ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
January 21, 2008
1:06 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Max Gruenberg

OTHER LEGISLATORS PRESENT

Representative Andrea Doll

COMMITTEE CALENDAR

HOUSE BILL NO. 255
"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 301
"An Act relating to partial-birth abortions."

- MOVED HB 301 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 255
SHORT TITLE: DUAL SENTENCING
SPONSOR(S): REPRESENTATIVE(S) JOHNSON

05/04/07	(H)	READ THE FIRST TIME - REFERRALS
05/04/07	(H)	JUD, FIN
05/11/07	(H)	JUD AT 1:00 PM CAPITOL 120
05/11/07	(H)	Heard & Held
05/11/07	(H)	MINUTE(JUD)

01/21/08 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 301
SHORT TITLE: PARTIAL-BIRTH ABORTION
SPONSOR(S): REPRESENTATIVE(S) KELLER, COGHILL, LYNN

01/11/08 (H) PREFILE RELEASED 1/11/08
01/15/08 (H) READ THE FIRST TIME - REFERRALS
01/15/08 (H) JUD
01/21/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE CRAIG JOHNSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 255.

TONY NEWMAN, Social Services Program Officer
Division of Juvenile Justice (DJJ)
Department of Health & Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 255, and expressed support for the bill.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 255, and expressed support for the bill.

QUINLAN G. STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 255.

JOSHUA FINK, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 255.

REPRESENTATIVE WES KELLER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as one of the joint prime sponsors of HB 301.

KAREN LEWIS, Alaska Right to Life
(No address provided)
POSITION STATEMENT: Provided comments during discussion of HB 301.

SIDNEY HEIDERSDORF, President
Alaskans for Life, Inc.
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 301.

JOHN P. MONAGLE
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 301.

DEBBIE JOSLIN, President
Eagle Forum Alaska
Delta Junction, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 301.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:06:30 PM. Representatives Samuels, Lynn, Holmes, Coghill, and Ramras were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress. Representative Doll was also in attendance.

CHAIR RAMRAS offered a few quotes by Martin Luther King, Jr., in recognition of the holiday.

HB 255 - DUAL SENTENCING

1:10:42 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 255, "An Act relating to dual sentencing of

certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

1:11:04 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 255, Version 25-LS0914\E, Luckhaupt, 1/18/08, as the work draft. There being no objection, Version E was before the committee.

1:11:29 PM

REPRESENTATIVE CRAIG JOHNSON, Alaska State Legislature, sponsor, relayed that HB 255 [proposes an expansion of the dual sentencing provisions of Title 47] so that those juveniles who commit a certain class of crime can be given a chance to serve a sentence within the juvenile justice system (JJS) but can then be "remanded to adult court" should they not satisfy the terms of the juvenile order. The bill provides that an individual who has reached the age at which his/her juvenile order no longer can be enforced but who the department feels still needs more supervision can then be placed under adult probation. He noted that during the interim, the issue of dual sentencing was discussed by a "task force in Anchorage," but no consensus was reached; one of the points discussed pertained to the age at which a young person could also be subject to an adult sentence.

REPRESENTATIVE JOHNSON offered that the bill gives the judge more flexibility with regard to which crimes a juvenile can receive dual sentencing for. Under dual sentencing, a judge can order a juvenile to participate in the JJS and impose an adult sentence that will only be enforced if the juvenile does not then successfully rehabilitate himself/herself via the JJS. He relayed that initially he'd intended to expand the statutory provisions pertaining to mandatory waivers, but the department had expressed concern with that concept, and so HB 255 simply addresses the provisions pertaining to dual sentencing with the goal of providing juvenile offenders with an incentive to complete their juvenile orders and rehabilitate themselves. The bill gives the administration another tool by which to rehabilitate those juvenile offenders that can be rehabilitated, and a tool by which to further control those that can't be rehabilitated - they can instead be dealt with as an adult before they have an opportunity to commit another crime as an actual adult.

REPRESENTATIVE JOHNSON, in conclusion, said:

> This is a public safety issue - so many of our crimes these days are being committed by juveniles in gang-related incidences. So if we can get our hands on these ... young people and work them through the system, great. For those that we can't, it's an opportunity for us to protect the public into the future.

REPRESENTATIVE SAMUELS questioned whether under the bill, the [prosecuting] attorney would still have the ability seek a discretionary waiver instead of dual sentencing.

REPRESENTATIVE JOHNSON said the bill won't reduce the prosecuting attorney's ability to seek a discretionary waiver for those crimes that are deemed heinous.

REPRESENTATIVE SAMUELS asked what the appellate process would be in such situations.

REPRESENTATIVE JOHNSON suggested that others might be better able to address that question.

1:17:43 PM

REPRESENTATIVE HOLMES referred to Section 4 of the bill, and noted that in part it is proposing to change the standard of proof - from a preponderance of the evidence to clear and convincing evidence - [that a juvenile must provide to justify a continuance of the stay of the adult sentence], and that a court need only find by a preponderance of the evidence that the juvenile has committed a second offense. She asked whether, when the juvenile commits a subsequent offense, another trial must take place wherein the juvenile is actually convicted.

REPRESENTATIVE JOHNSON offered his understanding that if the prosecuting attorney chose to prosecute that subsequent offense, "that offense would be there," and that the adult sentence that was part of the original dual sentencing procedure could be imposed immediately while the juvenile awaits further trial. Part of the purpose of the bill, he added, is to keep those juveniles with a propensity to reoffend incarcerated.

REPRESENTATIVE HOLMES characterized the standard of a preponderance of the evidence as a low threshold by which to impose the adult sentence, particularly given that a higher

standard is being imposed on the juvenile to provide evidence that mitigating circumstances exist.

REPRESENTATIVE JOHNSON opined that it shouldn't be difficult to impose the adult sentence for those that [continue to] endanger the public; in such cases, that lower threshold is justified. Although he doesn't wish to violate anyone's rights, he remarked, he would like to tip the scales toward protecting the public. However, should the juvenile then be found innocent of a subsequent offense, he surmised that the judge would then have the discretion to again stay the adult sentence.

REPRESENTATIVE HOLMES asked why a change to the standard of evidence the juvenile must provide is being proposed.

REPRESENTATIVE JOHNSON suggested that others might be better able address that question as well.

REPRESENTATIVE SAMUELS offered an example in which a 15-year-old commits murder and the prosecuting attorney chooses to pursue dual sentencing. He asked how old that juvenile must be before he/she is "booted out of McLaughlin [Youth Center] - ... 19 or 20?"

REPRESENTATIVE JOHNSON said that is correct, unless he/she is victimizing other inmates or otherwise becomes a problem.

REPRESENTATIVE SAMUELS asked who determines whether the treatment "sticks."

REPRESENTATIVE JOHNSON surmised that that is an administrative decision that would be made by the Division of Juvenile Justice (DJJ).

CHAIR RAMRAS characterized [dual sentencing] as an interesting approach to a public safety issue.

REPRESENTATIVE SAMUELS, referring to his aforementioned example, asked whether the juvenile's records would be sealed.

1:26:40 PM

TONY NEWMAN, Social Services Program Officer, Division of Juvenile Justice (DJJ), Department of Health & Social Services (DHSS), explained that if a juvenile succeeds in the JJS, the juvenile goes back to court wherein it is determined that his/her juvenile order has been satisfied and that he/she is

thus "finished." This same process would apply under dual sentencing except that the juvenile [must then] ask the court not to impose the previously-pronounced adult sentence. If the department, however, feels that the juvenile hasn't succeeded in the JJS, then it would petition the court to have the adult sentence imposed.

REPRESENTATIVE SAMUELS questioned what criteria would be used to make the determination of whether a juvenile has been successful in the JJS, and who would be held accountable should that juvenile then go on to murder someone else.

MR. NEWMAN said that the DJJ is already making such determinations, and that DJJ treatment facilities already have standards regarding what constitutes [success]; for example, the DJJ considers whether the juvenile is likely to live a crime-free lifestyle, what is in the best interest of both society and the juvenile, and whether it is likely that any further progress will be obtained by requiring the juvenile to remain in the program. In addition to those considerations, every juvenile also has an individualized treatment or probation plan outlining goals that he/she is expected to achieve while in the JJS or while out on probation, and these plans can be used to help determine whether the juvenile is succeeding. Juveniles who don't meet their goals but who must be released from the DJJ facility because their juvenile jurisdiction is about to end have notations made in their discharge summaries outlining that they have failed in meeting their goals, or, for example that they are "surface compliant" only.

MR. NEWMAN noted that currently under juvenile orders, once the juveniles turns 19 or 20, "they're gone," and so the bill gives the DJJ an opportunity to impose some sort of sanction on the juveniles that continues beyond their reaching the age of 19 or 20.

1:30:09 PM

REPRESENTATIVE SAMUELS again asked whether the records of juveniles who succeed in the JJS would be sealed.

MR. NEWMAN offered his belief that currently under the dual sentencing provisions, court records are open to the public as adult records.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), added that juvenile records are available to probation officers.

1:31:41 PM

REPRESENTATIVE SAMUELS questioned whether the court could look at an adult felon's juvenile record and see that he/she committed a similar felony crime while he/she was a juvenile and then use that information to increase the sentence.

MR. NEWMAN said that is true for felony crimes; when a juvenile is adjudicated on a felony, a judge, in determining mitigating and aggravating factors, can use a previous felony adjudication to help determine those factors.

REPRESENTATIVE SAMUELS questioned whether Alaska has a "three strikes and you're out" law.

MS. CARPENETI explained that there is such a law, but that juvenile adjudications don't count as a conviction. The aforementioned law is very limited with regard to what counts as a "strike." In response to a question, she explained that currently there is a discretionary waiver procedure available; the state can ask the court to consider the discretionary waiver of a juvenile who is under the age of 18, or who is under the age of 15 if it's a very serious crime that would otherwise be subject to automatic waiver, into adult court. Currently the state's dual sentencing statute only applies to one class B felony against a person - second degree sexual abuse of a minor - whereas HB 255 proposes to expand that statute such that it could apply to all class B felony crimes against a person. However, there are several steps that must occur before dual sentencing is considered, the first of which is that the prosecuting attorney must make the decision to request that dual sentencing be applied to the person.

MR. NEWMAN clarified that under the bill, dual sentencing would also be available for any felony crime against a person as long as there is a previous adjudication or conviction for a felony crime against a person.

MS. CARPENETI concurred.

MR. NEWMAN, in response to a question, offered that currently, for a juvenile 15 years of age who commits a murder, there are two processes, one of which is the discretionary waiver process,

though that isn't used very often because it presents a difficult legal tangle with regard to determining whether the juvenile would be amenable to treatment in the JJS; sometimes when a discretionary waiver is sought, it is denied and the juvenile is sent back to the DJJ, but sometimes a juvenile is waived into the adult system and is never given the chance to possibly succeed in the JJS. What's attractive to the DJJ about HB 255 is that it would provide yet a third way of dealing with such a juvenile; he/she would be allowed to spend some time in the JJS, but if the DJJ still has concerns about him/her when he/she turns 19 or 20, the state still has the ability to "continue some measure of public safety and accountability on that person for a while."

MS. CARPENETI offered her understanding that at one point the proposal was to expand the automatic waiver provisions to include more crimes for which juveniles would automatically be sent into the adult justice system, but since the mission of the DJJ is to try to rehabilitate juvenile offenders, "public safety would really mitigate in favor of trying to work with them at an early age," rather than just sending them to adult prison where the chances of being rehabilitated are not as good.

1:39:26 PM

MS. CARPENETI, in response to a question, said that the DOL supports HB 255.

REPRESENTATIVE HOLMES offered a hypothetical situation in which a juvenile commits the crime of manslaughter, goes through the JJS, but then reaches the point where he/she is going to "age out" of the system. How long would the adult probationary period be for that person, up until what age could the adult sentence possibly be imposed, and what happens if the person commits a subsequent lesser crime such as the crime of driving under the influence (DUI)?

MR. NEWMAN offered that if a 15-year-old commits the crime of manslaughter, and he/she is referred for dual sentencing - thus receiving both an adult sentence and a juvenile order - and he serves the standard two years for the juvenile order in the JJS, but the DJJ then extends the order because it is not yet sure about his/her public safety risk, he/she could stay within the JJS until he/she reaches the age of 20. If the DJJ still has some concerns about him/her even though he/she has reached the age of 20, since the timeframes of the adult sentence would already be spelled out, the DJJ could go back to court and the

judge could then decide how much of that adult sentence should be served and in what fashion.

REPRESENTATIVE HOLMES questioned whether such a person might simply have adult probation imposed, and, if so, for how long.

MR. NEWMAN said the person would be placed on probation, and the length of time would depend on the parameters of the previously-pronounced adult sentence. If the person then commits another crime while on that adult probation, then that would be dealt with as a new crime - "almost entirely out of the juvenile [justice] system altogether," he added. As another example, if a juvenile under a dual sentence is on juvenile probation and he/she commits a serious felony assault, the DJJ could decide whether to move the juvenile offender to the adult system, and whether to discretionarily waive him/her [for the second crime] if he/she is still a juvenile. Again, one of the attractive aspects of HB 255 is that it provides the DJJ with more tools than the existing dual sentencing statute, which is not being used very much - only five times in the last ten years.

REPRESENTATIVE HOLMES surmised, then, that the bill gives the court discretion with regard to probation and violations of probation.

MR. NEWMAN concurred.

REPRESENTATIVE COGHILL asked whether plea bargaining occurs when serious crimes are committed by juveniles, and whether such would occur under a dual sentence.

MS. CARPENETI said she assumes that plea negotiations would proceed in a potential dual sentence case, and that the question of whether to proceed with a discretionary waiver or dual sentencing would definitely be a subject of discussion and negotiation between the prosecution, the DJJ, and the defense. Once the dual sentence is imposed, however, the court has chosen what adult sentence would be appropriate under the circumstances, and so her belief, she relayed, is that there would not be any further negotiations.

REPRESENTATIVE COGHILL indicated that he is still questioning how the appropriate adult sentence would be determined.

1:49:29 PM

QUINLAN G. STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), mentioned that with regard to HB 255 as a whole, he did have a chance to work with the aforementioned task force, and so was privy to some of the discussions that arose regarding the bill. The three main issues raised that merited discussion were: at what age should dual sentencing become available - currently the bill could apply to someone as young as 12 who commits certain crimes - and whether there is research indicating that such a decision could not be supported for someone of that age because of brain chemistry and brain development; whether the standard of evidence showing an ability to be rehabilitated should be changed to clear and convincing when a probation violation has been established - currently, for a discretionary waiver, the standard is still a preponderance of the evidence; and which process, dual sentencing or discretionary waiver, is the preferable method by which to achieve the sought-after goals.

MR. STEINER, in response to a question, said that the PDA doesn't have a position on HB 255, but noted that one unintended consequences could result from changing the standard of evidence to clear and convincing, given that there is a very broad definition of what constitutes a probation violation that could, under the bill, result in the imposition of an adult sentence. The juvenile would have the burden of proving that the adult sentence should not be imposed, and so mistakes in providing that evidence would accrue to the juvenile. With regard to the proposed age threshold of 12, he offered his understanding that there was some research provided during the task force meetings addressing that issue.

1:53:18 PM

JOSHUA FINK, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), noted that a representative from the OPA also attended the aforementioned task force meetings, and that he concurs with Mr. Steiner's summation of those meetings. The OPA does have some concerns, one being that "the brain science" seems to indicate that 12- and 13-year-olds should not be held to the same level of culpability as an adult; furthermore, the U.S. Supreme Court has discussed this issue in Roper v. Simmons. Another concern pertains to changing the standard of evidence for the juvenile. It won't be hard for the state to prove, by a preponderance of the evidence, that a probation violation such as truancy has occurred, but then the juvenile must prove, by clear and convincing evidence, that that doesn't warrant having the adult

sentence imposed. This could result in more juveniles receiving adult sentences than under current law, though that is a policy call for the legislature to make. He offered to provide the committee with further comments in writing regarding the PDA's concerns.

MS. CARPENETI, referring to Section 4's proposed change to the standard of evidence for the juvenile, said that although that does change the burden, it is not an unintended consequence. The rationale behind that change is that at that point in time, the juvenile would have already been given both a juvenile sentence and an adult sentence, and the DJJ doesn't petition for imposition of the adult sentence lightly and wouldn't do it for simple truancy, for example. Again, the whole mission of the DJJ is to get a child into a position where he/she can become a productive member of society. When the DJJ does decide to petition to have the adult sentence imposed and when it is found that the juvenile has violated a condition of his/her probation, the juvenile is then asking for yet another chance. Changing the standard is a way of saying to the juvenile that he/she has already had a couple of chances and so he/she must make an effort to convince the DJJ that he/she really will do well in the JJS; at that point the juvenile ought to be able to clearly articulate his/her request for another chance, she opined. The standard of clear and convincing evidence is just a little bit higher than a preponderance of the evidence and no where near as high as the criminal standard of beyond a reasonable doubt.

1:56:31 PM

MR. NEWMAN assured the committee that the DJJ does not take the concept of moving juveniles into the adult system lightly - the reward and the mission of the DJJ are to keep juveniles out of the adult criminal system. So the fear that mere probation violations such as truancy or being late for a probation appointment could result in an imposition of an adult sentence [is unfounded] because that is not the intention of the DJJ. With regard to crimes, he went on to say, the bill provides that if a juvenile commits either a felony or a misdemeanor involving injury to a person or the use of a deadly weapon, the DJJ can seek to have the adult sentence imposed. However, there are a whole range of crimes that don't fit within those specific categories but that could still represent a public safety concern to the DJJ. For example, if a juvenile under dual sentence for the crime of killing someone while drunk is arrested for DUI while on probation, although that DUI is not a felony, it is still cause for concern. Or, as another example,

if a juvenile sex offender under dual sentencing is released and a condition of his/her probation is that he/she may not spend time with small children but is then found on a playground in a daycare center, although that specific activity is not a crime, it is a probation violation and is cause for concern.

CHAIR RAMRAS asked how many juveniles move through the JJS annually.

MR. NEWMAN said that annually the DJJ is referred between 5,000-6,000 juveniles, with the majority of those being "adjusted out," and with a majority of those that do enter a court process being held on juvenile probation in their homes and communities. The McLaughlin Youth Center currently has about 200-250 beds, and there are about 350 juveniles around the state being held in secure treatment facilities.

CHAIR RAMRAS questioned whether a juvenile has to be incarcerated before being subject to dual sentencing.

MR. NEWMAN explained that any juvenile that is alleged to have committed one of the listed offenses could be subject to dual sentencing.

REPRESENTATIVE SAMUELS asked how many discretionary waiver proceedings have taken place since that provision was adopted.

MR. NEWMAN said he's found record of nine juveniles who were discretionarily waived, though more were referred for discretionary waiver.

2:01:47 PM

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 255.

MR. NEWMAN, in response to a question, said that the DJJ supports HB 255.

[HB 255, Version E, was held over.]

HB 301 - PARTIAL-BIRTH ABORTION

2:03:17 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 301, "An Act relating to partial-birth abortions."

2:03:45 PM

REPRESENTATIVE WES KELLER, Alaska State Legislature, speaking as one of the bill's joint prime sponsors, indicated that HB 301 is tailored to meet the intent of federal law; that it defines the term, "partial-birth abortion" using [some of] the language currently in federal law; and that 36 states currently restrict partial-birth abortions, which have been characterized as inhumane and brutal.

REPRESENTATIVE COGHILL, speaking as one of the bill's joint prime sponsors, offered his understanding that the language in federal law has been considered by the U.S. Supreme Court, and that existing Alaska law restricting partial-birth abortions has not been enforced. House Bill 301 will help Alaska meet the federal court's standard and put Alaska's law in the forefront again, and though that could lead to challenges, he opined, [adoption of HB 301] still constitutes good public policy. He noted that members' packets contain one proposed amendment.

2:07:56 PM

KAREN LEWIS, Alaska Right to Life, first relayed that Alveda King, the niece of Martin Luther King, Jr., was the keynote speaker at her organization's 2007 Proudly Pro-Life Dinner last November and told participants that had her uncle been alive he would have spoken against "the injustices that are being inflicted on the unborn children in our nation" and that she believes abortion is the present-day human rights issue. Ms. Lewis said it is difficult for her to understand why and how the nation continues to allow the "brutal and merciless slaughter of our most precious resource - our children." She offered her understanding that a little over 150 years ago, the U.S. Supreme Court deemed African Americans as not being fully human, and that Native Americans were systematically slaughtered with tax funds; thus she is not very surprised to "see what's going on now with the killing of our babies." She noted that as of tomorrow, Roe v. Wade will have been in effect for 35 years, and offered her understanding that about 50 million "pre-born" children have been killed at the hands of their mothers and hired abortionists. In conclusion, she said she appreciates the [committee hearing] HB 301 "as a very good piece of legislation."

2:10:10 PM

SIDNEY HEIDERSDORF, President, Alaskans for Life, Inc., relayed that his organization supports HB 301 as well as all efforts to bring Alaska statutes in line with abortion restrictions as permitted by the courts. He added:

> We are opposed to partial-birth abortion - it's a gruesome, horrifying procedure. However, this is not why we oppose it. We oppose it because it kills a baby. And there is no moral difference, really, between a partial-birth abortion and any other abortion. What sets partial-birth abortion apart is that it's a procedure which is so horrifying that ... you would have rights to hope that even abortion supporters would condemn it. Simply reflecting on what it is should be adequate to convince anyone that this is a procedure which should be prohibited. Supporting it really is an effort to defend the indefensible. Partial-birth abortion really is virtual infanticide.
>
> So we think it shouldn't be a controversial issue, really. Sadly, in many instances, we have been mistaken and not fully appreciating the commitment that some individuals have to abortion regardless of the circumstances of the pregnancy. This is simply reaping, I believe, the harvest of Roe v. Wade, which legalized abortion at any stage of pregnancy for any reason or for no reason. So we need to have this ban enforced if we want to maintain at least some semblance in our society as a civil society when it comes how we treat the most defenseless members of the human family. So we thank the [joint prime] sponsors for this proposed legislation and we ask for favorable consideration by this committee. Thank you very much.

2:12:46 PM

JOHN P. MONAGLE said that no one can convince him that a fetus is anything other than a human being - a baby - that is being killed [via abortion], and so anything that can be done to stop "this crime" should be done. In conclusion, he said he supports [HB 301].

2:13:51 PM

DEBBIE JOSLIN, President, Eagle Forum Alaska, after thanking the committee for hearing HB 310 and the joint prime sponsors for introducing it, characterized it as "a good thing." She offered her understanding that there was broad, bipartisan support for passing the federal partial-birth abortion ban, perhaps in part due to the publicity highlighting what is actually entailed in such a procedure. It really isn't a pretty way to kill an unborn baby, she remarked; it is particularly gruesome. She offered her understanding that the U.S. Supreme Court has already ruled that it is constitutional to ban this form of abortion. In conclusion, she urged the committee to pass HB 301 without amendments, surmising that it will merely align Alaska law with "the U.S. Constitution."

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 301.

2:16:30 PM

REPRESENTATIVE HOLMES made a motion to adopt Amendment 1, labeled 25-LS1139\C.1, Kurtz, 1/21/08, which read:

Page 1, following line 2:
Insert a new bill section to read:
"*** Section 1.** AS 18.16.050(a) is amended to read:
(a) Notwithstanding compliance with AS 18.16.010, a person may not knowingly perform a partial-birth abortion unless **continuation of the pregnancy is likely to result in the pregnant woman's death or poses a substantial risk of permanent injury to the pregnant woman's physical or mental health** [A PARTIAL-BIRTH ABORTION IS NECESSARY TO SAVE THE LIFE OF A MOTHER WHOSE LIFE IS ENDANGERED BY A PHYSICAL DISORDER, ILLNESS, OR INJURY AND NO OTHER MEDICAL PROCEDURE WOULD SUFFICE FOR THAT PURPOSE]. Violation of this subsection is a class C felony."

Page 1, line 3:
Delete "**Section 1**"
Insert "**Sec. 2**"

CHAIR RAMRAS objected [for the purpose of discussion].

REPRESENTATIVE HOLMES noted that Amendment 1 proposes to amend AS 18.16.050(a), a provision of statute not currently included in HB 301, which just changes the definition of "partial-birth

abortion". As currently written, AS 18.16.050(a) contains an exception to the restriction on partial-birth abortion, and Amendment 1 would change the wording of that exception such that a partial-birth abortion could be performed not only if the life of the mother is threatened but also if there is a substantial risk of permanent injury to her physical or mental health. She offered her belief that including such language is critical.

CHAIR RAMRAS questioned what constitutes "mental health".

REPRESENTATIVE HOLMES offered: "The requirement of it being a ... substantial risk of permanent injury applies to both the physical and mental health aspects; there are cases in which it could be found that it would cause severe trauma. I don't know the exact medical definition."

REPRESENTATIVE COGHILL said he objects to Amendment 1, though likes the inclusion of the words "permanent injury". He opined that Amendment 1 would soften the effect of HB 301, and noted that it will be hard to substantiate a potential permanent mental health problem. He offered his belief that the life that is healthy needs to be protected, and that physical and mental injury can probably be repaired, whereas killing "a child" is irreparable.

2:21:04 PM

REPRESENTATIVE LYNN, speaking as one of the bill's joint prime sponsors, opined that life is precious, whether it be the mother's or the child's, and so both should be saved whenever possible. He asked how often "this situation" has occurred, and whether current statute contains a definition of mental health.

REPRESENTATIVE COGHILL noted that mental health disorders are described in the [Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)], and surmised that as used in Amendment 1, the term, "mental health" could fall under that code, which he characterized as very broad.

REPRESENTATIVE HOLMES explained that the language of Amendment 1 was derived from Colorado and Delaware state statutes.

REPRESENTATIVE DAHLSTROM relayed her belief that if the child in the womb is of the size described in the bill, then a Cesarean section could be performed - instead of a partial-birth abortion - and the child could then be given up for adoption. If the steps outlined in the bill have to be taken in order to kill the

unborn child, then that child is probably capable of living in an incubator and thus wouldn't have to be killed. She said she opposes Amendment 1.

REPRESENTATIVE HOLMES offered that the U.S. Supreme Court has already debated, in two cases, whether there needs to be a "health of the mother" exception in "a statute like this," and whether such a procedure is ever medically necessary to save and protect the health of the mother. In both cases there was a lot of serious debate among the medical community on this issue, and this debate is ongoing. Even if the court does find Alaska's existing exception to be adequate, because the debate is still so active, it may not be the right decision; therefore, she remarked, "I have to come down on the side of allowing a health exception." The language of Amendment 1 is not meant to be a "light" standard, she assured the committee, and if it ever were deemed medically necessary to perform a partial-birth abortion in order to preserve a woman's health, it would be important to have included such an exception.

REPRESENTATIVE DAHLSTROM pointed out that even during a "normal" child birth, complications can occur resulting in problems that doctors may or may not be able to fix. She relayed her knowledge of one woman who'd chosen to give birth and then to give the baby up for adoption because she felt she couldn't care for it properly, and offered her belief that any expectant mother in a similar situation would prefer to give birth - via a Cesarean section if necessary - and then let the baby be adopted. She noted that when her mother was pregnant with her brother during the Rubella epidemic, the doctors advised her to have an abortion; her mother instead chose to give birth to her brother, and although he was born prematurely and had a hearing problem, he was not "the monster that they said he was going to come out to be." Although she understands the intent of Amendment 1, she relayed, she feels that delivering the baby via Caesarean section is an alternative to a partial-birth abortion.

2:34:23 PM

REPRESENTATIVE COGHILL noted that existing AS 18.16.050(a) already references the life of the mother and protecting the life of the mother - in situations wherein only one may live, the mother gets priority. Historically, he surmised, before Roe v. Wade, it was the other way around - if they had to make a choice, doctors would try to save the baby and not the mother. Statute currently says that the life of the mother has value, and so it is important, he opined, to also say, wherever

possible, that the life of the child has value as well; one obvious place to make such a policy statement is in the statute restricting the use partial-birth abortions, because to him, "that's a life," regardless of whether it starts at conception. House Bill 301, he indicated, is the best that can be done at present.

REPRESENTATIVE HOLMES argued that just because the U.S. Supreme Court has said "we can" doesn't mean they should. Noting that she puts a very high value on the life and health of the mother, and given that the debate regarding whether such a procedure is ever necessary is still ongoing, she said she thinks that including a "life and health of the mother" exception is important.

2:38:48 PM

A roll call vote was taken. Representative Holmes voted in favor of Amendment 1. Representatives Lynn, Dahlstrom, Coghill, Samuels, and Ramras voted against it. Therefore, Amendment 1 failed by a vote of 1-5.

REPRESENTATIVE KELLER, in conclusion, said he appreciates that Representative Holmes discussed her amendment with him beforehand.

REPRESENTATIVE LYNN relayed that he is pro-life and believes in protecting human life from the moment of conception until natural death occurs. House Bill 301 addresses the issue of infanticide, he opined, because for all practical purposes, during a partial-birth abortion, the baby has already been born. In conclusion, he said that life is precious and needs protection, and that he supports HB 301 as doing "just that."

REPRESENTATIVE HOLMES reiterated her belief that the health of a woman is [paramount], and said she is disappointed that her proposed exception is not included in the bill and will therefore be objecting to passage of the bill.

2:41:41 PM

REPRESENTATIVE DAHLSTROM moved to report HB 301 out of committee with individual recommendations [and the accompanying zero fiscal note].

REPRESENTATIVE HOLMES objected.

A roll call vote was taken. Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted in favor of reporting HB 301 from committee. Representative Holmes voted against it. Therefore, HB 301 was reported out of the House Judiciary Standing Committee by a vote of 5-1.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:43 p.m.