

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 13, 2009

1:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 35

"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 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 HB 35 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 35

SHORT TITLE: NOTICE & CONSENT FOR MINOR'S ABORTION

SPONSOR(S): REPRESENTATIVE(S) COGHILL

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	JUD, FIN
03/09/09	(H)	JUD AT 1:00 PM CAPITOL 120
03/09/09	(H)	Heard & Held
03/09/09	(H)	MINUTE(JUD)
03/11/09	(H)	JUD AT 1:00 PM CAPITOL 120
03/11/09	(H)	Heard & Held

03/11/09 (H) MINUTE(JUD)
03/13/09 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CRAIG TILLERY, Deputy Attorney General
Civil Division
Office of the Attorney General
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 35.

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

POSITION STATEMENT: Responded to questions and provided comments during discussion of HB 35.

JANET CREPPS, Deputy Director
U.S. Legal Program
Center for Reproductive Rights
New York, New York

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 35.

ACTION NARRATIVE

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CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:35 p.m. Representatives Ramras, Gatto, Dahlstrom, and Coghill were present at the call to order. Representatives Lynn, Gruenberg, and Holmes arrived as the meeting was in progress.

HB 35 - NOTICE & CONSENT FOR MINOR'S ABORTION

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CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 35, "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 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."

REPRESENTATIVE HOLMES, after noting that HB 35 is similar to the existing parental consent law that the Alaska Supreme Court recently found to be unconstitutional [in State v. Planned Parenthood of Alaska], asked how much the Department of Law spent defending the existing law.

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CRAIG TILLERY, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law (DOL), indicated that the [State of Alaska] spent approximately \$500,000 in litigation costs, and approximately \$940,000 in fees and interest awarded to the prevailing party. He said he anticipates that if HB 35 were to pass and then be challenged, the [litigation] costs would be somewhat less [than \$500,000] but still expensive.

REPRESENTATIVE HOLMES offered her belief that it is highly likely HB 35 would be litigated were it to pass, and asked Mr. Tillery to comment.

MR. TILLERY said he strongly suspects that [HB 35 would engender] litigation.

REPRESENTATIVE HOLMES asked whether the consent provisions in HB 35 are similar to those in the existing law.

MR. TILLERY said they are somewhat similar though "more in line with the issues that concerned the [Alaska] Supreme Court."

REPRESENTATIVE HOLMES questioned whether it would be fair to say that it is not clear that HB 35 is constitutional.

MR. TILLERY said that is absolutely correct. He added that it is not clear that it is constitutional, that it is not clear that it is unconstitutional, but that it is closer to being constitutional than the [existing] law. It also is unclear how the Alaska Supreme Court would rule in any litigation engendered by the passage of HB 35, particularly given the differences in this bill compared to the existing law and given the fact that the Alaska Supreme Court would have two different justices serving on it.

CHAIR RAMRAS characterized abortion as an elective, invasive, surgical procedure; offered his understanding that minors cannot

elect to undergo any other elective, invasive, surgical procedure without parental consent; and questioned this seeming discrepancy.

MR. TILLERY offered his understanding that in Planned Parenthood of Alaska, the Alaska Supreme Court attached greater rights to the [pregnant minor] in situations involving the surgical procedure of abortion than it would have for other surgical procedures, but surmised that a representative from the [Alaska Supreme Court] could probably better address that question.

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

MR. TILLERY, in response to questions, offered his understanding that typically, any law passed by the legislature can be the subject of litigation, and explained that when the legislature passes a law, the DOL will defend that law, regardless of the cost to the State, except in instances where it is so patently unconstitutional that to defend it would cause the [DOL's attorneys] to violate their requirements of professional responsibility and their duties to the [Alaska Court System (ACS)]; HB 35 certainly doesn't meet that criteria, and is instead a bill that the DOL would defend were it to be passed into law and then challenged.

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REPRESENTATIVE HOLMES pointed out that under a U.S. Supreme Court ruling, hospitals can, in certain situations, provide medical care to minors without parental consent, and surmised that a hospital would deliver a pregnant minor's baby without parental consent.

MR. TILLERY concurred.

REPRESENTATIVE GATTO, noting that he is a former paramedic, offered his understanding that providing medical care without parental consent is allowed in life-threatening, emergency medical situations.

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

MR. TILLERY, in response to a request, offered his understanding that in Planned Parenthood of Alaska, the Alaska Supreme Court looked at the right of privacy and determined that it was a fundamental right, looked at what was proffered as a compelling state interest and determined that it was indeed a compelling

state interest, and looked at whether requiring parental consent was the least restrictive means available and determined that it was not, that a less-restrictive means - that being parental notification - was available. The Alaska Supreme Court focused on the existing law's judicial bypass procedures, and expressed some concerns that those procedures weren't as efficient and timely as possible. House Bill 35, in contrast to the existing law, provides an exception for a minor who is the victim of documented abuse; has a three-day - rather than a five-day - deadline by which the court must act; has an eight-day - rather than a nine-day - appeal timeframe; and provides that a pregnant minor may be excused from school via a confidential court order [in order to go through the judicial bypass procedure]. The bill, however, also contains some of the same standards set by the existing law.

MR. TILLERY said these differences and similarities [in the judicial bypass procedure provisions] seem to provide a method by which a pregnant minor may access an abortion in an easy, straightforward, and quick manner, and nothing else in the bill seems to detract from that. In response to questions, he surmised that the court, should HB 35 be adopted and then challenged, would probably focus on the distinctions between parental consent as used in the bill and the concept of parental notification; and that the judicial bypass procedure outlined in the bill would suffice to mitigate the asserted problem of providing parents - via consent requirements - with veto power over a minor's reproductive choice to have an abortion.

MR. TILLERY, in response to questions about the DOL's fiscal note, offered his understanding that the aforementioned amounts that the State spent in defending the existing parental consent law covered all levels of the defense; that that case did go to trial; and that in-house legal costs don't increase much from year to year.

REPRESENTATIVE COGHILL, speaking as the sponsor of HB 35, mentioned that the bill does have a referral to the House Finance Committee.

REPRESENTATIVE GRUENBERG asked whether under the bill, the parents of a pregnant minor would be granted the right to intervene in the judicial bypass procedure.

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KEVIN G. CLARKSON, Esq., Attorney at Law, Brena, Bell & Clarkson, PC, offered his understanding that they would not be granted that right under the bill because the U.S. Supreme Court - principally via Bellotti v. Baird - has ruled that a pregnant minor's parents are not to be notified that a judicial bypass procedure is occurring because that would then defeat the whole purpose of the judicial bypass procedure, that being to allow a minor to obtain an abortion without parental consent or notification.

REPRESENTATIVE GRUENBERG asked whether the court would have the discretion to allow the parents of a pregnant minor to intervene in the judicial bypass proceeding if they did find out about it and did seek to intervene.

MR. CLARKSON indicated that the court would not have that discretion; again, the [proposed bill] is designed to prevent parents from even having knowledge of the judicial bypass proceeding to begin with.

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

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JANET CREPPS, Deputy Director, U.S. Legal Program, Center for Reproductive Rights, concurred with Mr. Clarkson, adding that if that weren't the case, it would create a constitutional problem. In response to a further question, she offered her understanding that there isn't a published decision on that issue.

MR. CLARKSON concurred. In response to another question, he explained that although the Alaska Supreme Court has already ruled that there is no distinction between the constitutional rights of an adult and the constitutional rights of a minor, in application, the court will take into account the age and maturity of the particular minor in question when upholding those rights.

MS. CREPPS agreed, adding her belief that the court will apply a balancing test regarding the parents' interests and the minor's interests. The important point to consider with HB 35, though, is that a minor who is pregnant is facing certain life-changing events and health issues, thus changing the normal balance that the court ordinarily seeks in situations involving other medical procedures [or activities]; the court will be seeking a different kind of balance simply because the pregnancy itself has such life-altering consequences.

MR. CLARKSON, in response to a further question, pointed out that abortion must be viewed in a very unique context, and explained that when the legislature passed the existing parental consent law in 1997, it made a policy call and chose the age of 16 as the threshold, surmising that at the age of 17, a girl is more likely than not to be mature enough to decide for herself whether she wants to continue with a pregnancy. This policy call was in part based on the fact that a study conducted in Massachusetts over the course of several years indicated that the vast majority of pregnant girls who sought, pursued, and obtained a judicial bypass of that state's parental consent law - based on the argument that they were mature enough to make a decision regarding whether to have an abortion - were 17 years of age; the bill merely follows that same model and exempts 17-year-olds from its parental consent/notification requirements.

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REPRESENTATIVE HOLMES characterized the bill's requirement of both parental consent and parental notification as unusual.

MR. CLARKSON explained that in Texas, the legislature passed a parental notification law first and then passed a parental consent law, and thus he does not see an inconsistency or a conflict in HB 35's requirement for both, particularly given that in order for parents to give consent, they must first have been notified and thus consent and notice requirements are compatible.

MS. CREPPS added that there are only a few states that require both parental consent and parental notification. Also, a unique factor to consider with HB 35 is that it doesn't provide parents with an opportunity to waive the mandatory 48-hour delay even when consenting to an abortion.

REPRESENTATIVE HOLMES questioned whether it is possible that the court will simply decide that it has already addressed the issues raised by HB 35 and uphold its prior ruling under the doctrine of stare decisis.

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

MR. CLARKSON said it is possible, but he is reluctant to predict that that's what the court will do.

MR. TILLERY offered his belief that if the court did hold stare decisis in a challenge to HB 35, that would, in effect, also be a ruling on HB 35's proposed changes to the existing parental consent law.

MR. CLARKSON, in response to a question, opined that the court would have to analyze the effectiveness and burden of consent versus the effectiveness and burden of notification under HB 35, because it's a very different consent bill than the law that was passed in 1997. For example, under the existing law, a pregnant minor who has been abused by her parents would still have to go through a judicial bypass proceeding, whereas under HB 35, such a person could avoid the judicial bypass proceeding simply by providing a sworn statement alleging the abuse and having the abuse corroborated by one of the people listed in the bill. Such a change constitutes a significant reduction in the burden being placed on a pregnant minor, and thus the court would be precluded from simply holding stare decisis.

MS. CREPPS disagreed. She offered her belief that the main point of the Alaska Supreme Court's opinion in Planned Parenthood of Alaska is that the existing parental consent requirement [imbued parents with an unconstitutional veto power], adding that it is very difficult for her to envision how the court could analyze a statute requiring both consent and notice and say that it is less burdensome and provides for a less restrictive means than either a parental consent statute or a parental notification statute by itself. She predicted that the court will find HB 35 unconstitutional just on those grounds alone even without holding stare decisis, and most certainly will with such a holding.

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MR. CLARKSON, in response to a question, said he doesn't have a financial interest in HB 35, and was simply asked to testify by the sponsor. He added, though, that he was compensated by the State for his legal services in Planned Parenthood of Alaska, and estimated that he'd received approximately \$400,000-\$500,000 over the course of 10 years.

MS. CREPPS shared her recollection that her organization - the Center for Reproductive Rights - received approximately \$670,000 of the fees and interest awarded the plaintiffs in Planned Parenthood of Alaska, and offered to research that issue further.

REPRESENTATIVE GRUENBERG questioned whether it's possible that subsidiary litigation would arise should the new justice on the Alaska Supreme Court who had previous involvement with Planned Parenthood [of Alaska] refuse to recuse herself from a future challenge to HB 35.

MR. CLARKSON acknowledged that that issue might be raised, offering his recollection that that new justice served on the board of Planned Parenthood of Alaska in 1997 - the year in which that organization filed its lawsuit challenging the existing parental consent Act. Whether that involvement would require judicial recusal, however, is not something he'd venture to guess, he added.

MR. TILLERY, in response to a question, explained that in Planned Parenthood of Alaska, the State initially used in-house counsel, but when those people retired, it hired outside counsel, including Mr. Clarkson for a period of time.

MR. CLARKSON added that he is the attorney who helped then-Senator Loren Leman write the existing parental consent law. He then represented the legislature thereafter as an amicus in the ensuing litigation, and assisted the DOL at its request, and then, when the State's in-house counsel retired, he was hired to take over the State's defense.

REPRESENTATIVE GRUENBERG asked Ms. Crepps whether she thinks the fact that the bill doesn't allow the 48-hour waiting period to be waived even when the parents consent to the abortion is another constitutional infirmity of the bill.

MS. CREPPS said she does think that.

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REPRESENTATIVE HOLMES asked whether the term "medical instability", as used on page 2, line 29, will cause problems.

MS. CREPPS said that term causes her concern, and she thinks that it - both on its own and within the context of what she characterized as the fairly convoluted "medical emergency" definition [provided for via proposed AS 18.16.010(g)(3)] - would be subject to a claim of unconstitutional vagueness.

MR. CLARKSON said that proposed AS 18.16.010(g) does several things that reduce the impact of the [existing law], one of which is that the defense would simply be a defense and no

longer an affirmative defense, and thus the burden of proof would no longer be borne by the physician/surgeon. With regard to the term "medical instability", he explained that the evidence presented at trial in January 2003 - some of which came from emergency room physicians - indicated that when doctors examine a patient, in order to determine whether an emergency exists, they look at whether the patient is stable. He offered his belief that the term "medical stability" is a concept that medical students are taught during their first year of medical school, and that doctors keep that concept in mind every day, particularly when faced with emergency situations, and so he therefore disagrees with Ms. Crepps that the aforementioned term is unconstitutionally vague.

MR. CLARKSON then referred to the term "Clinical judgment" as used in proposed subsection (g) and defined in that subsection's paragraph (1), and offered his belief that a physician/surgeon's clinical judgment is not going to be second-guessed by anybody, and so there is no constitutional infirmity with [this provision] because the only thing the physician/surgeon has to do is exercise his/her discretion in good faith; proposed AS 18.16.010(g)(1) reads:

(1) "clinical judgment" means a physician's or surgeon's subjective professional medical judgment exercised in good faith;

MR. CLARKSON pointed out that a physician/surgeon could not use the defense outlined in proposed AS 18.16.010(g) if he/she were to make a determination that there was an emergency and perform an abortion, but do so in bad faith, knowing that there wasn't really an emergency. In response to a question, he clarified that in changing the type of defense from an affirmative defense to just a defense, as the bill proposes to do, the physician/surgeon would still have the burden of going forward - presenting evidence that he/she acted in good faith - but then at that point it would be the duty of the State to prove beyond a reasonable doubt that the physician/surgeon instead acted in bad faith, knowing that there wasn't really an emergency.

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CHAIR RAMRAS turned the committee's attention to Amendment 1, labeled 26-LS0192\A.2, Kurtz/Mischel, 3/13/09, which read:

Page 2, line 29:

Delete "medical instability caused by a"

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REPRESENTATIVE HOLMES made a motion to adopt Amendment 1.

CHAIR RAMRAS and REPRESENTATIVE LYNN objected.

REPRESENTATIVE HOLMES said she believes that the language Amendment 1 proposes to delete will result in the physician not only having to believe in good faith that delaying an abortion will create serious risk of substantial and irreversible impairment of a major bodily function, but he/she must also [believe] that a delay will also create a serious risk of creating a medical instability. She characterized this as a higher burden on the physician/surgeon, and offered her belief that there will be people who will have a hard time interpreting the meaning of the language Amendment 1 is proposing to delete. The risk of performing an abortion without complying with this provision is a felony, she noted, and opined that the language in existing AS 18.16.010(g) is sufficient because it already requires the physician/surgeon to have a good faith belief [that the abortion should not be delayed]. "I think that we need to be very careful in the types of burdens we are putting on our doctors and their judgment; if they think the patient in front of them needs to have an emergency procedure, I think we, with a felony hanging over your head if you get it wrong, ... need to be very careful," she concluded.

REPRESENTATIVE GRUENBERG, in support of Amendment 1, pointed out that the term "medical instability" is not defined in the bill, and that there doesn't seem to be a legally-recognized definition of that term. Since [complying with this terminology] is a key aspect of the defense, the lack of a legally-recognized definition may cause that phrase to be considered constitutionally vague because it's being used in a criminal context; alternatively, that phrase might be construed to be so much in favor of the defendant that it won't add anything to the proposed legislation. In conclusion, he characterized [the phrase that Amendment 1 is proposing to delete] as constitutionally suspect and unnecessary, surmised that it may result in additional litigation and expense, and said he supports Amendment 1.

REPRESENTATIVE COGHILL expressed a preference for retaining the language Amendment 1 is proposing to delete, expressing his belief that a medical instability is an aspect of a medical emergency.

REPRESENTATIVE GRUENBERG opined that retaining the language Amendment 1 is proposing to delete will instead create an additional inconsistency within the regulation of abortions, because AS 18.16.060(d)(2), which defines medical emergency for purposes of informed consent, would still read: "a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman".

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A roll call vote was taken. Representatives Gruenberg and Holmes voted in favor of Amendment 1. Representatives Lynn, Dahlstrom, Coghill, Gatto, and Ramras voted against it. Therefore, Amendment 1 failed by a vote of 2-5.

[2:43:48 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 26-LS0192\A.9, Mischel, 3/13/09, which read:

Page 3, lines 6 - 7:

Delete "not less than 48 hours before the abortion is performed"

Page 4, line 23:

Delete "48 hours"

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GRUENBERG, recalling Ms. Crepps's comments on this issue, proffered that the bill's current mandatory 48-hour waiting period - which he characterized as arbitrary - could endanger the minor's health, and is unnecessary, particularly in instances where the parents have already agreed that it is in their daughter's best interest for her to have the abortion. Furthermore, no such waiting period is required under current law. He urged the committee to adopt Amendment 2.

REPRESENTATIVE HOLMES offered her understanding that the proposed waiting period would be required even when the parents accompany the minor to the physician/surgeon's office and consent to her having the abortion, and opined that this is burdensome and infringes upon the rights of both the minor and her parents, particularly in situations where travel costs have been incurred.

CHAIR RAMRAS opined that a waiting period of 48 hours is a reasonable amount of time.

REPRESENTATIVE COGHILL offered his understanding that from a practical standpoint, at least that much time passes between a first appointment with a physician/surgeon and the appointment wherein the abortion procedure is performed. He characterized the bill's mandatory 48-hour waiting period as respectful to "both parties," and indicated that he is opposed to Amendment 2.

REPRESENTATIVE GRUENBERG pointed out that in instance where the parents are consenting to the abortion, their daughter has already informed them of her pregnancy and desire to have an abortion, and yet under the bill, that family - even when they have been discussing the issue all along - would still have to wait yet another 48 hours. He said he wants there to be some discretion on this point, and surmised that Amendment 2 will effect that. In response to a comment, he indicated that he would be amenable to possibly amending Amendment 2 such that it would only address situations in which the pregnant minor is facing a medical emergency.

CHAIR RAMRAS expressed a preference for addressing Amendment 2 as currently written.

[2:49:01 PM](#)

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

[2:49:23 PM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Amendment 3, labeled 26-LS0192\A.1, Kurtz/Mischel, 3/13/09, which read:

Page 2, line 27:

Following "death":

Insert "or serious risk to the minor's health"

REPRESENTATIVE DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG indicated that a serious risk to the minor's health ought to be included in the definition of medical emergency as outlined under proposed AS 18.16.010(g)(3)(A).

REPRESENTATIVE GATTO opined that including that language as Amendment 3 proposes to do would allow the medical emergency exemption to be applied in instances wherein the minor's mental health would be adversely affected by the continuation of the pregnancy. He offered his belief that Amendment 3 would neutralize the entire bill.

CHAIR RAMRAS concurred.

2:51:30 PM

A roll call vote was taken. Representatives Holmes and Gruenberg voted in favor of Amendment 3. Representatives Dahlstrom, Coghill, Gatto, Lynn, and Ramras voted against it. Therefore, Amendment 3 failed by a vote of 2-5.

2:51:53 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, labeled 26-LS0192\A.4, Kurtz/Mischel, 3/13/09, which read:

Page 3, line 17:

Delete "by a declaration of the"

Insert "in a writing signed by the minor under penalty of perjury."

Page 3, lines 18 - 28:

Delete all material.

REPRESENTATIVE DAHLSTROM objected.

REPRESENTATIVE GRUENBERG explained that Amendment 4 will eliminate the requirement that a pregnant minor document her abuse via a notarized statement signed by both herself and one of the specific people listed under proposed AS 18.16.020(a)(4)(B) who has personal knowledge of the abuse, and will instead provide that the minor may document her abuse herself simply by signing a statement under penalty of perjury. There should not be a necessity, he opined, to have "all these other people involved"; the right of privacy is at issue, and the more strictures there are, the more a minor's constitutional right of privacy is impinged upon, and thus the more likely the bill will be found unconstitutional.

CHAIR RAMRAS questioned whether a minor would understand the phrase, "under penalty of perjury".

REPRESENTATIVE GRUENBERG posited that most minors would know it means that if they lie, they go to jail.

CHAIR RAMRAS disagreed.

REPRESENTATIVE COGHILL pointed out, though, that as currently written, this provision allows a pregnant minor to bypass even the judicial bypass procedure and merely requires that both the minor and a specific type of person submit a notarized declaration of the abuse. He offered his understanding that this provision could also serve to uncover the activities of a perpetrator. The current language is a protection, and provides a minor with a less-restrictive means of moving forward with an abortion on her own.

2:56:05 PM

REPRESENTATIVE HOLMES, referring to a copy of the petition to bypass parental consent that was created for the existing law before it was ruled unconstitutional, observed that that petition requires the minor to swear or affirm under penalty of perjury that certain statements were true; [the courts], therefore, were already expecting a minor to understand that concept. She opined that although she appreciates the sponsor's efforts to address some truly horrific situations wherein abused minors are facing an unwanted pregnancy, proposed AS 18.16.020(a)(4) as currently written is just too restrictive in that it's requiring an abused minor to get a very specific type of person to corroborate her allegations of abuse.

REPRESENTATIVE LYNN noted that proposed AS 18.16.020(a)(4) uses the term, "a pattern of emotional abuse", and surmised that teenagers often feel like they're being emotionally abused whenever they don't get their own way, whereas the type of people listed in subparagraph (B) of subsection (a)(4) are more likely to know what emotional abuse really is.

REPRESENTATIVE GRUENBERG offered his belief that the question of whether the pregnant minor really is the victim of a pattern of emotional abuse will ultimately be determined by the physician/surgeon when he/she is deciding whether to perform the abortion [without providing parental notification and obtaining parental consent]; the physician/surgeon would be talking with the minor about the alleged emotional abuse, and any reasonable-thinking physician/surgeon wouldn't consider situations in which the minor simply isn't getting her own way as constituting

emotional abuse. He then pointed out that under the language of proposed AS 18.16.030(b), when petitioning the court for a judicial bypass, the minor must file the complaint under oath, whereas the issue of perjury isn't raised at all in proposed AS 18.16.020(a)(4) as currently written, because it only requires that the declaration of the alleged abuse be signed and notarized.

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

REPRESENTATIVE GRUENBERG said that from a practical standpoint, under the bill as currently written, a pregnant minor would have to make at least two trips, either first to the court and then to the physician/surgeon, or first to the notary public and then to the physician/surgeon. Under Amendment 4, by contrast, the minor would just have to make the trip to the physician/surgeon and while there sign a statement under penalty of perjury documenting the abuse. That is not a small difference, given that for a judicial bypass procedure, the bill requires a pregnant minor to go through the superior court, and since many communities across the state don't have a superior court, the minor would therefore essentially be required to travel perhaps hundreds of miles from a remote village - no small task for a minor under the age of 17.

REPRESENTATIVE GRUENBERG pointed out that it could also be difficult for a pregnant minor to obtain a corroborating witness of the type currently required under proposed AS 18.16.020(a)(4)(B), particularly if she lives in a small village where almost everybody is related, since most people are reluctant to testify against a relative. Furthermore, many communities in Alaska don't have any law enforcement presence to speak of or any Department of Health and Social Services (DHSS) personnel, thereby making it impossible for a pregnant minor living in rural Alaska to obtain a corroborating witness of that sort. As currently written, the current language in proposed AS 18.16.020(a)(4) raises some significant equal protection problems for those living in rural Alaska.

[3:05:28 PM](#)

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

[3:06:08 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 5, labeled 26-LS0192\A.5, Kurtz/Mischel, 3/13/09, which read:

Page 1, line 3, following "abortion":
Insert "or to bear a child"

Page 7, line 25, following "abortion":
Insert "or to bear a child"

Page 7, line 28, following "abortion":
Insert "or to bear a child"

VICE CHAIR DAHLSTROM objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG opined that it should also be a crime under proposed AS 18.16.035 to coerce a pregnant minor into bearing a child if she doesn't want to; it ought to be the act of coercion itself that's illegal, regardless of whether it's coercion to bear a child or coercion to have an abortion. He offered his belief that proposed AS 18.16.035 is unconstitutional as currently written.

REPRESENTATIVE COGHILL disagreed, noting that AS 18.16 pertains to the regulation of abortion. He posited that the current language of proposed AS 18.16.035 would give the pregnant minor protection from being coerced into having an abortion, and give her grounds for emancipation. He said he objects [to Amendment 5].

REPRESENTATIVE GRUENBERG asked whether proposed AS 18.16.035 is intended to be a criminal statute.

REPRESENTATIVE COGHILL indicated that it is, adding that his intention is to prevent a minor from being coerced by a perpetrator into having an abortion.

REPRESENTATIVE GRUENBERG said he was under the impression that proposed AS 18.16.035 would create a felony crime in addition to the general crime of coercion under Title 11. He urged that a legal opinion be sought on this issue before the bill is heard in its next committee of referral. He offered a hypothetical situation involving a contract to illustrate that whether the coercion is to prevent the signing of a contract, for example, or to encourage the signing of a contract, it is equally illegal [under Title 11] - this is a basic legal principle. In response

to a comment, he again urged the sponsor to obtain a legal opinion on the matter.

VICE CHAIR DAHLSTROM concurred with that suggestion.

REPRESENTATIVE COGHILL agreed to do so.

[3:14:54 PM](#)

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

[3:16:22 PM](#)

REPRESENTATIVE COGHILL moved to report HB 35 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE HOLMES objected. She offered her belief that everyone has the goal of reducing the number of unplanned [teenage] pregnancies and the resulting need for minors to have to make a decision about abortion on their own. This is a good goal, but HB 35 misses the mark and is still unconstitutional regardless of how it differs from existing law, she opined, and predicted that it will result in a lot of expensive litigation, and will instead hurt some teenagers who, for whatever reason, feel that they can't go to their parents. There aren't any provisions in the bill that would allow a pregnant teenager to [obtain consent from] another adult in place of her parents when her parents wouldn't be the best people to counsel her. "I don't want teenagers facing these things alone; I know there are some protections built into this, [but] I don't think they go far enough," she added.

REPRESENTATIVE HOLMES questioned how a pregnant teenager in a rural community with limited telephone access and limited access to the courts is going to be able [to comply with the bill's judicial bypass provisions]. She said she thinks [the bill] will fall short [of helping such teenagers], and will instead result in more late-term abortions being performed. Furthermore, under the bill, the parents would still have veto power over their pregnant minor's decision to have an abortion, and she finds this to be morally troubling, she relayed, and therefore objects to moving HB 35 from committee.

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REPRESENTATIVE LYNN posited that those who support HB 35 believe that children are a gift from god entrusted to parents for care, that parental rights are needed in order for parents to fulfill their parental responsibilities, and that family is the bedrock foundation of society. He predicted that most parents will acknowledge that they are imperfect, but pointed out that parents don't have to be perfect in order to be good parents, and that the same can be said of children. Parents, he surmised, as well as himself, believe that without the bill, the judicial branch of government will have abrogated parental rights in situations involving teenage pregnancy.

REPRESENTATIVE LYNN offered his belief that those who oppose HB 35 are obsessed with maintaining every woman's right, regardless of her age or situation, to have an abortion. However, he opined, parental rights extend far beyond the subject matter of the bill, with the bottom line for him being that children are a gift from god and are not the property of federal, [state,] or local government, or the judicial or legislative branch of government. He said that although his heart goes out to any teenager who finds herself in serious trouble simply because she made a mistake, consideration should be given to everyone involved, including the parents and the fetus. In conclusion, he relayed that he is prolife and believes the bill is all about parental rights.

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REPRESENTATIVE GATTO opined that the terms "clinical judgment", "good faith", and "necessary" [as used in proposed AS 18.16.010(g)] give a lot of credibility to the concept of moving HB 35 from committee, and that the bill does have built-in safeguards.

REPRESENTATIVE COGHILL - remarking that he is a strong advocate of parents and their responsibilities and rights, and is cognizant of minors' irresponsibility - said he believes that the Alaska Supreme Court has given the legislature some direction regarding what would constitute a least restrictive means of balancing the state's compelling interests with [a minor's rights]. He also believes, however, that the parents' rights were left out of the balance, and so he wanted to find a way to give parents the right and responsibility of consent and yet still provide for those teenagers living in troubled and/or abusive families. [House Bill 35] strikes that balance, he

opined, and without it, he predicted, minors will become vulnerable to predators, predators that can currently take their victims to an abortion clinic and coerce them into having an abortion. House Bill 35 creates a body of law that will give good guidelines and protection to minors, protect the parents, and give "a good template" to both the courts and doctors when considering those circumstances wherein a pregnant minor seeks to have an abortion without parental consent/notification, whether that be through judicial bypass or a declaration of abuse, he proffered.

REPRESENTATIVE COGHILL said a minor who decides to have an abortion without parental consent or parental notification might later regret her decision, particularly if it was arrived at because someone put pressure on her to have an abortion. The bill will provide minors with bad-acting parents a good avenue for moving forward with an abortion without parental notification or consent. The rights of pregnant minors seeking an abortion should be protected, but so should the rights of parents to give counsel and consent, and HB 35 strikes a balance between reproductive rights and reproductive responsibilities, and it is therefore with the greatest respect for both pregnant minors and their parents that HB 35 was introduced. In conclusion, he asked members to vote to move the bill from committee.

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

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A roll call vote was taken. Representatives Gatto, Lynn, Dahlstrom, Coghill, and Ramras voted in favor of reporting HB 35 out of committee. Representatives Gruenberg and Holmes voted against it. Therefore, HB 35 was reported from the House Judiciary Standing Committee by a vote of 5-2.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:34 p.m.