "Married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting." The bill allows three responses:

1. The parent is involved in the decision whether to have the abortion.
2. The minor by-passes the parental notification and consent process through showing good reason.
3. If the minor is physically or sexually abused or has a history of emotional abuse, there are provisions so

that the minor can proceed without parental notification and consent.

[6:14:33 PM](#)

Representative Coghill asserted that the parent should be involved in the decision unless there is a compelling reason for them not to be involved.

Representative Coghill explained the details of the bill ("Sectional for Version 'E'," Copy on File), including:

- Sec. 1. Adds a notice requirement to the consent requirement.
- Sec. 2. Shifts the burden of proof for prosecution of a physician who performs an abortion.
- Sec. 3. Specifies conditions under which a doctor can perform an abortion: parental consent, court order waiving notification and consent (judicial bypass), constructive consent, and bypass of the judicial bypass.
- Secs. 4 & 5. Adds notice to process for filing for judicial bypass.
- Sec. 8. Provides for a minor requesting a judicial bypass.
- Sec. 9. A new section prohibiting a parent or other person from coercing a pregnant minor to have an abortion.

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Representative Coghill stressed that the Legislature needs to intercede. He said the courts have struck down the PCA, which means parents have an absolute barrier if a child chooses not to involve the parent in the decision to have an abortion. Parents have had the right to intercede in all other medical procedures. He acknowledged that there are parents who treat girls poorly and said the bill has allowed for that. The courts have said that the fundamental right of the parent is balanced against the fundamental right of the child. The bill is an attempt to set the balance right in the direction of parents' rights by using some of the courts' own logic.

Representative Coghill stated that he believed the default position in Alaska should be that parents be involved in the decision.

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Co-Chair Meyer opened for questions to the Sponsor.

Representative Gara searched for common ground with the Sponsor. They both wanted to limit abortions as much as possible. He voiced concerns about telling a child that they have to get consent from an abusive parent.

Representative Gara stated that he did not like the judicial bypass because he does not want a child to have to prove abuse to the court. He prefers the alternative of the affidavit. He maintained that a child who fears an abusive parent will not go to court. He wanted the bill to specify that the child does not need consent from anyone if the minor signs an affidavit, under penalties of perjury, that they genuinely fear abuse. He had trouble with the child having to get another person to sign.

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Representative Coghill replied that there are safety nets in the system for a young person caught in a pattern of abuse. He thought the bill broadened the safety net by including parents. He argued that abortion is a big decision. He wanted to be sure there was trustworthy support for the child. He thought an affidavit was absolutely necessary.

Representative Gara responded that the child should be protected without delaying the abortion until the second trimester. He said if the Sponsor wants to protect the child, the bill could say that the child gets the right to choose at the point when she files the affidavit with the doctor. The doctor would have to report the abuse and the child would be protected that way. Representative Coghill said that if there is abuse, he wants it reported. He agreed a doctor could make notification of abuse.

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Representative Gara restated his desire to find common ground. He revisited the steps a child could take. He said the problem with the bill as written is the child cannot get her affidavit accepted without another adult signature. Too much time has passed. Once the child states under penalties of perjury that they are in danger, he thought that should be enough.

Representative Coghill thought there might not have to be a time problem. He imagined a scenario where a child could get immediate help. He reminded the Committee that an emancipated minor is already able to make the decision. The child who is not emancipated needs help anyway. However, if it is just between the child and the doctor, he was concerned that doctors might not do the right thing.

Vice-Chair Stoltze observed the common ground is recognizing the youth of the minor and the shared desire to protect the

child. He wondered how much Representative Coghill has compromised on HB 364 already and how much further he would be able to compromise.

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Representative Coghill responded that there were things he would prefer not to have in the bill, but the courts' rulings affect the situation. He has difficulty with minor's ability to go ahead with the abortion when the courts do not take action. He hoped that those who helped young girls would be reasonable. He reiterated his strong belief that the courts missed the balance in excluding parents.

Representative Kelly queried as to the youngest age a child could have to make the decision. Representative Coghill thought that would be whatever age the child was able to conceive.

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Co-Chair Chenault opened public testimony.

KIM M. BOIDIKER, FAIRBANKS (Testified via teleconference), spoke in support of HB 364. She relayed a personal story. She thought it important for parents to be involved in their child's decision to have an abortion.

HEATHER ANDRULLI (Testified via teleconference), (Statement read by another testifier) spoke in support of HB 364. She described her family and told a story of her daughter's involvement with a man over the internet. She thought having the law on their side enabled the parents to help their daughter. She related stories involving abortion providers and Planned Parenthood. She thought only parents should have the right to provide guidance for minor daughters.

ANNIE DOUGHERTY, FAIRBANKS (Testified via teleconference), spoke in support of HB 364. She felt the bill is written to protect girls.

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Representative Gara pointed out that there is no evidence that Planned Parenthood did the things testifiers had accused them of doing.

Co-Chair Chenault asked testifiers to stick to the issue and not make accusations.

JASON SOIGERS, FAIRBANKS (Testified via teleconference), testified in support of HB 364. He described the dangers of abortion. He would be outraged if his daughter made the

decision on her own. He referred to women who are now coming forward to say how wounded they are from the procedure.

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RACHELLE RENNER, FAIRBANKS (Testified via teleconference), spoke in support of HB 364. She listed the things a young person has to get permission to do and thought they should not be able to have an abortion without permission.

[6:50:48 PM](#)

MARK RENNER, FAIRBANKS (Testified via teleconference), testified in favor of HB 364. He talked about his children and worried children would take advantage of the loopholes in the bill.

CLOVER SIMON, CEO, PLANNED PARENTHOOD OF ALASKA, ANCHORAGE (Testified via teleconference), spoke in opposition to HB 364. She pointed out that all providers and staff at Planned Parent are mandated reporters. She said permission is required in schools for children to take medicine for insurance and liability reasons. Planned Parenthood's experience is that parents are already involved in the decisions of young people; teens come into the clinics with their parents. Addressing the fiscal notes, she wondered who would pay for the costs of the judicial bypass and other expenses. She stated concerns about the mandated reporters. The process can take weeks, delaying the teen from getting the medical care she needs. She pointed out that a similar law was recently struck down by the Supreme Court. She said abortion is about ten times safer for teens than giving birth.

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Representative Gara said that one of the reasons the Supreme Court struck the previous statute down was the time issue between when a minor notices she's pregnant and when the first trimester ends. He wondered if Planned Parenthood had information on when a young woman notices pregnancy. Ms. Simon replied that in general teens delay getting an abortion until the tenth or eleventh week, which leaves only two weeks in the first tri-semester. Representative Gara asked how long the bypass and appeal process would take. Ms. Simon responded that the process would take eleven working days, without the bypass. If the young woman had been sexually assaulted, the bypass to the bypass would take longer. Her experience has been that the process is lengthy.

Representative Gara reiterated his concerns about additional delays. He asked if a person could get an elective abortion in Alaska after the first trimester. Ms. Simon said there

are no providers for second trimester elective abortion in Alaska.

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BRITTANY GOODNIGHT, PUBLIC AFFAIRS MANAGER, PLANNED PARENTHOOD OF ALASKA (Testified via teleconference), spoke in opposition of HB 364. She described her good relationship with her parents, but she could not talk to her parents about everything. She thought the bill would create almost insurmountable obstacles and dangerous delays for girls afraid to report. She urged the Legislature to fund the safety net that teens need to have real choices to have children: medical care, after-school and recreation programs, child care and educational opportunities for young mothers.

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GREG SCHMIDT, BOARD, ALASKA FAMILY COUNCIL (Testified via teleconference), spoke in support HB 364. He does not like outside entities involved in such intimate decisions. He worried that the choice to abort could cause many years of trauma.

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ROBIN SMITH, ANCHORAGE (Testified via teleconference), spoke in opposition of HB 364. She spoke to abortion complications for young girls who are afraid to get help. She related a personal story and encouraged that each young girl determine what the correct medical treatment should be. She pleaded that dollars be placed into prevention and sex education for teens.

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KARLA UTTER, ANCHORAGE (Testified via teleconference), spoke in favor of HB 364. She echoed comments made by Ms. Simon and Ms. Goodnight.

KATHLEEN GUSTAFSON, PRESIDENT, BOARD OF DIRECTORS, FAMILY PLANNING CLINIC, HOMER (Testified via teleconference), testified in strong opposition to HB 364. She stated that abortion is a legal procedure for anyone old enough to become pregnant. Respect and trust between a parent and child cannot be legislated.

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ANNE LINDSLEY, HAINES, (CURRENTLY A STUDENT IN PORTLAND, OREGON) (Testified via teleconference), spoke in support of HB 364. She noted that she is 18 years old and wanted her peers to have access to safe health care. The goal of the

legislation is noble, but it approaches the intent in the wrong way. Some youth do not live in safe homes. She thought abortion is a personal decision. The court process is too lengthy for a young woman to consider all options and could result in dangerous behavior. If the State wants to reduce the number of abortions, it should implement a more thorough sex education program. Parents should not have the right to make decisions that will affect the rest of their daughters' lives.

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JIM MINNEREY, PRESIDENT, ALASKA FAMILY COUNCIL, JUNEAU (Testified via teleconference), testified in support of the legislation. He spoke to the need for parental consent for a wide range of activities and procedures. He referred to a Massachusetts study of young people who had pursued the judicial by-pass, which found that half had positive relationships with their parents. Only a small portion of those in the study had fear of some kind of parental harm if they told their parents. He thought the issue is the fear of restrictions in the pro-choice group. He reviewed examples of courts and doctors supporting parental consent.

PAMELA SAMASH, JUNEAU (Testified via teleconference), spoke in support of HB 364. She has a teenage daughter. Her religious beliefs affect her stance. She related a personal story. She thought girls needed their parents most when they had to make such a difficult decision.

DEBBIE JOSLIN, EAGLE FORUM ALASKA, DELTA JUNCTION (Testified via teleconference), spoke in support of HB 364. She stated her personal beliefs regarding abortion. She thought parents' right to raise their children is sacred.

CATHY COTTON, DELTA JUNCTION (Testified via teleconference), testified in support of the bill. She thought it made common sense for parents to be involved in the decision.

JANET CREPPS, DEPUTY DIRECTOR, LEGAL CENTER FOR REPRODUCTIVE RIGHTS (Testified via teleconference), spoke in opposition to HB 364. She litigated the case regarding the PCA from its inception in 1997, including arguing the case twice before the Alaska Supreme Court. She had two points about HB 364. First, the proposal is clearly unconstitutional. The Court's decision is binding precedence and the Legislature should recognize and apply that when considering parental involvement requirements. House Bill 364 not only fails to meet the standard laid out by the Supreme Court, but seeks to impose even harsher and more onerous burdens than the law that was struck down. The addition of the so-called abuse exception and changes to the by-pass do not fix the fundamental flaw that parental consent is unconstitutional. If enacted the law would be one of the harshest parental

involvement laws in the country. The notice provision is burdensome and requires minors and their parents to undergo multiple steps. In most states that require notice and a waiting period before a minor can obtain an abortion, the waiting period can be waived if the parent consents to the procedure, which is not the case in HB 364.

Ms. Crepps outlined her second point. The bill, if passed as written, will be subject to a legal challenge and found unconstitutional and the State will have to foot the bill for unnecessary and expensive litigation.

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Representative Gara asked for details of the costs resulting from the last parental consent statute. Ms. Crepps confirmed that the cost of state legal counsel was \$790,000. In addition, the State hired a private law firm for approximately \$300,000, which does not include the additional costs that were incurred by the Fairbanks District Attorney's office, which also represented the State in the case. Representative Gara wanted to hear from the State's attorneys regarding the totals for that litigation.

Representative Gara also wanted to know how much public representation cost in states where parental consult has been upheld for a child who goes to court. Ms. Crepps replied that most of the states are not tracking the costs of public advocates. She explained that states with judicial bypass, which are the states not only with parental consent but parental notice, uniformly provide appointed representation, the costs of which are borne by the public.

Representative Gara stated that HB 364 is very similar to the statute struck down by the Supreme Court and he advised that it would happen again. He thought the cost issues are important and wanted to hear from the Department of Labor and the Public Defenders regarding potential costs.

Co-Chair Chenault referred to a note from the courts and the Department of Law.

Representative Gara pointed out that costs to the State from defending young women should also be pursued.

Co-Chair Chenault answered that all departments would be asked for fiscal notes pertaining to the bill.

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Representative Kelly grilled Ms. Crepps regarding her parental status and beliefs about abortion. Ms. Crepps thought the question was irrelevant. Representative Kelly asked her about her beliefs regarding parental consent. Ms.

Crepps replied that she thought a minor had the right to make life-altering decisions.

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Representative Gara turned to page 7 of the bill, regarding coercion of a minor to have an abortion through force, threat of force, deprivation of food, support, or shelter. He asked if it was then all right to do the same thing to require the minor to deliver a pregnancy to term. Ms. Crepps replied that no minor should be coerced by her parents to make life-altering decisions either way. As a matter of law, this raises equal protection concerns regarding treating minors who make a decision to carry to term differently than minors who decide to terminate a pregnancy.

Representative Gara referred to the provision requiring the 48-hour waiting period and discussion in the Supreme Court case regarding the collapsing time period between when a young woman is aware of pregnancy and when the bypass proceeding is complete. Ms. Crepps thought the built-in delay would give the courts concern.

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LAUREN BRETZ, ALASKA FAMILY COUNCIL (Testified via teleconference), spoke in support of HB 364. She thought it should be obvious that children need parents involved in their lives. She referred to the movie "Juno," which depicts a young woman involving her parents in her decision to carry a child to term.

KATE LINDSLEY, HAINES (Testified via teleconference), spoke in opposition to HB 364. She is 16 years old and feels the bill is relevant to both herself and her friends. She thought the court is not being practical in its assumptions. The bill is not applicable to all girls. She can talk to her mother, but not everyone can. Good communication cannot be mandated by the State. Parents should not have the right to compel a child to have a child any more than they should not be able to compel them to have an abortion. She introduced her mother, Michelle Tarrott, who had also come to testify.

MICHELLE TARROTT, HAINES (Testified via teleconference), vehemently opposed the bill. She said her two teen daughters motivated her to testify. She believes the issues addressed by HB 364 are highly personal and does not want the government mandating that her children talk to her. The State needs better sex education and clinics, not more restrictions.

WAYNE HUNTER, RIGHT TO LIFE (Testified via teleconference), spoke in favor of HB 364 and thought it represented the will of the people of Alaska. He thought the after-effects of

abortion was harder on teen girls than grown women. Involving parents in the process can increase the chances of a youngster making a truly informed decision.

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PUBLIC TESTIMONY CLOSED.

Co-Chair Meyer stated that the intent was not to take action on the bill but to take testimony. He referred to possible amendments. He asked if there were additional questions for the Sponsor.

Representative Gara referred to page 2, line 29, which zones in on his biggest concerns. Currently a person does not have to get a judicial bypass if a doctor determines that a delay will cause a serious risk of substantial and irreversible impairment. That has been changed in HB 364 to add "medical instability caused by a" substantial and irreversible impairment.

Representative Coghill responded that (g) under Sec. 2 gives the physician a rebuttable defense for these reasons: life, health, and medical emergency. The section Representative Gara referred to is under the definition of medical emergency. He said the intent is to define what a medical emergency is and whether the young girl is medically stable or if it would create instability.

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Representative Gara said his concern was that the definition could be interpreted to mean having to prove medical instability. He did not want to insert a standard beyond substantial and irreversible impairment. Representative Coghill responded that the bill is trying to define whether an emergency exists. Representative Gara proposed that a delay would cause the emergency. Representative Coghill replied that the standard is good faith and medical judgment.

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Co-Chair Meyer asked that the amendments be submitted by Wednesday evening.

HB 364 was HEARD and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 8:12 PM.