

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 29, 2008

1:14 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

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."

- MOVED CSHB 364(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 364

SHORT TITLE: NOTICE & CONSENT FOR MINOR'S ABORTION

SPONSOR(S): REPRESENTATIVE(S) COGHILL

|          |     |                                  |
|----------|-----|----------------------------------|
| 02/13/08 | (H) | READ THE FIRST TIME - REFERRALS  |
| 02/13/08 | (H) | JUD, FIN                         |
| 02/14/08 | (H) | STA AT 8:00 AM CAPITOL 106       |
| 02/14/08 | (H) | <Above Item Removed from Agenda> |
| 02/28/08 | (H) | JUD AT 1:00 PM CAPITOL 120       |
| 02/28/08 | (H) | Heard & Held                     |
| 02/28/08 | (H) | MINUTE(JUD)                      |

02/29/08

(H)

JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

JANA KREOFISKY

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

AUTUMN LEACH, Attorney at Law

Soldotna, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

MEGH BARNETT

Wasilla, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

KATY SANDERS

Copper Center, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

ROBIN FORD

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

JOLENE FIRMIN

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

CHRISTINE FONTAINE

Outreach Coordinator

Kachemak Bay Family Planning Clinic (KBFPC)

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

SARAH FERRENCY

Sitka, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

GERAN TARR, Director

Alliance for Reproductive Justice

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

SUE JOHNSON

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 364.

MARILYN RUSSELL  
Fairbanks, Alaska  
**POSITION STATEMENT:** Testified in opposition to HB 364.

KAREN L. LEWIS, Executive Director  
Alaska Right to Life  
Palmer, Alaska  
**POSITION STATEMENT:** Testified in support of HB 364.

DAVID EASTMON, JR.  
Palmer, Alaska  
**POSITION STATEMENT:** Provided comments during discussion of  
HB 364.

DOUGLAS KIDWELL  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of HB 364.

JAN WHITEFIELD, M.D.  
Anchorage, Alaska  
**POSITION STATEMENT:** During discussion of HB 364, expressed  
concerns and responded to questions.

SHELLY BOYER-WOOD  
Anchorage, Alaska  
**POSITION STATEMENT:** Provided comments during discussion of  
HB 364.

CHRISTOPHER REYNOLDS, Licensed Professional Counselor (LPC)  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in opposition to HB 364.

AMY DEVEREUX  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in opposition to HB 364.

NANCY SCHEETZ-FREYMILLER  
Anchorage, Alaska  
**POSITION STATEMENT:** Spoke against HB 364.

ROBERTA N. HUNTER  
Salcha, Alaska  
**POSITION STATEMENT:** Testified in support of HB 364.

KEVIN G. CLARKSON, Esq., Attorney at Law  
Brena, Bell & Clarkson, PC  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of proposed amendments to HB 364.

PAMELA FINLEY, Revisor of Statutes  
Legislative Legal and Research Division  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Spoke on behalf of the drafter of HB 364, Jean Mischel.

CLOVER SIMON, MSW, Chief Executive Officer (CEO)  
Planned Parenthood of Alaska (PPA)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided a comment during discussion of HB 364.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:14:02 PM](#). Representatives Lynn, Dahlstrom, Coghill, and Ramras were present at the call to order. Representatives Holmes, Gruenberg, and Samuels arrived as the meeting was in progress.

#### HB 364 - NOTICE & CONSENT FOR MINOR'S ABORTION

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CHAIR RAMRAS announced that the only order of business would be 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."

[Following was a brief discussion regarding how the committee would be proceeding.]

CHAIR RAMRAS indicated that he supports the bill, particularly in an amended form.

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JANA KREOFISKY relayed that she is a parent and would be testifying against HB 364. She said that should her daughter ever find herself in the really difficult situation of having to deal with an unplanned pregnancy, she hopes that her daughter will feel comfortable coming to her; "but the reality is, for her and for a lot of other children, they won't, and that's why I'm here - ... to try to protect her right to make those choices for herself." She added: "I feel like it's already a horribly difficult situation to deal with, and I don't think it's fair to add more; I'm here to protect her right to make decisions for herself that are, in the end, really going to affect her, her life, and her body."

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AUTUMN LEACH, Attorney at Law, after relaying that she is a former legal advocate for victims of domestic violence (DV) and sexual assault, said she opposes HB 364 because it would force a minor to ask an abusive parent for consent to terminate a pregnancy.

REPRESENTATIVE DAHLSTROM reiterated testimony heard the day before about a study of 490 girls who sought judicial bypass in Massachusetts.

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MEGH BARNETT said she opposes HB 364. Growing up in "the valley" and in Talkeetna, she remarked, had she, as a teenager, needed to terminate a pregnancy but had to first tell her parents, she would have looked for ways to terminate the pregnancy herself, rather than get her parents' consent; she surmised that a lot of girls would do the same because they would find it easier than talking to their parents. She concluded by saying: "I urge you to think about keeping abortion safe, and this bill would make abortion not safe because if a teenager doesn't want to tell their parents [in order] to get consent to have a safe, legal abortion, I fear that they'll look for alternatives to do so. Again, I oppose this bill."

MS. BARNETT, in response to a question, said she has a wonderful relationship with her parents but doesn't feel it's necessary to share information with them about her sexual health.

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KATY SANDERS said she opposes HB 364. She relayed that she has a concern with forcing teenagers who are in abusive situations to go to their parents; regardless that there might only be a few such teenagers, they still need to be protected. Furthermore, teenagers who come from abusive homes are not always willing to disclose that they are from abusive homes, and this should be taken into account when considering any survey results. She explained that in the rural part of the state that she is from, a magistrate serves the whole "Copper valley," and so if she had to go to that magistrate to seek a judicial bypass by admitting that she is from an abusive home, everyone would know about it, and she feels that that would jeopardize her safety. The bill is not addressing what ought to be done to protect girls in rural Alaska, or how such girls could go about obtaining judicial bypass.

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ROBIN FORD said she would be speaking against HB 364. She said she believes the bill is unconstitutional because the Alaska Supreme Court has already ruled on a similar [law] and found it to be unconstitutional.

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JOLENE FIRMIN said she opposes HB 364. She relayed that her parents have been very involved her life; that she is very grateful for everything they've done for her; that she is from Fort Yukon - a committee of 500; and that when she was 14, she decided to move to Fairbanks to get a better education, and did so, with the support of her parents. She explained that she did not ask her parents for permission when she decided to start taking birth control, and wouldn't have asked her parents for permission if she had decided to seek an abortion. The option proposed by the bill would have required her to seek a judicial bypass. But in Fort Yukon, the magistrate is her friend's brother, so her confidentiality wouldn't have been protected, and both she and the magistrate would have been placed in an uncomfortable position. Keeping things confidential in a town of 500 people isn't possible, she relayed.

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CHRISTINE FONTAINE, Outreach Coordinator, Kachemak Bay Family Planning Clinic (KBFPC), explained that the KBFPC is a small, private, nonprofit reproductive-health clinic that's been in existence for about 20 years but is not an abortion provider.

Instead, the KBFPC provides other services similar to those provided by Planned Parenthood. She shared that when young women call the KBFPC seeking birth control or pregnancy testing, one of the first questions they often have is whether their call will be kept confidential from their parents. Currently, staff at the KBFPC can answer that calls are kept confidential unless some form of abuse is going on. These young women are calling the KBFPC because they are either already sexually active or will be soon, and they express relief that someone can confidentially provide them information about the options they have.

MS. FONTAINE said that when a young woman comes in for a pregnancy test, she also receives counseling because entities that receive Title X funding are mandated to inform and counsel clients about abstinence, and are mandated to suggest that they speak with their parents. After noting that she is a nursing student and has worked in the acute care unit at the hospital, she said she has never met any medical provider that wouldn't want parental involvement; "there is no agenda there to hide things from the parent - no one wants that." So if a client says she is afraid or worried about discussing the issue with her parents, and staff determines that abuse is not an issue, staff will encourage the client to bring a parent along for her next visit.

MS. FONTAINE noted that in addition, the client then also has an opportunity to receive other healthcare services such as screening for breast and cervical cancer, and testing for sexually transmitted diseases (STDs). Ms. Fontaine said she is opposed to HB 364 because if staff can't ensure that confidentiality will be maintained once a young woman decides to seek an abortion because she will have to obtain parental consent, then staff would be required to tell the client that, with the result likely being that the young woman will hang up the phone and never come in.

CHAIR RAMRAS asked Ms. Fontaine whether the KBFPC would be capable of instructing a girl regarding a judicial bypass procedure.

MS. FONTAINE said the KBFPC would be capable of doing so, but pointed out that if the girl is in an abusive situation and is seeking a judicial bypass for that reason, regardless of what the KBFPC does, that girl is unlikely to have a lot of support or resources - she will still be on her own and perhaps might even see KBFPC staff as the enemy. So although the KBFPC is

capable of providing information on the judicial bypass procedure, she asked the committee to not force the KBFPC to be part of that system; "I'm asking that you help the healthcare community do what their job is, [which] is to provide safe health care."

CHAIR RAMRAS characterized pregnant teenagers as one of the most vulnerable segments of society, and acknowledged that it will be hard to find a solution.

MS. FONTAINE, in response to a question regarding the definition of the term "sexual health" offered her belief that although it is a private thing that can't be legislated, a person can be educated so as to be able to make better choices.

REPRESENTATIVE DAHLSTROM asked Ms. Fontaine whether she believes that parents should be financially responsible for medical treatments pertaining to their daughter's sexual health.

MS. FONTAINE said she is not sure she would be able to accurately answer a question about a parent's financial responsibility. She offered her belief, however, that there will be very few cases in Alaska in which a minor seeks an abortion without some form of parental involvement, since most girls are being counseled to seek parental involvement, and that involvement is being provided safely. Again, if parental consent is required, girls will seek to abort in other ways. She relayed that young women have told her that before they came into the KBFPC, they have thrown themselves down staircases or have had someone punch them in the lower abdomen or have taken chemicals in order to induce an abortion. These activities are far more risky than just being sexually active. Also, sometimes these pregnant girls are involved with older men. So she is most concerned, she relayed, about the health care that these girls are getting and about their physical safety.

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MS. FONTAINE, in response to a question, said that abortion is a health issue for the pregnant woman.

REPRESENTATIVE LYNN questioned whether some girls might need some guidance.

MS. FONTAINE agreed, and said she sees that that might be the intention of the bill, but pointed out no health practitioner tells a girl not to bother telling her parents - that's not what

happens in the real world. "We want those parents involved, and when a young woman says to me, 'Oh, I can never tell my parents,' well, that's not true - she could, she does, it works out," she remarked. There is no intention to take away parental involvement; instead, the issue is that there are situations in which parental involvement isn't available. For example, there are a lot of young, homeless girls in Homer - their parents aren't going to be found, and those girls won't get involved with the legal system, so they are at risk of taking matters into their own hands and attempting to abort without anyone's help or guidance.

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SARAH FERRENCY said she would be speaking in opposition to HB 364. She mentioned that she lives in Sitka, is a parent, and teaches at-risk children at Sitka's alternative school, and shared her belief that in a democracy - although the will of the majority is followed - "we also owe it to the minority to protect them." Therefore, regardless that the number of girls who can't obtain parental consent might be few, those few deserve protection. She said that if her daughter found herself pregnant, she would hope that her daughter would decide to speak with her, but her daughter might not, and although that would be disappointing, she would view that as her own failure in maintaining a relationship with her daughter. She noted that as written, the bill requires a girl to either obtain parental consent from an abusive parent or report that parent for the abuse, which will result in the parent being prosecuted; there is nothing in between, and the girl can't simply slow down and take the time to decide whether she wants to prosecute her parent. In the circle of domestic violence, the trend is that it is the victim's right to decide whether and when to prosecute, and this right is being taken away by the bill.

MS. FERRENCY referred to the documentation of abuse required by the bill - a notarized document from someone who has personal knowledge of the abuse. Does that mean that the person has to have been present when the abuse occurred? Furthermore, as soon as such documentation is provided to the doctor, he/she will report that abuse because doctors are mandated reporters, and as soon as the documentation is provided to the court, it will have to prosecute the parent. There is no leeway here, she remarked, so she can see situations in which a girl will instead choose to seek a "back alley abortion" - an unsafe abortion. Even when children have decent relationships with their parents, their parents sometimes hold very strong views, she noted, and relayed

that when she was 14, she had a friend whose parents had made it very clear to her friend that if she ever got pregnant she would no longer be welcome at home; when her friend did get pregnant, she wanted to have an abortion so she that she wouldn't become homeless - there just aren't many options available in Sitka for homeless pregnant girls. Someone from such a family who wants stay in school and who wants to stay with her family really doesn't have many options.

MS. FERRENCY - with regard to the concern that parents might be held financially responsible for any medical complications that arise from an abortion they didn't consent to - pointed out that a baby is a guaranteed financial responsibility/liability, and that the chances of medical complications arising from a safe and legal abortion are very small. The likelihood of parents being subject to financial liability for a safe and legal abortion is least, is more for a "back alley abortion," and is highest still for carrying a baby to term. In response to a comment, she offered that her understanding of the current legal system is that the woman - who has already been born - has rights, and that the fetus's rights are much more limited.

REPRESENTATIVE LYNN said he doesn't view a baby as a liability but rather as an asset.

MS. FERRENCY pointed out that she was speaking in terms of financial liability.

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GERAN TARR, Director, Alliance for Reproductive Justice, relayed that she would be speaking in opposition to HB 364. She said:

As I was thinking about what I wanted to say, I was thinking [that] I can't really come up with something to change some of your minds. I spent five years working in this building and we've talked about these issues time and time again, so I know where we stand and ... I'm always searching for that middle ground and where can we come together. And so I guess why I'm disappointed is that we're having this conversation again, and we're not having the conversation about increasing Denali KidCare or fixing the foster care problems or providing better State support for children in need. And I feel like if we could focus on those issues and do a better job in our ... role as advocates, and work with the government to

accomplish those goals and things that I think we can agree on and have common ground on, then I think we could spend a lot less time arguing over these issues that are so divisive and really ... hit at people's core values. And I want to be respectful of people's values and I think we all do.

So I do oppose the bill for many of the reasons stated earlier, but I also hope that we can consider a new approach as we move forward - and I know there are other pieces of legislation here in the body that address some [of] those issues I just mentioned, and I think that it would be a day to celebrate if we could also get those things happening and see what the effects of those pieces of legislation were - and that we might find ..., with a little better support and more forward-thinking, ... that some of these other issues go away. So I oppose this bill but I do support some of those other bills, and I'll be watching, and you'll probably hear from me on those pieces of legislation.

REPRESENTATIVE LYNN said he understands the concern about Denali KidCare and the other programs, but opined that HB 364 is primarily about parental rights and the potential overreaching of the courts.

MS. TARR said she was mentioning those other issues because she sees them as interrelated, and sees some family problems as being related to those "sort of systemic issues" that mean "we're not supporting our families and our women and our children." She said she feels, therefore, that there is a need for a comprehensive approach - sort of an overhaul - "to the way we address these issues," and maybe that paradigm shift would open a new door through which to move forward.

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SUE JOHNSON relayed that she is a mother and would like to think that her child would and does come to her to discuss important issues affecting his life, adding that one can call that good parenting or one could call it good luck. She went on to say:

I oppose [HB 364] ... for many reasons but mainly because it won't force good communication between parents and teens, and the [Alaska Supreme Court] has also found a similar bill [to be] unconstitutional.

... I would like to share a story, though, about how parental notification has unintended consequences sometimes. As a young girl, I had ... a very close friend - her name's Rita - and we played sports together all through grade school and part of high school, and we were 16. She fell head over heels in love, thought she'd found her soul mate, and she became pregnant, and she was very happy about it, and so she had plans to get married and have a family. So she announced it to her parents - ... that she was going to get married to this boy and have a family - and ... [they said], "Oh no you're not."

So the first thing that happened was that her parents threatened her not to tell anybody else about this secret, and then she was told that she would not [get to] have the child. Back then, abortion was not legal, and so there was no choice for the family but to take her to a back alley ... [abortionist]. Her parents were ... very active in the church and the community, and so this event was a closely-guarded secret. Rita's friends didn't know that this was going on, but we noticed that she was out sick from school for long stretches of time and we were told that she was staying [with] a sick aunt in another state. ...

Her family ... [were] loving, devout Christians; however things like sex were seldom if ever talked about in the home. And we didn't see Rita for another year or two, and, when we did, we hardly recognized her. She looked old and she was using a cane, and that was the result of the illegal abortion by some back alley quack who botched the procedure and ruined her body and ruined her life. Since Rita was not able to make her own decision about her body, she lost the love of her life, she lost her family, and she lost her friends. So I guess the moral of the story is ... that often, when parents force kids to go in the opposite direction ... from where they want to go, ... unintended consequences do occur.

MS. JOHNSON, in conclusion, said she hopes the committee will vote to not pass the legislation.

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MARILYN RUSSELL relayed that she is a retired teacher, is the mother of two adult children, was a foster mother for over 12 years, and is opposed to HB 364. By being a foster mother, she remarked, she learned that by the age of 14, a person is formed and pretty set with regard to intelligence and values - though perhaps lacking in experience - and is capable of making major life decisions affecting herself/himself. She added:

Believe me, at 13-, 14-, 15-years-old, ... the foster kids I've seen are savvy, and they've been through the ringer, and they've been forced to grow up fast, and if they've [come] ... from an abusive home - as many that I've seen have - they certainly don't want to go home for permission, and I think that they are capable of making a decision in this case.

[1:59:44 PM](#)

KAREN L. LEWIS, Executive Director, Alaska Right to Life, after relaying that her organization has over 48,000 households in its database, said she supports HB 364, and offered her belief that "the American people as a whole" also support such legislation. She also offered her belief that there are polls illustrating that more than 75 percent of people believe that they should be involved in their minor child's decisions - especially ones with "this type of impact" - and that over 90 percent of women who've had an abortion have experienced a negative psychological impact. If a girl were to make such a life-changing decision as getting an abortion, the girl would then carry the full burden of that decision, but when the parents are brought into the decision-making process, the girl doesn't have to carry the entire burden herself. With regard to the point that there may be some minors who [fear for their safety if they attempt to get parental consent for an abortion], she opined that that's what the judicial bypass is for. In conclusion, she offered a quote from Thomas Jefferson - "The care of human life and happiness, and not their destruction, is the first and only object of good government" - and said she agrees with that statement.

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DAVID EASTMON, JR., relayed that he has served as both an emergency medical technician (EMT) and a police officer, and that he is speaking on behalf of the children of Alaska, particularly on behalf of young girls. He encouraged the committee to consider the impact that HB 364 will have on those young girls. He went on to say:

When I was first trained as a police officer, and then later as an EMT, I remember ... - [in] going through the training, learning the relevant laws - the initial confusion that my classmates and I had concerning when it was proper to provide medical care to a minor in Alaska. Minors, of course, cannot normally give consent for us to provide them care even if we might judge it to be in their best interest for us to treat them. But if a parent determines that the care would not be in the child's best interest, they, of course, have the legal responsibility to make that decision on behalf of their child. But of course there are exceptions.

For example, what about when a parent cannot or will not make a decision? Then, of course, the child can give consent. What about if the parent can't be found or they're unavailable? Again, the child or the minor, in that case, is able to give consent. Other exceptions would be if the minor is legally emancipated and the State looks upon them as an adult. Of course at that point they are entitled to give consent on their own behalf. Of course if they are legally married, if they're no longer living at home with their parents, again, they can give consent. Each of these exceptions have been granted in the interests of the minor, and I believe they should be maintained; I believe that they are good exceptions to the general principle that a parent is the one who's responsible for making some of the more weighty, lifelong - and [in] some cases, decisions that can never be reversed - on behalf of ... a young daughter.

Personally, I believe that the crux of the debate before us is not so much on the matter of abortion as it is on the definition of the word "minor". When this legislation passes, what effect will it have on the meaning of the word "minor"? Will it add substance to the word, or do you think it will perhaps contribute to diminishing its meaning? We have the designation, "minor" not as a way of ... designating someone a lower class of citizen or a lower human being or less of a person. They, of course, are just as much a person as any other of us. However, knowing that, and knowing that they have not the life experience and the ability to make some of those

decisions maturely and with wisdom, we've left that to their parents.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

REPRESENTATIVE COGHILL said that under the bill, an emancipated minor, or a minor who is a member of the armed services, or a minor who is married, or, he added, "a minor who is independently caring for themselves" would be allowed to obtain an abortion without parental consent. He offered his belief that the court has ruled that if the child so chooses, her parents are forbidden to know [that she is seeking an abortion].

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DOUGLAS KIDWELL relayed that he is a parent and that he strongly supports HB 364 "and the importance it holds," which is ensuring that parents maintain the necessary awareness regarding their dependents. He added:

The mere thought [that] a parent does not have the right to keep abreast of what's going on with a dependent is appalling to me. This isn't a religious issue - though it can definitely apply - but one that clearly undermines the authority a parent holds regarding their children, especially when it is a "dependent" issue. And that's one of the key words, here, is "dependent." The minor, in this case, is a dependent of the parent; the parent has the ultimate responsibility to ensure the wellbeing of the child, of the minor - in this case, we're talking about a female minor - and to go through the process of educating, instructing, guiding, instilling the very principles that they hold, into the minor, there, to properly prepare them to venture out into the outside world. And it's hard enough as it is - the parents have to fight through a lot of this stuff that our youth are exposed to. And it's even worse when you have a judge, or society as a whole, that states that a female minor has the right not to inform her parents if she's pregnant, and can go and obtain an abortion on her own. So, in short, this teaches our youth not to honor and respect their parents and allow them to go through the decision-making. ... This is unacceptable to me.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

2:08:58 PM

JAN WHITEFIELD, M.D., indicated that [as an obstetrician/gynecologist,] he has concerns about HB 364 because it pertains to people who come to him for services. He elaborated:

One of the concerns I have is that the [proposed] law says that I can use my clinical judgment regarding a concern for an immediate threat or serious risk to the life or physical health of a pregnant minor, and from my point of view that's a rather ambiguous statement. It doesn't, for instance, say whether psychological or psychiatric health can be considered part of physical health. That's a debatable question even among healthcare providers, let alone attorneys. And if I make a decision to do a pregnancy termination and, in my best judgment, I think it's what's best for the person under 17, and if that is next challenged by a parent, then how is my judgment then evaluated?

Does the court bring in someone to evaluate my judgment? And two people who are equally trained ... can look at a situation and come up with different answers as to whether an abortion would or would not have been appropriate. And if I am challenged and I lose, then what ... have I lost? Have I been fined? Do I lose my license? Do I go to jail? And those are all things that are very real issues for me to think about as a person who provides terminations.

DR. WHITEFIELD continued:

The issue of a minor who chooses to get corroboration for abuse, as many other people have noted, that's really onerous. I would imagine that there are many times that a teen could not find a sibling over 21, law enforcement officers, someone from [the Department of Health and Social Services (DHSS)], a grandparent, or a stepparent who could vouch for them. So does that mean that the person [who] suffers abuse but doesn't have one of those five sources is excluded from judiciary bypass? In terms of notification to the parent, one of the things it spells out - it's fairly specific - is that I would call, for no less than five calls spaced no less than two hours apart.

... In one day that would be a call at 8 o'clock, 10 o'clock, 12 o'clock, 2 o'clock, and 4 o'clock - and I make those calls. When you couple that with the task of trying to figure out if it's an appropriate telephone number, ... those are pretty tough goals to meet. I would challenge most of you, in your busy schedules that you are running right now in Juneau, to walk out at 8:00, 10:00, 12:00, and 2:00, and 4:00 ... to do something like this. I mean, it certainly is a significant task.

DR. WHITEFIELD went on to say:

There is an option where if a minor comes in and can demonstrate sufficient maturation, ... they can try to go through the process without parental ... notification and consent. Well, who decides that this person's mature enough? Is this a decision that the courts make? Do they hire special people who come in to do a, quote, "maturation appraisal" to decide whether or not the teen is mature enough? I mean, it's not a very well-defined sort of bypass.

And lastly, as I went through the judicial bypass, I tried to figure out, from the day that a claimant comes in and says 'I want to exercise judicial bypass,' if the maximum time is used at each step along the way, by my calculations, from the time a claimant puts in a request for judicial bypass, to when it comes out the back end by the [Alaska] Supreme Court, that can take 11 working days. Now, 11 working days is one thing, but when somebody's pregnant, the days aren't "working days" - they're days - and 11 working days can translate into no less than 15 calendar days.

In terms of supplying a pregnancy termination, if there's a delay of two weeks, that increases the risk [for the person who's getting the] pregnancy termination. ... And so the bypass procedure is not only onerous, because the person who comes in to be a claimant has to be pretty well together when they walk in the front door, but coming out the other end, they have now been set back about two weeks and a day.

[2:13:56 PM](#)

REPRESENTATIVE DAHLSTROM, referring to [an article from Time] titled "What Makes Teens Tick?", offered her understanding that it highlights a study which illustrates that the human brain continues to develop well past puberty, with one of the last developments being to the part of the brain - the prefrontal cortex - that results in an increased ability to plan, to set priorities, to organize thoughts, to suppress impulses, and to weigh the consequences of one's actions.

DR. WHITEFIELD said it would be nice if sexual maturity were delayed until the prefrontal cortex of the brain finished maturing, but the reality is that teenagers will get pregnant regardless of what such studies illustrate. He went on to say:

My findings in my office are very similar to what is found in Planned Parenthood, and that is that the majority of teens who walk in here to ask for pregnancy termination fortunately come with a parent. And I'm always thankful for [that] because, for me, I can't imagine a better support for a child than a parent. But I've also seen cases where there isn't a good support for the child - the parent is not necessarily good support. And of course one would say, 'Well, that's what the whole process of the judicial bypass is," and I laud you for putting the judicial bypass in, and not only putting it in, but to try to change the dates from, in some cases, five days to three days, and, [in] some cases, four days to three days.

But the reality will always remain that there's going to be some teens who will not have a safe place for them to be able to go to, to talk about this situation, and for those, the bypass, I think, is important but I don't think that the bypass is functional. That doesn't take away from my concern, as a provider, that if I exercise my judgment and I do a termination on a pregnant teen, then to what standards am I held, because this bill is quite ambiguous on that. And it's important to understand that if the standards are such that I wind up in prison, that's going to have a pretty chilling effect on whether or not we would of course consider doing a pregnancy termination on a teen no matter how ... [compelling] that teen's argument might be - it's probably not going to happen.

So ... this is a less-than-a-perfect-situation. I wish it was other, but the minority that this bill, realistically, [is] ... going to affect are the ones that are not going to be sort of affected by the study that you just read. The majority of people who walk in here will have a parent with them and, for them, that study becomes meaningless, and for those that don't have a good working relationship with their parents, that study's still meaningless.

[2:20:26 PM](#)

REPRESENTATIVE COGHILL said he has been attempting to institute a workable judicial bypass. He asked how often someone who's been sexually abused or otherwise traumatized comes in seeking an abortion, and what reporting mechanism do doctors have to report instances of sexual abuse.

DR. WHITEFIELD said that the process he uses is the same that any other mandatory reporter uses. If someone comes into his office that appears to have been sexually abused, then that will be reported. However, he pointed out, when he has done so in the past, it has not proven to be a particularly transparent process; he's had some problems identifying the appropriate agency to call in order to get someone to respond - it is not necessarily a straightforward process.

REPRESENTATIVE COGHILL indicated that that issue should be addressed. He sought confirmation that when suspected sexual abuse is reported, everything remains confidential.

DR. WHITEFIELD explained that things don't remain confidential if suspected sexual abuse is reported, because then the authorities have to contact the victim.

REPRESENTATIVE GRUENBERG, referring to Dr. Whitefield's concern regarding AS 18.16.030(b)(4)(A) - which pertains to a minor showing that she is sufficiently mature and well enough informed to get an abortion without parental consent - noted that AS 18.16.030(e) reads:

(e) If the complainant makes only the allegation set out in (b)(4)(A) of this section and if the court finds by clear and convincing evidence that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an

abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

REPRESENTATIVE GRUENBERG offered his understanding, then, that the determination regarding whether the minor is sufficiently mature and well enough informed will be made by the court. However, that determination must be made by clear and convincing evidence - the highest standard possible in a civil case and the same standard that's used to terminate parental rights [altogether].

[2:26:22 PM](#)

DR. WHITEFIELD opined that that sets the standard exceedingly high for the pregnant teenager and will more than likely eliminate that provision as an option for her.

REPRESENTATIVE GRUENBERG observed that that same standard is used when a pregnant teenager seeks a judicial bypass on the grounds that she is abused.

DR. WHITEFIELD opined that that is an exceedingly high standard for a child who is in an abusive situation, particularly given that she would have to have someone - a sibling over the age of 21, a law enforcement officer, an employee of the DHSS, a grandparent, or a stepparent - substantiate that claim in a notarized format. That standard essentially puts the parents in a significantly superior position if the child cannot get someone to step up for her, because the parents can simply assert that they are not abusive. This will leave the minor exposed to the parent who is doing the abusing. He characterized that standard as a steep requirement to overcome.

REPRESENTATIVE DAHLSTROM said that having raised four children, she suspects that probably each could have claimed abuse at some point but that they now realize they weren't abused at all. She said that although the type of abuse that's being discussed actually does exist, she surmised that the judicial bypass procedure provided for in HB 364 could be used by some teenagers to blow things out of proportion. Furthermore, the aforementioned study indicates that the decision-making capability of teenagers is not as developed as originally thought - teenagers may not be as mature as most people would

like to think. What this translates to, she remarked, is that when people are young, they think they know everything and have all the answers, yet they don't really realize all the potential consequences of their behavior. This research helps in the understanding that normal teenagers don't organize and understand information in the same way adults do, and thus they are not capable of making an appropriate decision. She suggested that knowledge of this fact is why children are not allowed to get a driver's license until they are 16, or join the military until they are 18.

REPRESENTATIVE HOLMES said she believes that HB 364 contains an extremely onerous "abuse" standard, particularly given that Alaska has such a high rate of child abuse.

[2:32:03 PM](#)

SHELLY BOYER-WOOD, after relaying that she is a mother, said she is concerned that the aforementioned evidence standard is tremendously high. Furthermore, since even most adults feel intimidated by the court system, she said she can't imagine what it must feel like for a child who doesn't have the benefit of "an adult working brain" to have to go before the courts and explain why she feels she needs an abortion. She went on to say:

[House Bill 364] is a misguided piece of legislation that would allow the further alienation and trauma a young woman would experience as the result of a bad choice, rape, or even incest. The so-called parental rights of those that want to control the lives of their daughters do not trump the rights of traumatized young women across Alaska. Once a young woman has made the tormenting decision to terminate a pregnancy, with or without discussing the situation with her parents, she should have the safest, cleanest, and most supportive environment within which to carry out her decision. I as a parent gladly waive any claim to parental rights when it comes to the life and safety of my child.

When a young woman has decided, for whatever reason, to terminate a pregnancy, she will stop at nothing to do so. I would like to direct the committee's attention to the era of the 1950s, wherein it is documented that many mothers, grandmothers, nieces, sisters, and daughters were left with no alternative

but to seek the services of back alley butchers when they sought to terminate a pregnancy. Many of these women, young and middle-aged alike, were left sterile, and many endured horrendous infections due to unsanitary conditions. One such account details the death of a young mother left for dead, hemorrhaging in a hotel room after the so-called doctor, who demanded payment up front, performed his deed and then promptly left the dying woman without any afterthought.

Additionally, has the thought that a young woman might commit suicide as an option to end or terminate her pregnancy crossed the minds of anyone there? Do not think for one second that the option does not cross the mind of a young woman in trouble. If you take the legal means away from them, you will see a spike in teen suicide for not only young women but also ... the young men that love them. I, for one, am not willing to sacrifice those young people for those that argue in favor of parental rights.

MS. BOYER-WOOD concluded:

Also, please consider the likelihood that this legislation would cause young women to seek abortions in Mexico, where health standards are much lower and safety of the patient is not of concern. The real concern in Mexico is money and how much money a doctor with a "no questions" attitude can make for performing abortions on the young woman coming across the border to get, what they consider at the time, help. I will tenaciously attack this or any other legislation that attempts to put Alaska's young women in jeopardy.

[2:36:14 PM](#)

CHRISTOPHER REYNOLDS, Licensed Professional Counselor (LPC), relayed that he is a clinical therapist in private practice, is the past president of the American Counseling Association (ACA), and is the current representative of the American Association of Sexuality Educators, Counselors, and Therapists (AASECT), and that he would be speaking in opposition to HB 364. Noting that he has 14 years' of experience working with youth and families in a clinical setting, he said he would be speaking to two points, one of them being about the bill's judicial bypass provision. He elaborated:

It's [my] clinical opinion that the hoops that a youth would have to go through to access this judicial bypass really seem developmentally inappropriate ..., and ... looking back on the youth that I've served that have been in these situations, I can't imagine them negotiating the Alaska Superior Court in an effort to access that judicial bypass. The second point that I wanted to make is specifically with [regard] to the [issue] ... of lying to provide/prevent parental consent. And I want to recognize that at the point at which a teen has an unwanted pregnancy, there really are no good options, and it seems to me that ... the task that the committee has is trying to figure out what are the better of a few bad options.

And I want to recognize that having a teenager make the decision about whether to terminate their pregnancy or to carry it full term is not a good option, but I also would like for you to consider that forcing that same teen to carry out an unwanted pregnancy, go through the birth process, and then either put the child up for adoption or have an unwanted child also has very substantial risks. And if you would ask me which of those two options has a higher risk for promoting damage and trauma to the child, without hesitation I would say, the second of those two options.

[2:39:11 PM](#)

MR. REYNOLDS, in response to questions, explained that although he has counseled pregnant teenagers, he has not referred them to abortion services, but would connect them with community resources if they did end up seeking abortion services. As a therapist, he pointed out, it's his job to help the child and the family come to their own conclusions about the direction they wish to pursue.

REPRESENTATIVE COGHILL opined that Mr. Reynolds is in a position to help a teenager make a decision that would trump her parents' decision without their knowledge.

MR. REYNOLDS responded, "I would say that it wouldn't trump the parents' decision; I would say that it would be supporting where the teen would be going."

REPRESENTATIVE LYNN opined that abrogation of parental rights is a very serious issue. He asked Mr. Reynolds what he would suggest to make the judicial bypass procedure as easy as possible.

MR. REYNOLDS said that in thinking about the teenagers that could find themselves in this situation, he can't imagine a solution that would include them having to go to the court house - that is an unrealistic solution; rather, it would be better if they could be met in a place where they feel comfortable. He added, "To ask them to have the self esteem and the coping skills to be able to negotiate the judicial bypass process the way that it's outlined in this bill, I think, is really unrealistic."

REPRESENTATIVE LYNN surmised, "I suppose you think the courts should come to the young mother rather than the young mother to the court."

MR. REYNOLDS responded, "I don't think that's realistic either, and I think that's a good reason why this bill shouldn't be passed, because that's simply an unrealistic expectation."

[2:42:26 PM](#)

AMY DEVEREUX relayed that she is the mother of a 10-year-old boy, and that she opposes HB 364. She said that for most of her son's life, she has been a single parent. She elaborated:

As a teenager, I was faced with the dilemma of an unplanned pregnancy, so I understand this issue from a teenager's perspective and I know the desperation and fear that a young couple can face in this situation. Young people that are not given options when facing such a difficult decision are more likely to make choices that end in drastic or unsafe measures. Right now, my son is only 10 years old, and we have a very close relationship - he tells me everything - but I am not so naive as to think this will continue into his teenage years. I would like to think that we will still have this relationship when he is older, but the reality is that he may not see me as a person he can confide in and look to for help in a desperate situation.

My main concern for him is that he gets the care and the assistance that he needs regardless of my

involvement in the situation. And, yes, as a parent, it would break my heart to know that he could not talk to me about an unplanned pregnancy or any number of other things that may arise in his teen years, but his access to accurate information and safety is more important to me than my consent or notification. I believe that House Bill 364 will restrict a young person's access to counseling and safe medical care, and, as an Alaskan parent, that's why I oppose House Bill 364.

[2:44:20 PM](#)

NANCY SCHEETZ-FREYMILLER relayed that she is the parent of a 22-year-old young woman, and that although she respects the concept of parental rights, she doesn't think that government interference will improve her communication as a parent or take away her rights as a parent. Regardless that some committee members are concerned about the issue of parental rights, she said she doesn't see this proposed government solution as helping at all. In conclusion, she said she is speaking against HB 364, and urged the committee to understand that it won't improve parental communication with teenagers.

REPRESENTATIVE LYNN asked Ms. Scheetz-Freymiller whether she considers the Alaska Supreme Court's decision in State v. Planned Parenthood of Alaska to be a governmental intrusion on parental rights.

MS. SCHEETZ-FREYMILLER characterized her rights as a parent as something - though nebulous - that she will always have with her child. Regardless that everyone is trying to be a good parent, there are exceptions to "the good family," and this bill will have a tremendous impact [on those who don't have good parents]. She said she doesn't think that the effort to legislate understanding between parents and their children is proper, nor will that effort have the anticipated impact. Communication between parent and child will either happen or it won't, and the consequences of HB 364 are too drastic and too harmful to result in the desired outcome, she added.

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ROBERTA N. HUNTER relayed she is the mother of ten children, one of whom is a teenage girl, and that she has been actively involved with abortion issues for over six years. She said she is in support of HB 364, and offered her belief that abortion

leads to drug and alcohol use, depression, and suicide, and sends many women into a downward spiral - emotionally, mentally, and spiritually. She went on to say:

The younger a woman is, the more deeply these things seem to happen. To have teens go through such things, and for their parents to have no idea why, is a surefire recipe for destruction among an Alaskan family. This sort of pain, to be a parent who has no idea what has happened to or is happening to their child and therefore not know how to help, is tragic. To be a teen and to hide, first of all a pregnancy, then an abortion, then the aftereffects of these things from your parents, is almost unfathomable as far as imagining the guilt, suffering, and pain the child must feel she has to endure. This is a good bill for Alaska families ...; there are enough provisions in this bill to protect minors that are actually abused. If a teen wants an abortion without her parents' consent, there are plenty of provisions, for her to attempt this, in this bill.

MS. HUNTER opined that contrary to what some have said, HB 364 will help parents talk to their teenagers because the majority of teenagers will have to obtain their parents' permission in order to get an abortion. Regardless of the impact such a conversation will have on the parents, the teenagers will feel relief, and the parents will be able to employ adult coping mechanisms. Open communication between parents and children is always good. She added:

In the state of Alaska, the rights and responsibilities of parents includes that of providing ... medical care for our children. On one hand we have the government telling us that to be a responsible parent, we are to protect and nurture our children and provide them with responsible medical care. On the other hand, [the] Alaska Supreme Court has told us that our children, in cases of sexual medical issues, don't need our permission or participation in their medical care, and that we, the parents, don't even need to know about our children's sexual activities. This is foolery. Sexual activity often leads to the need for medical care, and, as parents, it's our right and responsibility to seek appropriate medical care for our children. We have a right and responsibility to know and respond

appropriately to our children's medical needs, and this bill, HB 364, legally grants us this.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 364.

The committee took an at-ease from 2:54 p.m. to 3:15 p.m.

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REPRESENTATIVE COGHILL, in addition to outlining the existing provisions of AS 18.16.010(a), indicated that Section 1 of HB 364 adds a stipulation that an abortion may not be performed on an unemancipated woman under 17 years of age unless notice as required under AS 18.16.020 has been given. Section 2 adds language regarding the physician or surgeon's clinical judgment to AS 18.16.010(g), which provides a defense from prosecution. Section 3 [repeals and reenacts] AS 18.16.020, which outlines the notice and consent requirements.

REPRESENTATIVE COGHILL then indicated that in Section 3, under subsection (a) of proposed AS 18.16.020, before an abortion on an unemancipated minor under 17 years of age can be performed, one of the following must apply: (1) the minor's parents, legal guardian, or custodian shall have been given notice not less than 48 hours before the abortion is performed and in turn shall have given written consent; (2) a court issues an order under AS 18.16.030 authorizing the minor herself to consent; (3) the court, by its inaction under AS 18.16.030, [constructively authorizes the minor herself to consent]; or (4) the minor is the victim of physical abuse, sexual abuse, or a pattern of emotional abuse by one or both parents, legal guardian, or custodian, and the abuse is documented by a declaration of the abuse in a signed and notarized statement by the minor and another person - a sibling who is at least 21, a law enforcement officer, [a representative of the DHSS who has investigated the abuse,] a grandparent, or a stepparent - who has personal knowledge of the abuse.

REPRESENTATIVE COGHILL offered his belief that a minor needs help when making a decision [about whether to have an abortion]; that this was "agreed to" in the court's ruling in Planned Parenthood of Alaska; that "these give ample reason for a State compelling interest to give them that line"; and that [subsection (a)(4) of Section 3] addresses some of the court's concerns in the aforementioned case.

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REPRESENTATIVE COGHILL indicated that Section 3 also adds several provisions regarding notification. The new provisions in proposed subsection (b)(1)-(2) and (c) outline what the physician must document, how the physician is to go about the notification process, how the physician is to verify the identify the person who's being given notice - whether by telephone or in person - and what the physician should do when he/she is unsuccessful in giving "actual notice". Proposed subsection (d) outlines that instances of suspected or documented abuse shall be reported, and proposed subsection (e) requires the physician to retain and preserve, for law enforcement officials, the products of conception resulting from criminal sexual assault of a minor.

REPRESENTATIVE COGHILL indicated that Sections 4 and 5 [make conforming changes - regarding the new notice requirement - to AS 18.16.030(a) and AS 18.16.030(b) respectively,] and that AS 18.16.030 pertains to the judicial bypass procedure, including what statements are required by the court, and what allegations by the minor the court must consider - either that the minor is sufficiently mature and well enough informed to get an abortion without parental consent, and/or that the minor is the victim of physical abuse, sexual abuse, or a pattern of emotional abuse by one or both parents, legal guardian, or custodian [or that obtaining consent would not be in the minor's best interest].

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REPRESENTATIVE COGHILL indicated that Section 6 alters AS 18.16.030(c) by changing, from five business days to three business days, the timeframe in which the Alaska Superior Court must fix a time for a hearing pertaining to a judicial bypass request; that Section 7 alters AS 18.16.030(j) by changing, from four days to three days, the timeframes pertaining to an appeal by the minor of the Alaska Superior Court's decision, [and making conforming changes with regard to the new notice requirement]; and that Section 8 alters AS 18.16.030(n) - pertaining to the forms and information the court must provide - to include a stipulation that the court must also provide information that the minor can request the court to issue her an excuse from school to attend the judicial bypass hearings.

REPRESENTATIVE COGHILL opined that those in urban areas won't have a problem making use of the judicial bypass provisions, but acknowledged that those in rural areas may have issues to

overcome. He characterized proposed 18.16.030(n)(5) as important with regard to maintaining confidentiality, and indicated that although keeping things confidential in a small town could be problematic, the goal is to provide the minor with as much privacy as possible.

REPRESENTATIVE COGHILL indicated that Section 9 [which adds two new sections to AS 18.16] precludes a parent, legal guardian, or custodian from coercing a pregnant minor into having an abortion; stipulates that withholding financial support in order to coerce the minor into having an abortion shall be sufficient evidence of emancipation status; defines "coercion" [for purposes of AS 18.16.035]; and establishes a requirement that the physician provide the DHSS with a monthly report that includes information about each minor he/she performs an abortion on, and outlines what that information shall consist of. Sections 10-16 provide for conforming court rule changes [to the Alaska Rules of Appellate Procedure, the Alaska Probate Rules, and the Alaska Rules of Civil procedure]. Section 18 proposes to add to the uncodified laws a right of intervention provision; this, he remarked, will give the legislature the right to defend this legislation should it be challenged.

REPRESENTATIVE COGHILL said:

There's no doubt in my mind ... that this particular issue is a societal question that will be worked back and forth through the legislature, in the courts, and in society generally for several reasons. What we have here ... is a balance of ... the right of privacy for an individual, and the right of parents to be involved in [the] ... decision making of the young child - the minor. And I fall in the place where wherever it is humanly practical, and the parents are good actors, that the right of a parent is equal to the right of the child in that regard, and they must [not be] severed by law. And that's what we've actually done with the [Alaska] Supreme Court case, and they said that there was not a compelling State interest to keep those together under their standards. And I disagreed with their standards, obviously.

REPRESENTATIVE COGHILL pointed out that although the courts have said that constitutional rights don't start when one reaches a particular age, Alaska law views parents as the primary protectors and guardians of minors, "and so I think we can show a compelling State interest." He opined that HB 364 is meant to

address some of the court's concerns by providing for a judicial bypass procedure that gives the minor the ability to demonstrate before the court that she is responsible enough to make a decision [about abortion]. He opined that that is something that needs to be demonstrated, for the welfare of both the minor and her family, and said that although some people think that the right of the pregnant girl trumps everyone else's rights, he disagrees. When a minor is in trouble, someone needs to be there to help her, and that's one of the roles of court system, regardless that it might be intimidating.

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REPRESENTATIVE HOLMES remarked:

This is an emotional issue, ... and I personally would love to live in a world were this wasn't an issue; I'd love to live in a world where we didn't have unplanned, unwanted pregnancies, where we didn't have teenagers facing these decisions. That would be my ideal world, [and] I'd like to say it would be the ideal world for ... most of us in this room. So we're starting from an uncomfortable place, where we're not living in anybody's ideal world, and we're talking about what happens when everything goes wrong and you do have a teenager who is pregnant - probably not intentionally, maybe intentionally - and in my view we're dealing, in this bill, particularly with those who are not in the most ideal [world], who are not living in Leave It To Beaver families. I had a pretty Leave It To Beaver family myself, ... but unfortunately the statistics tell us that's not the case in a large number of Alaskan families.

REPRESENTATIVE HOLMES, referring to Section 2, noted that proposed AS 18.16.010(g) adds ", in the clinical judgment of the physician or surgeon" and then goes on to define "clinical judgment" as "a physician's or surgeon's subjective professional medical judgment exercised in good faith". She characterized that as a somewhat circular definition, and said she is not entirely sure what that means. Furthermore, proposed 18.16.010(g)(3)(B) requires a physician, in instances of a medical emergency, to prove that a delay in providing an abortion will create a serious risk of medical instability caused by a substantial and irreversible impairment of a major bodily function of the pregnant minor. Referring to a memorandum dated 2/27/08 written by the drafter, she noted that

[with regard to the aforementioned requirement] it says in part, "I am not aware of any other state in which such a restrictive definition of medical emergency exists and may not survive constitutional scrutiny under our express constitutional protections." As that requirement is currently written, it is not sufficient that [there is a risk that an impairment of a major bodily function] be substantial and irreversible, it must also create a medical instability. She is not entirely sure what that is, she remarked, nor why it is necessary to include in the bill. In response to a question, she indicated that she would be proposing an amendment to "strike that new language."

REPRESENTATIVE HOLMES, referring to Section 3, noted that proposed AS 18.16.020(a) says in part, "A person may not knowingly perform or induce an abortion". She said she is wondering whether that would include what is sometimes referred to as the [morning] after pill, particularly given that Alaska's statutory definition of "abortion" is extremely broad. She indicated that her concern is that the proposed provisions meant to apply to abortion will also be applied to what is basically a dose of birth control taken the day after [a woman has unprotected sex].

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REPRESENTATIVE HOLMES offered her understanding that proposed AS 18.16.020(a)(1) requires a 48-hour waiting period after parental consent has been obtained. She also offered her understanding that "consent waiting periods" are only upheld for shorter periods of time and only when there's an actual reason for the waiting period, but there doesn't seem to be any such reason in this instance. This seems to impose quite a burden, both on the parents and on the minor, particularly if they are coming in from rural Alaska, since they would then have to pay for food and lodging for those additional days, and when burdens are more onerous on rural Alaskans than on urban Alaskans, that is often grounds for equal protection concerns. There just doesn't seem to be any purpose behind waiting that additional 48-hour period, she remarked, and it seems to undermine the parents' authority even though they will have just been given the authority to consent.

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REPRESENTATIVE HOLMES characterized proposed AS 18.16.020(a)(4) as being a very narrow exception, because not only does the minor have to document that she is abused but there also has to

be someone - from a very limited list of who that person could be - with personal knowledge of the abuse. She said she doesn't know what "personal knowledge of the abuse" means, or how the minor will be able to meet the burden of getting someone to corroborate the abuse. Referring to the list of acceptable corroborators outlined in proposed AS 18.16.020(a)(4)(B)(i)-(v), she noted that it doesn't include a sibling younger than the age of 21, or an aunt, uncle, or cousin, or a stepsibling. She said she finds paragraph (4) to be a fairly restrictive provision, particularly given that the minor must document the abuse via a notarized statement, and given that AS 44.50.062(5) requires somebody who's getting something notarized to either be personally known to the notary public or to produce government-issued picture identification (ID) or government-issued ID with a signature along with another valid ID with both a photo and signature - a lot of minors simply won't have this level of documentation, and this puts another burden on the minor who is trying to prove abuse.

REPRESENTATIVE HOLMES noted that proposed AS 18.16.020(b) requires the physician himself/herself to notify the parents, but physicians are very busy people and so most other states allow the physician to designate someone in his/her office to notify the parents. In response to a question, she said she disagrees with the notice requirement in general. Proposed AS 18.16.020(b)(1) - which pertains to providing notice in person - requires the person receiving the notice to present what she characterized as a fairly onerous level of documentation proving that the person is the child's parent, legal guardian, or custodian; the person must not only show his/her government-issued ID, but also documentation of his/her relationship with the minor, such as the minor's birth certificate, or a court order of adoption, guardianship, or custodianship. It can be difficult to put one's hands on such documents even when not working under the sort of time constraints and stress that accompany an unwanted pregnancy; this requirement is an additional burden and could cause an additional delay.

REPRESENTATIVE HOLMES noted that proposed AS 18.16.020(b)(2) - which pertains to providing notice over the phone - requires the physician to review published telephone directories in order to verify that they are dialing the correct number, but the bill doesn't clarify how many telephone directories must be reviewed. Furthermore, the physician himself/herself must continue to initiate the call in not less than two-hour increments for not less than five attempts in a 24-hour period. The physician will have to interrupt what he/she is doing, and it is unclear what

happens if he/she gets caught up in a task and it ends up being more than two hours between calls. That seems a little strict, she remarked.

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REPRESENTATIVE HOLMES noted that proposed AS 18.16.020(c) says that if providing "actual notice" is unsuccessful, the physician may provide "constructive notice" - which means mailing written notice after taking steps to verify the correct address. This will add a lot of delay because the physician must first attempt to provide actual notice. Furthermore, notice, via one of the methods outlined in the bill, must be provided to the minor's parent, legal guardian, or custodian at least 48 hours prior to the abortion. She offered her belief that the bill isn't clear with regard to whether simply providing constructive notice after all other attempts to provide notice have failed meets the bill's consent requirement. Referring to proposed AS 18.16.020(e) - which requires the physician to preserve the products of conception if the pregnancy resulted from criminal sexual assault - she opined that as written, this provision is too broad and too vague with regard to what would be considered the products of conception, and doesn't address what the chain of custody will be for such evidence. She indicated that there will be an amendment forthcoming to clarify what is meant by "products of conception".

REPRESENTATIVE HOLMES referred to Section 8 - which adds a new paragraph (5) to AS 18.16.030(n) and pertains to the court notifying minors seeking a judicial bypass that they can request the court to provide them with an excuse from school and direct the school to not notify their parents - and said she doesn't believe this provision adequately addresses the issue of confidentiality because it almost appears to require the court to tell the school why the minor is being excused, and given that there are often students working in school offices, this could lead to breaches in confidentiality. Referring, then, to Section 13, she said she is not sure what documentation would be required of a minor who is filing a petition seeking authorization to consent to an abortion, because the petition must be under oath.

REPRESENTATIVE HOLMES said she has a concern about all of the proposed court rule amendments. Because only a simple majority of each body is needed to pass the bill, but two-thirds of each body is needed to adopt the court rule amendments, several portions of the bill could end up being deleted if the bill

should pass but not the court rule amendments. This could result in a bill that provides a judicial bypass procedure with regard to consent but not with regard to notice, and there could be some situations in which it will be very important that the parent not be notified that the minor is seeking an abortion.

[3:55:54 PM](#)

REPRESENTATIVE HOLMES, referring to Sections 16, said she is not sure what an "indirect court rule" is. Referring to Section 17 - the severability clause - she said she is not sure what the court will actually do, particularly given that HB 364 is remarkably similar to the law that the court just struck down; the court might not be willing to sever just portions of the bill. Referring to Section 18 - the right of intervention clause - she said she's not ever seen such a provision and it seems a little strange to allow members of the legislature to intervene, as a party, in a court case. Normally that is the DOL's role. This provision also says that bill sponsors could be appointed to intervene, but it isn't clear with regard to whether bill sponsors who are no longer members of the legislature could be appointed to represent the legislative branch.

REPRESENTATIVE HOLMES, referring to Section 9 - which precludes a parent, legal guardian, or custodian from coercing a pregnant minor into having an abortion - surmised that it doesn't preclude a parent, legal guardian, or custodian from coercing a pregnant minor to give birth. In response to a comment, she opined that parents shouldn't be allowed to coerce a pregnant minor in either case. Referring to the bill in general, Representative Holmes again noted that it is similar to the law that the Alaska Supreme Court just overturned. Furthermore, there is a legal opinion from the drafter in which the drafter stated that she has substantial reason to believe that a state court in Alaska would invalidate at least the consent requirements under HB 364 both on res judicata grounds and on constitutional grounds.

REPRESENTATIVE HOLMES said she has every reason to believe that HB 364 is unconstitutional and that the legislature is just basically picking a fight with the court, and said she believes that doing so is inappropriate.

CHAIR RAMRAS disagreed.

REPRESENTATIVE HOLMES offered her belief that HB 364 is the only bill that requires both notification and consent; "that's a little bit odd, since consent obviously implies notification." She offered her understanding that the legal opinion, in addition, characterizes HB 364 as one of the most harsh and demanding notification/consent bills [in the country], and opined that it is much harsher than the law that has already been found to be unconstitutional. The bill's medical exceptions, she also opined, are overly restrictive, and she is concerned about some of the delays, and about the equal-protection issues arising from the burdens being placed on rural residents in particular. In response to a question, she acknowledged that she doesn't like the bill.

REPRESENTATIVE HOLMES, in conclusion, said she has concerns about the bill because it requires those minors who are seeking judicial bypass to "go through a lot of very scary steps" but doesn't stipulate who will help them do so.

CHAIR RAMRAS pointed out that abortion is terminal for the fetus, and that he and other committee members believe that they are simply protecting the sanctity of life. He opined that minors don't have the mental capacity to be making a decision of "this magnitude."

[Following was a brief discussion regarding who was available for questions and how the committee would be proceeding.]

[4:12:36 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, which read [original punctuation provided]:

**Page 2, Line 6** Insert a period "." after "consents" and delete the remainder of line 6 and lines 7 through 11.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG offered that the presumption that Amendment 1 proposes to delete is not necessary because language on page 5, line 12, requires, in the petition itself, that the minor must affirmatively state under oath that she is unemancipated. So there's no need for the presumption because it's already, as a matter of law, part of the proof - it's sworn to and it's in the petition; in the law, one doesn't need a presumption unless there is an absence of proof.

REPRESENTATIVE COGHILL opined that the language Amendment 1 is proposing to delete is necessary because language in Section 3 requires either that there be notice or that a court has given authorization to have an abortion without consent.

REPRESENTATIVE GRUENBERG asked that his point be researched further as the bill moves through the process.

REPRESENTATIVE GRUENBERG then withdrew Amendment 1.

[4:16:49 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

**Page 2, Line 29** - Delete "medical instability caused by a"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE HOLMES explained that Amendment 2 addresses the fact that under the bill as currently written, it is not sufficient that in a medical emergency, a delay in performing an abortion would create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant minor, but the delay must also create a medical instability. She said she doesn't know what that is, and that it would seem to her that a substantial and irreversible impairment of a major bodily function is enough without also requiring a medical instability. Again, Representative Holmes noted, the drafter, in her legal opinion, said, "I am not aware of any other state in which such a restrictive definition of medical emergency exists and may not survive constitutional scrutiny under our express constitutional protections."

REPRESENTATIVE COGHILL indicated that the provision Amendment 2 is proposing to alter pertains to medical emergencies and the goal of getting people stabilized. The standard is a good-faith effort, he remarked, and he is looking at medical stability as a part of that good-faith effort.

REPRESENTATIVE HOLMES asked what the penalty is for a violation of this provision. She reiterated that she doesn't know what a "medical instability" is.

REPRESENTATIVE COGHILL indicated that [under AS 18.16.010(c)], a violation would subject the physician to a fine of not more than \$1,000, or a jail term of not more than five years, or both. He added that under AS 18.16.010(e), if a physician violates AS 18.16.010(a)(3), he/she would be civilly liable for compensatory and punitive damages.

REPRESENTATIVE HOLMES said her point is that [this provision] is adding another burden and making it very restrictive; when a physician is dealing with a teenager's medical emergency, she thinks they should want the doctor erring on the side of protecting the teenager rather than worrying about spending time in jail.

REPRESENTATIVE COGHILL indicated that at issue is the question of whether there really is a medical emergency.

4:21:06 PM

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Amendment 2. Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Amendment 2 failed by a vote of 2-5.

REPRESENTATIVE GRUENBERG referred to Amendment 3 [a handwritten amendment which he later noted was incomplete] and indicated that the change it is proposing would be that on page 2, lines 27-30, all language after the words, "necessary to avert" would be deleted and replaced with the words, "a serious risk to the minor's health."; proposed AS 18.16.010(g)(3) would then no longer need to be divided into subparagraphs (A) and (B), and would then read:

"medical emergency" means a condition that, on the basis of the physician's or surgeon's good faith clinical judgment, so complicates the medical condition of the pregnant minor that an immediate abortion of the minor's pregnancy is necessary to avert a serious risk to the minor's health.

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KEVIN G. CLARKSON, Esq., Attorney at Law, Brena, Bell & Clarkson, PC, opined that the change proposed by Amendment 3 would result in language that is much vaguer than the [bill's] current language. He went on to say:

The language with respect to "medical instability" and "substantial and irreversible impairment of a major bodily function", those are terms of medical art that were testified to by emergency room physicians in the parental consent case.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3.

REPRESENTATIVE LYNN and REPRESENTATIVE COGHILL objected.

MR. CLARKSON opined that the bill's current language is clearer because it uses medical terms of art that doctors understand, and the entire provision is premised upon the doctor's good-faith, subjective clinical judgment.

REPRESENTATIVE GRUENBERG noted that the handwritten version of Amendment 3 is missing the language that is to be inserted, and therefore needs to be altered to reflect his earlier description of it. There being no objection, Amendment 3 was amended in that fashion.

MR. CLARKSON, in response to a question, indicated that his comments still apply because the medical terms of art would still be deleted.

REPRESENTATIVE GRUENBERG - referring to Amendment 3, as amended - said:

Doctors, physicians, physician assistants, and the medical community, every day, determine what constitutes a serious risk to the minor's health, and this is a medical decision, and it is something that needs to be made on the spot. We are legislators, we are not right there at the scene of the emergency, and this gives the necessary discretion to the doctor to assess whether there is a sufficiently serious risk to the minor's health that they have to perform the abortion right there and there's not time to do other things. This is just common sense kind of medicine.

REPRESENTATIVE LYNN opined that the term "minor's health" is far more subjective than the term "minor's death"; "health" can be defined in a number of ways, and therefore he thinks "death" is the better term.

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 3, as amended.

Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Amendment 3, as amended, failed by a vote of 2-5.

[4:26:48 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, which read [original punctuation provided]:

**Page 3, Line 6** - After abortion delete "not less than 48 hours before the abortion is performed"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE HOLMES offered her belief that the 48-hour provision undermines the parents' authority to make the decision, because it's making them wait an additional 48 hours even when they do consent. She also offered her belief that the provision has implications for rural girls because it requires them and their parents to stay in a city longer, at great expense, without there being any real reason for them having to wait those extra days. She asked the committee to pass Amendment 4.

REPRESENTATIVE COGHILL, pointing out that what is being discussed is the termination of a pregnancy, opined that a 48-hour waiting period is well within reason, given that there will probably be some type of waiting period, since the goal is to get people communicating [with each other].

REPRESENTATIVE HOLMES said she is a big supporter of parental involvement in children and teenagers' decisions whenever it is safe.

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Amendment 4. Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Amendment 4 failed by a vote of 2-5.

[4:28:58 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, which read [original punctuation provided]:

**Page 3, delete Lines 15-28.** Insert "a minor who is a victim of physical abuse, sexual abuse, or emotional abuse is not required to give notice or obtain consent

when such abuse is documented in a writing signed by the minor under penalty of perjury."

REPRESENTATIVE COGHILL objected. He indicated that it won't be that hard for a minor to produce a notarized statement for the court, and expressed favor with keeping the list outlined in proposed AS 18.16.020(a)(4) as is.

REPRESENTATIVE GRUENBERG pointed out, however, that AS 09.63.020 - which pertains to oaths, certifications, notarizations, and verifications - allows a document to be signed "under penalty of perjury", and it doesn't have to be done in front of a notary public if the certification states the date and place of execution, the fact that a notary public or other official empowered to administer the oaths is unavailable, and the words, "I certify under penalty of perjury that the foregoing is true." He indicated that such a certification is to be used only when a notary public is unavailable.

[4:31:45 PM](#)

PAMELA FINLEY, Revisor of Statutes, Legislative Legal and Research Division, Legislative Affairs Agency (LAA), in response to a question, after relaying that she would be speaking on behalf of the drafter, Jean Mischel, explained that a minor can certainly sign a notarized document; a minor can't do certain things, such as create contracts, but a minor - if he/she is of sufficient age, usually seven years old or so - can testify in a hearing and thus is capable of taking an oath. She posited that if a minor is capable of taking an oath, he/she ought to be able to sign a notarized document.

REPRESENTATIVE GRUENBERG noted that there was a supreme court case wherein the witness to the murder of one parent by another was a four-year-old, and [the witness's testimony] was allowed because the witness could communicate adequately and understood the duty to tell the truth.

REPRESENTATIVE SAMUELS asked whether, if the minor signs a document stating she is the victim of abuse, the court would then be obligated to act to address the issue of the abuse.

REPRESENTATIVE GRUENBERG said yes, because it would be like filing a complaint in court - the procedure outlined in the bill is commenced by the filing of a sworn petition under oath.

REPRESENTATIVE SAMUELS surmised, then, that law enforcement would then become involved.

REPRESENTATIVE GRUENBERG concurred.

REPRESENTATIVE COGHILL offered his understanding that one can get a statement notarized if one has sufficient ID, and opined that it is important to have corroboration that physical or sexual abuse of a minor is occurring. Referring to proposed AS 18.16.020(a)(4)(B), he characterized those listed therein as the minor's asset base, and noted that in many other areas of the law, it has already been decided that minors need help. If a minor has made a statement that abuse is occurring and that abuse is then corroborated, then a minor does not need parental consent to obtain an abortion.

CHAIR RAMRAS pointed out that if a minor is required to sign a document "under penalty of perjury" but no abuse has actually occurred, the minor will have then committed a criminal act; therefore, he is inclined to vote against Amendment 5.

REPRESENTATIVE HOLMES noted that the provision Amendment 5 is proposing to alter is dealing with the most vulnerable of an already vulnerable group - these girls have been abused and are now pregnant, possibly as a result of that abuse. She added:

We all know that abuse in this state and other states is underreported, largely because of fear. We're now dealing with some of the situations that some of our testifiers, I think, were describing earlier: you've got, probably, a very scared teen who may be scared of [her] ... family, and I'm thinking that knowing that [she's] ... got to comply with this [paragraph] (4) has got to scare the living daylights out of ... [her]. And it's going to keep delaying decisions. And I'm just afraid that the more burdens we put on them in that situation, the more often times you end up with the person throwing [herself] ... down the stairs or trying to go through more drastic measures.

So I would support [the proposed change], because I think the amendment is a little bit less burdensome and a little bit less scary. ... This statement will still go to the police, it will still go to the courts, it will still be investigated, we will still get help, but I think it's a little bit less scary and

you're more likely to have people reach out for that help. So I support the amendment.

REPRESENTATIVE COGHILL said he agrees that a vulnerable youngster "is going to jump." However, he opined, Amendment 5 isn't providing any direction, whereas the current language specifically requires the minor to also get someone else to substantiate her claim. "To characterize the courts as a place where you can't get help in our society, I think generally has been true in some areas but is not true in this area, and the culture change has to happen where people, when they need intervention in their life, can find those places," he added. He expressed a preference for the language currently in proposed AS 18.16.020(a)(4).

[4:38:08 PM](#)

REPRESENTATIVE GRUENBERG offered his belief that Amendment 5 does three things. One, it eliminates the requirement that the declaration of abuse be made in front of a notary public; two, it eliminates the requirement that the declaration must also be signed by another person with personal knowledge of the abuse - often when there is abuse by a parent, no one else has personal knowledge of it, so this requirement would be impossible to comply with; and three, it specifically provides an exemption from notifying the parent and obtaining consent. On the latter point, proposed AS 18.16.020(a)(4) as currently written requires the physician to notify the perpetrator that his/her victim is seeking an abortion, and doesn't give the victim any protection.

REPRESENTATIVE COGHILL disagreed.

CHAIR RAMRAS acknowledged Representative Gruenberg's point, but reiterated that Amendment 5 could subject the minor to the charge of perjury. He suggested to the bill sponsor that at some point he address [Representative Gruenberg's point].

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Amendment 5. Representatives Coghill, Samuels, Lynn, Dahlstrom, and Ramras voted against it. Therefore, Amendment 5 failed by a vote of 2-5.

[4:40:34 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 6, which read [original punctuation provided]:

**Page 3, Line 29** - After "(a)" insert "(1)"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG - suggesting that Amendment 6 might need to be amended - pointed out that paragraphs (2) and (3) of AS 18.16.020(a) stipulate that the minor doesn't need parental consent, and so under those paragraphs, the physician needn't give notice as outlined in AS 18.16.020(b); offered his belief that it is not the sponsor's intent to require the physician to give notice when subsection (a)(4) applies; and opined that at the very least, something should be done to ensure that notice is not required when either paragraph (2) or (3) apply.

REPRESENTATIVE HOLMES concurred, and surmised that not specifying that subsection (b) pertains only to paragraph (1) of subsection (a) is merely a drafting error, since the whole point of paragraphs (2), (3), and (4) is to bypass the notice and consent requirements of the bill. Amendment 6 will simply allow subsection (b) to make sense, and is not a substantive change, she opined.

REPRESENTATIVE GRUENBERG suggested a conceptual amendment to Amendment 6 such that language be added to paragraph (4) to clarify, at least conceptually, that when it applies, notice and consent is not required - language similar to what's included in paragraphs (2) and (3) such that the minor can consent to her own abortion "without notice and consent of a parent, guardian, or custodian". Currently, paragraph (4) is not clear on that point, and one wouldn't want to give notice to the perpetrator of the abuse.

REPRESENTATIVE COGHILL indicated agreement with the intent of adding such language to paragraph (4), and that he agrees with Amendment 6 as currently written.

REPRESENTATIVE GRUENBERG, in response to a comment, indicated that he is amenable to addressing those two points separately.

REPRESENTATIVE COGHILL removed his objection to Amendment 6.

CHAIR RAMRAS announced that Amendment 6 was adopted.

[4:44:33 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt [Conceptual] Amendment 7, to add to paragraph (4) - somewhere on lines 15-18

of page 3 - language along the lines of, "without notice and consent of a parent, guardian, or custodian and the minor consents to the abortion".

REPRESENTATIVE COGHILL objected, and opined that because that language is already contained in paragraph (3) and is followed by "; or", the concept already applies to paragraph (4).

REPRESENTATIVE GRUENBERG pointed out that that same language is also included in paragraph 2, and said he is proposing that that language be inserted into paragraph (4) as well. Representative Gruenberg asked Representative Coghill whether he would prefer to address this issue at another time.

REPRESENTATIVE COGHILL indicated that he wants to ensure that the language fits.

REPRESENTATIVE HOLMES surmised that paragraph (1) is the only paragraph in AS 18.16.020(a) which requires the physician to give notice, and that it would be consistent to clarify that point by adding the aforementioned language to paragraph (4), particularly given that it pertains to situations involving abuse.

REPRESENTATIVE GRUENBERG acknowledged that [Conceptual] Amendment 7 may be overbroad because it might not be the parent who is the perpetrator of the abuse, and indicated that his intent in offering [Conceptual] Amendment 7 is to ensure that the perpetrator of the abuse not be notified that the minor is seeking an abortion.

REPRESENTATIVE GRUENBERG then withdrew [Conceptual] Amendment 7.

[4:47:11 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 8, which read [original punctuation provided]:

Page 3, Line 31 - After the first use of the term "abortion" insert "or the physician's designee" and after the second use of the term "abortion" insert "or the physician's designee"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE HOLMES, remarking that physicians are busy people, relayed that she has been told that in other

jurisdictions which require notice to be given to the parent, it is customary to allow the physician to designate someone to give the notice. She offered her hope that a physician in Alaska would be allowed to designate such a task to an appropriate person within his/her office, particularly given the onerous requirement of having to initiate the call in not less than two-hour increments for not less than five attempts in a 24-hour period.

REPRESENTATIVE GRUENBERG, by way of analogy, noted that when a physician prescribes medication for a patient, the physician has someone on his/her staff phone the prescription into the pharmacy.

[4:48:56 PM](#)

REPRESENTATIVE COGHILL said he wants to ensure that the physician is the one in charge of providing notice, and opined that providing notice about an abortion is not the same as prescribing medication. He expressed reluctance in allowing a physician to designate the notification task to office staff; instead, the physician must be the one to make contact with the parent. He said he doesn't view the requirements stipulated in subsection (b)(1)-(2) as onerous.

REPRESENTATIVE GRUENBERG suggested as an alternative that the designee be allowed to place the calls and then when the parent actually answers, the doctor can then speak to parent. As currently written, the doctor himself/herself must be the one to place the calls, and that's really onerous, he opined.

REPRESENTATIVE COGHILL characterized that as a reasonable alternative, but stressed that he doesn't want to simply excuse the doctor from making contact with the parent.

REPRESENTATIVE HOLMES indicated that such an alternative is acceptable to her.

REPRESENTATIVE GRUENBERG withdrew Amendment 8.

[4:51:24 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 9, to alter proposed AS 18.16.0202(b) as appropriate such that the physician or his/her designee may initiate the call but the physician himself/herself must be the one to speak

to the parent when the parent answers the phone. There being no objection, Conceptual Amendment 9 was adopted.

4:52:03 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 10, which read [original punctuation provided]:

**Page 4, Line 13** - Delete after "telephone" "but" and insert after "physician" "shall make reasonable efforts to comply with this subsection. A physician that makes reasonable attempts to comply with this subsection shall not be held liable for failure to notify." Delete the rest of line 13-16.

REPRESENTATIVE GRUENBERG indicated that the need for Amendment 10 is partially alleviated by the adoption of Conceptual Amendment 9.

REPRESENTATIVE COGHILL objected to Amendment 10.

REPRESENTATIVE GRUENBERG, referring to the requirement that the physician initiate the call in not less than two-hour increments for not less than five attempts in a 24-hour period, pointed out that mandating a specific number of calls will be burdensome for small offices - particularly those with limited staff - and so he is suggesting the alternative of simply requiring the physician to make reasonable efforts to comply with the notice provision.

REPRESENTATIVE COGHILL expressed a preference for waiting until Conceptual Amendment 9 is incorporated into the bill, and posited that Conceptual Amendment 9 adequately addresses concerns regarding the requirements outlined in proposed AS 18.16.020(b).

CHAIR RAMRAS agreed.

REPRESENTATIVE GRUENBERG withdrew Amendment 10.

4:54:23 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 11, which read [original punctuation provided]:

**Page 4, Line 23** - After "mail" insert ", restricted to addressee only"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG pointed out that certified mail can go to anybody at the address it's mailed to, including people that shouldn't receive such a notice. Amendment 11 is a technical amendment that would address this problem.

REPRESENTATIVE COGHILL removed his objection.

CHAIR RAMRAS announced that Amendment 11 was adopted.

[4:55:21 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 12, which read [original punctuation provided]:

**Page 4, Line 29** - Delete "products" and insert "evidence"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG offered his belief that the correct term of art to use is "evidence of conception" as opposed to "products of conception"; this provision - proposed AS 18.16.0202(e) - is referencing material that would go to law enforcement officials for use in a legal proceeding.

REPRESENTATIVE COGHILL argued that what is being aborted is a product of conception, and only the court would view it as evidence.

REPRESENTATIVE GRUENBERG pointed out, however, that this provision will be read primarily by those collecting material for use in court.

CHAIR RAMRAS suggested as an alternative amending Amendment 12 such that the language on page 29 would be changed to read in part, "products of conception as evidence".

REPRESENTATIVE LYNN suggested instead amending Amendment 12 such that the words, "and evidence" would be added after the word "products" on line 29; the language would then read in part, "products of conception and evidence".

REPRESENTATIVE GRUENBERG indicated that he would be amenable to that wording as an amendment to Amendment 12.

CHAIR RAMRAS [although no formal motion was made] announced that the amendment to Amendment 12 was adopted.

4:57:13 PM

CLOVER SIMON, MSW, Chief Executive Officer (CEO), Planned Parenthood of Alaska (PPA), asked Representative Coghill whether it would be acceptable to him if only enough material is retained to establish the deoxyribonucleic acid (DNA) of the fetus, as opposed to retaining all products of conception.

REPRESENTATIVE COGHILL said no, but added that he would give the matter further consideration.

REPRESENTATIVE SAMUELS asked whether law enforcement will have procedures in place to deal with the aforementioned material, and asked Representative Coghill what he would want the doctor to do.

REPRESENTATIVE COGHILL offered his understanding that the capital budget includes funding to create more storage for evidence, including evidence in sexual abuse of a minor cases.

REPRESENTATIVE SAMUELS asked how the doctor would interact with law enforcement, and what the chain of custody will be.

REPRESENTATIVE COGHILL offered his understanding that procedures are already in place, but acknowledged that "this" would be new [to law enforcement]. He expressed a preference for keeping Amendment 12, as amended, as is, and opined that storing more evidence won't be problematic.

REPRESENTATIVE HOLMES expressed a preference for Ms. Simon's suggestion - keeping only enough material to obtain a DNA sample so as to prove the abuse.

REPRESENTATIVE COGHILL pointed out that keeping all products of conception would ensure that enough evidence is retained.

A roll call vote was taken. Representatives Lynn, Holmes, Gruenberg, Dahlstrom, Coghill, and Ramras voted in favor of Amendment 12, as amended. Representative Samuels voted against it. Therefore, Amendment 12, as amended, was adopted by a vote of 6-1.

REPRESENTATIVE SAMUELS said he still has concerns regarding DNA and chain of custody issues, since law enforcement won't be present at the abortion; "you're going to end up with a problem unless it gets addressed."

[5:02:48 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 13, which read [original punctuation provided]:

**Page 5, Lines 20-21 - Delete "a pattern of"**

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG opined that it will be difficult to determine whether there is, quote, "a pattern of emotional abuse"; it will be simpler to just not include the words, "a pattern of" and thus avoid arguments based on semantics.

REPRESENTATIVE COGHILL opined that the term "emotional abuse" by itself is too broad, and that establishing that there is a pattern of emotional abuse can be done in a variety of ways.

REPRESENTATIVE GRUENBERG suggested as an alternative amending Amendment 13 such that the word, "serous" replace the words, "a pattern of". There could be one instance of very serious emotional battering, and he does not want to require the minor to have to show several instances of emotional abuse, he added.

REPRESENTATIVE COGHILL opined that the current language of, "a pattern of emotional abuse" is simply asking the minor to show that there is a reason why parental consent shouldn't be required.

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Amendment 13. Representatives Lynn, Dahlstrom, Coghill, Samuels, and Ramras voted against it. Therefore, Amendment 13 failed by a vote of 2-5.

[5:05:41 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 14, which read [original punctuation provided]:

**Page 7, Line 14 - Delete comma after "court"**

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG opined that including the comma on line 14 is a typographical error.

REPRESENTATIVE GRUENBERG then made a motion to amend Amendment 14 such that the comma on page 7, line 15, after the word "jurisdiction", also be deleted. There being no objection, Amendment 14 was amended.

REPRESENTATIVE COGHILL removed his objection.

CHAIR RAMRAS announced that Amendment 14, as amended, was adopted.

[5:06:47 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 15, which read [original punctuation provided]:

**Page 7, line 16** - After section insert "and to get an abortion"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG noted that the current language of proposed AS 18.16.030(n)(5) provides that the minor may request the court to issue an order excusing her from school only for the purpose of attending the judicial bypass proceedings, but not also for the purpose of obtaining the abortion if the court authorizes her to consent to an abortion. He characterized Amendment 15 as a technical amendment.

REPRESENTATIVE COGHILL indicated that AS 18.16.030(n) only speaks to what forms and information the court must make available to minors seeking judicial bypass.

REPRESENTATIVE GRUENBERG said he assumes it is Representative Coghill's intent that if the court issues the order authorizing the minor to get an abortion without parental consent, that the court should also excuse the minor from school in order to obtain the abortion.

REPRESENTATIVE HOLMES, in response to comments, surmised that Amendment 15 is simply saying that once the court has authorized the minor to obtain an abortion without parental consent, then the court should - in addition to directing the school to excuse the minor in order that she may attend the court proceedings -

direct the school to excuse the minor in order that she may obtain the abortion. Without the adoption of Amendment 15, when the minor misses school in order to get the abortion, the school could notify the parents that their child has missed school.

REPRESENTATIVE GRUENBERG said he would like to amend Amendment 15.

REPRESENTATIVE DAHLSTROM asked why an abused child would be allowed to go back into the home where she is being abused.

[5:10:14 PM](#)

REPRESENTATIVE GRUENBERG suggested amending Amendment 15 such that the [words], "and [to get an abortion]" be replaced with the words, "to get the court-ordered abortion".

REPRESENTATIVE HOLMES argued against such a change because the court wouldn't be ordering an abortion.

REPRESENTATIVE SAMUELS suggested using the words, "court-approved" instead.

REPRESENTATIVE COGHILL expressed disfavor with Representative Gruenberg's suggestion and with Amendment 15.

REPRESENTATIVE GRUENBERG opined that if the court authorizes the minor to get an abortion without parental consent, then proposed AS 18.16.030(n) should also contain a clause that stipulates that the court may order the school to also excuse the minor for that abortion procedure.

REPRESENTATIVE COGHILL expressed understanding of that concept.

REPRESENTATIVE GRUENBERG withdrew Amendment 15.

[5:12:07 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 16 such that on page 7, line 16, language be added stipulating that if the court allows the abortion, it can also direct the school to allow the minor to be excused for the abortion procedure. There being no objection, Conceptual Amendment 16 was adopted.

[5:12:49 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 17, which read [original punctuation provided]:

**Page 7, Line 21** - Delete "parent, legal guardian, or custodian of a minor" and insert "person"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG - noting that proposed AS 18.16.035(a) prohibits a parent, legal guardian, or custodian from coercing a minor into having an abortion - opined that no one should be allowed to coerce a minor.

REPRESENTATIVE HOLMES agreed.

REPRESENTATIVE COGHILL said he agrees with the concept that it wouldn't be proper for anybody to coerce [a minor into having an abortion].

REPRESENTATIVE GRUENBERG said it seems to him that no one should be allowed to coerce someone to either have an abortion or to have the child - there shouldn't be any coercion going on. He indicated that he wishes to address three points: who should be prohibited, what should be prohibited, and who should be protected.

REPRESENTATIVE LYNN asked whether Amendment 17 would protect the unborn child.

REPRESENTATIVE COGHILL and CHAIR RAMRAS said it would.

REPRESENTATIVE COGHILL said he would always agree that nobody should ever coerce somebody, but is not sure what effect adoption of Amendment 17 will have on other provisions of statute or whether the new language would still fit within the framework of the parental consent statute.

REPRESENTATIVE HOLMES, in response to comments, said she doesn't think anybody should be coercing [another].

REPRESENTATIVE COGHILL agreed, and removed his objection.

CHAIR RAMRAS announced that Amendment 17 was adopted.

[5:17:56 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 18, to delete the words "a minor" on page 7, line 21, and replace them with the words, "another person". Given that Amendment 17 has been adopted, the adoption of Amendment 18 would result in proposed AS 18.16.035(a) reading: "A person may not coerce another person who is pregnant to have an abortion."

REPRESENTATIVE COGHILL pointed out that proposed AS 18.16.035 is all about minors, and said that although he agrees with the concept embodied in Amendment 18, he would be objecting to it in order to keep the language focused on minors.

A roll call vote was taken. Representative Gruenberg voted in favor of Amendment 18. Representatives Holmes, Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Amendment 18 failed by a vote of 1-6.

REPRESENTATIVE HOLMES said that although she likes the idea of broadening the restriction on coercion, this issue might be better addressed at another time.

[5:21:01 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 19, which read [original punctuation provided]:

**Page 7, Line 22** - Before the period insert "or to bear a child"

**Page 7, Line 25** - After "abortion" insert "or to bear a child"

REPRESENTATIVE GRUENBERG said he doesn't want any coercion occurring "on either side."

REPRESENTATIVE COGHILL said he agrees, but objects to Amendment 19 because the issue pertains to judicial bypass for an abortion.

[5:22:15 PM](#)

A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 19. Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Amendment 19 failed by a vote of 2-5.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 20, which read [original punctuation provided]:

Page 10, Lines 26-31. Delete Sec. 18.

REPRESENTATIVE HOLMES - noting that Section 18 pertains to the proposed right of intervention - said she has problems, both philosophically and technically, with the concept that a sponsor or cosponsor of this legislation could intervene in any forthcoming court case that's based on a constitutional challenge.

REPRESENTATIVE COGHILL surmised that even if Section 18 is removed, the legislature wouldn't be relinquishing any of its rights, and indicated agreement that the language regarding bill sponsors/cosponsors could be problematic.

REPRESENTATIVE SAMUELS agreed.

REPRESENTATIVE COGHILL indicated that he'd suggested the language initially so that people would be reminded that the legislature would be following what happens with [this legislation].

[5:25:00 PM](#)

REPRESENTATIVE GRUENBERG explained that under the Alaska Rules of Civil Procedure, there is a rule pertaining to intervention as a matter of right, and a rule pertaining to permissive intervention. The legislature has the right to file, via Legislative Counsel, a request to intervene, but would not have any standing to intervene as a matter of right. As currently drafted, [Section 18] would limit the right of intervention to only the sponsors and cosponsors of the legislation. He suggested that the legislature shouldn't [impose such a limitation on itself].

REPRESENTATIVE COGHILL removed his objection.

REPRESENTATIVE SAMUELS objected, and posited that a right of intervention provision should be included in more bills, though the right should pertain to the entire legislature rather than just individual members. He then removed his objection, but opined that the legislature should assert its rights against both the executive branch and the judicial branch.

CHAIR RAMRAS announced that Amendment 20 was adopted.

[5:26:51 PM](#)

REPRESENTATIVE GRUENBERG referred to Conceptual Amendment 21, which read [original punctuation provided]:

Page 9, Line 26 - delete "clear and convincing" and insert "a preponderance of the"

AS 18.16.030(e) is amended by deleting "clear and convincing" and inserting "a preponderance of the"

AS 18.16.030(f) is amended by deleting "clear and convincing" and inserting "preponderance of the"

REPRESENTATIVE GRUENBERG explained that Conceptual Amendment 21 changes the evidence standard used by the court to grant judicial bypass from clear and convincing evidence to a preponderance of the evidence, and it does so in subsections (e) and (f) of AS 18.16.030 and conformingly in Rule 20(3) of the Alaska Probate Rules.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 21.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG, in response to a question, offered his understanding that the evidence standard of clear and convincing evidence means that one would be left with a firm conviction that the party should prevail, and is the highest standard used in civil litigation.

REPRESENTATIVE COGHILL - noting that in emancipation proceedings, the evidence standard of a preponderance of the evidence is used - opined that the higher standard of clear and convincing evidence should be used when what's at issue is whether to terminate the life of the unborn.

REPRESENTATIVE GRUENBERG argued that if Conceptual Amendment 21 is not adopted, a lawyer could simply tell a minor client seeking an abortion to just get emancipated first and then get the abortion.

[5:30:15 PM](#)

CHAIR RAMRAS asked whether a minor would still have to satisfy all the provisions of the [proposed] judicial bypass statute if the evidence standard were to be changed.

REPRESENTATIVE COGHILL offered his belief that she would, that the court did address the issue of evidence standard, and that the proposed notice and consent provision contains a standard of clear and convincing evidence.

MR. CLARKSON, in response to a question, offered his understanding that the standard of clear and convincing evidence would apply in a judicial bypass proceeding, that such a standard is used in nearly every other [similar] statute in the country, and that such a proceeding is ex parte - with no opposing side testifying. This type of proceeding terminates parental rights with regard to abortion.

REPRESENTATIVE GRUENBERG again argued that if the evidence standard of clear and convincing evidence is found to be too onerous, then a lawyer will simply advise his/her minor client who's seeking an abortion to just get emancipated first.

MR. CLARKSON noted that a parent gets notice of an emancipation proceeding.

REPRESENTATIVE GRUENBERG pointed out, however, that even though the parent gets notice of the emancipation proceeding, if the court finds the minor is mature enough to warrant being emancipated, emancipation will be granted regardless.

MR. CLARKSON, in response to a question and comments, offered his understanding that the evidence standard of clear and convincing would not apply if the minor provides the doctor with documentation, as outlined in AS 18.16.020(a)(4), that her parents are abusing her, because then she need never go to court.

[5:34:47 PM](#)

MS. FINLEY noted that AS 18.16.020(a)(4) doesn't pertain to the judicial bypass procedure, though AS 18.16.020(a)(2) and (3) do.

REPRESENTATIVE GRUENBERG also pointed out that under AS 18.16.030(f), if a minor is seeking a judicial bypass under AS 18.16.030(b)(4)(B) - which pertains to abuse by the parents - then an evidence standard of clear and convincing evidence will be used by the court.

REPRESENTATIVE COGHILL opined that that is as it should be.

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Conceptual Amendment 21. Representatives Dahlstrom, Coghill, Samuels, Lynn, and Ramras voted against it. Therefore, Conceptual Amendment 21 failed by a vote of 2-5.

5:36:45 PM

REPRESENTATIVE COGHILL moved to report HB 364, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HOLMES objected. She opined that there is still more work to be done on the bill, and that the bill won't help communication between parents and their children but instead will place an onerous burden on those teenagers who are the most vulnerable and will increase their health risks.

REPRESENTATIVE LYNN relayed that just prior to this meeting, he'd received call from a woman who supports HB 364 and who'd had an abortion without telling her parents but then wished she had. Acknowledging that he is prolife and that the bill addresses the issue of abortion, he said that for him the bill has more to do with limiting the court from legislating from the bench, and with parental rights. He went on to say:

Without this bill, parents are irrelevant to the child's decision, to a decision that cannot be reversed. In my worldview, children are a gift from god entrusted to the care of parents for a proper upbringing. Children don't belong to Washington D.C., children don't belong to Juneau, [and] children certainly don't belong to the Alaska Supreme court; parents [and no one else] are responsible for caring for and for educating their children and ... that includes education on all aspects of abortion.

Sometimes the government gets things backwards [and] believes the parents are somehow responsible to the government for everything. In my way of thinking, that's not so - the government is responsible to parents. ... When parents need to resolve a situation about their child, the court should not get in the way except in some needed bypass situations, which we've addressed very well in this bill today. And, yes, the legislature is also a government, but the legislature is a balancing force between the separation of powers

between the executive branch, the legislative branch, and the judicial branch, which I think has overstepped its bounds, and hope that in some way HB 364 will help address that issue. ... And I strongly support the bill, obviously.

[5:41:12 PM](#)

A roll call vote was taken. Representatives Coghill, Samuels, Lynn, Dahlstrom, and Ramras voted in favor of reporting HB 364, as amended, out of committee. Representatives Holmes and Gruenberg voted against it. Therefore, CSHB 364(JUD) was reported from the House Judiciary Standing Committee by a vote of 5-2.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:41 p.m.