

27-GH1840\I
Gardner
3/18/11

CS FOR HOUSE BILL NO. 127(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of stalking, online enticement of a minor, unlawful
2 exploitation of a minor, endangering the welfare of a child, sending an explicit image of
3 a minor, harassment, and misconduct involving confidential information; relating to
4 probation; relating to the subpoena power of the attorney general in cases involving use
5 of an Internet service account; relating to an appearance before a judicial officer after
6 arrest; relating to penalties for operating a vehicle without possessing proof of motor
7 vehicle liability insurance or a driver's license; relating to penalties for certain arson
8 offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10,
9 Alaska Rules of Administration; and providing for an effective date."

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 * **Section 1.** AS 11.41.270(b)(3) is amended to read:

12 (3) "nonconsensual contact" means any contact with another person

that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(H) following or monitoring that person with a global positioning device or similar technological means;

(I) using, installing, or attempting to use or install a device for observing, recording, or photographing events occurring in the residence, vehicle, or workplace used by that person, or on the personal telephone or computer used by that person;

* **Sec. 2.** AS 11.41.270(b) is amended by adding a new paragraph to read:

(5) "device" includes software.

* **Sec. 3.** AS 11.41.452(d) is amended to read:

(d) Except as provided in (e) of this section, online enticement is a class **B** [C] felony.

* **Sec. 4.** AS 11.41.452(e) is amended to read:

(e) Online enticement is a class **A** [B] felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

* **Sec. 5.** AS 11.41.455(c) is amended to read:

(c) Unlawful exploitation of a minor is a

[(1)] class **A** [B] felony [; OR

(2) CLASS A FELONY IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF UNLAWFUL EXPLOITATION OF A MINOR IN THIS JURISDICTION OR A SIMILAR CRIME IN THIS OR ANOTHER JURISDICTION].

* **Sec. 6.** AS 11.51.100(a) is amended to read:

(a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person is

(A) [IS] registered or required to register as a sex offender or child kidnapper under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

(B) [HAS BEEN] charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) [HAS BEEN] charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; or

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.

* **Sec. 7.** AS 11.61 is amended by adding a new section to read:

Sec. 11.61.116. Sending an explicit image of a minor. (a) A person commits the offense of sending an explicit image of a minor if the person, with intent to annoy or humiliate another person, distributes an electronic photograph or video that depicts the genitals, anus, or female breast of that other person taken when that person was a minor under 16 years of age.

(b) In this section,

(1) "computer" has the meaning given in AS 11.46.990;

(2) "distributes" means to deliver the image to another person by sending the image to the other person's computer or telephone;

(3) "Internet" has the meaning given in AS 11.46.710(d).

(c) Sending an explicit image of a minor is

(1) a class B misdemeanor if the person distributes the image to another person;

(2) a class A misdemeanor if the person distributes the image to an Internet website that is accessible to the public.

* **Sec. 8.** AS 11.61.120(a) is amended to read:

(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;

(5) subjects another person to offensive physical contact; or

(6) **except as provided in AS 11.61.116,** publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act.

* **Sec. 9.** AS 11.76 is amended by adding new sections to read:

Sec. 11.76.113. Misconduct involving confidential information in the first degree. (a) A person commits the crime of misconduct involving confidential information in the first degree if the person violates AS 11.76.115 and obtains the confidential information with the intent to

(1) use the confidential information to commit a crime; or

(2) obtain a benefit to which the person is not entitled, to injure another

person, or to deprive another person of a benefit.

(b) Conviction under this section does not limit a person's ability to obtain civil relief from another person.

(c) Misconduct involving confidential information in the first degree is a class A misdemeanor.

Sec. 11.76.115. Misconduct involving confidential information in the second degree. (a) A person commits the crime of misconduct involving confidential information in the second degree if the person, without legal authority or the consent of another person, knowingly obtains confidential information about the other person.

(b) In this section, "confidential information" includes

(1) information that has been classified confidential by law;

(2) information encoded on an access device, identification card issued under AS 18.65.310, or driver's license.

(c) Conviction under this section does not limit a person's ability to obtain civil relief from another person.

(d) Misconduct involving confidential information in the second degree is a class B misdemeanor.

* **Sec. 10.** AS 12.05 is amended by adding a new section to read:

Sec. 12.05.030. Crimes involving minors committed outside state. In addition to any other jurisdictional basis expressed or implied in law, a person may be prosecuted under the laws of this state for conduct occurring outside the state for a violation of (1) AS 11.41.452 if the other person with whom the defendant communicated was in the state; or (2) AS 11.61.116 if the minor whose image is published or distributed was in the state.

* **Sec. 11.** AS 12.25.150(a) is amended to read:

(a) A person arrested shall be taken before a judge or magistrate without unnecessary delay, and in any event within 48 [24] hours after arrest, including Sundays and holidays. This requirement applies to municipal police officers to the same extent as it does to state troopers.

* **Sec. 12.** AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, [OR] promoting prostitution in the first degree under AS 11.66.110(a)(2)), unlawful exploitation of a minor, or online enticement of a minor under AS 11.41.452(e) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does

not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, **online enticement of a minor under AS 11.41.452(d)** [UNLAWFUL EXPLOITATION OF A MINOR], or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant

has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, two to 12 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, eight to 15 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

* **Sec. 13.** AS 12.70.130 is amended to read:

Sec. 12.70.130. Arrest without warrant. The arrest of a person may also be lawfully made by a peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when arrested the accused must be taken before a judge or magistrate without unnecessary delay and, in any event, within 48 [24] hours after arrest, including Sundays and holidays, and complaint shall be made against the accused under oath setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the accused shall be heard as if the accused had been arrested on a warrant.

* **Sec. 14.** AS 28.15.131 is amended by adding a new subsection to read:

(b) Violation of this section is an infraction.

* **Sec. 15.** AS 28.22.019(c) is amended to read:

(c) A person convicted under this section is guilty of an infraction [A CLASS

1 B MISDEMEANOR] and shall be sentenced to pay a mandatory fine of \$500
2 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
3 AT LEAST \$500 MUST BE IMPOSED].

4 * **Sec. 16.** AS 33.05.020(a) is repealed and reenacted to read:

5 (a) The commissioner shall appoint and make available to the superior court,
6 when ordered under AS 12.55.015(a), a qualified probation officer for the active
7 supervision of a person placed on probation for a felony offense. The commissioner
8 may provide active supervision to a person placed on probation for a misdemeanor
9 offense.

10 * **Sec. 17.** AS 41.23.220 is amended to read:

11 **Sec. 41.23.220. Penalty.** (a) Except for conduct that is a violation of
12 AS 11.46.420, a [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
13 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
14 in AS 11.81.900.

15 (b) Except for conduct that is a violation of AS 11.46.420, the [THE]
16 supreme court shall establish by order or rule a schedule of bail amounts for violations
17 under (a) of this section that allow the disposition of a citation without a court
18 appearance.

19 * **Sec. 18.** AS 44.23.080 is repealed and reenacted to read:

20 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
21 **of an Internet service account.** (a) If there is reasonable cause to believe that an
22 Internet service account has been used in connection with a violation of AS 11.41.452,
23 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
24 information about the account owner will assist in obtaining evidence that is relevant
25 to the offense, a law enforcement officer may apply to the attorney general or the
26 attorney general's designee for an administrative subpoena to obtain the business
27 records of the Internet service provider located inside or outside of the state.

28 (b) If an application meets the requirements of (a) of this section, the attorney
29 general or the attorney general's designee may issue an administrative subpoena to the
30 Internet service provider requiring the production of the following records:

31 (1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

(c) A subpoena issued under (b) of this section must prescribe a reasonable time after service for the production of the information.

(d) Service of a subpoena issued under (b) of this section may be by any method authorized by law or acceptable to the Internet service provider. At any time before the return date specified on the subpoena, the Internet service provider may petition a court of competent jurisdiction for the judicial district in which the provider resides or does business for an order modifying or quashing the subpoena or for an order sealing the court record.

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general or the attorney general's designee, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the subpoena.

(f) An Internet service provider who knowingly fails to produce the information required to be produced by the subpoena or court order is guilty of contempt under AS 09.50.010.

(g) Nothing in this section limits the authority of law enforcement from obtaining process from the court or through a grand jury subpoena to obtain the information described in (b) of this section.

(h) A person may not bring a civil action against an Internet service provider, its officers, employees, agents, or other person for complying with an administrative subpoena issued under (b) of this section or a court order issued under (e) of this section.

(i) For purposes of this section, the attorney general's designee must be in the Department of Law.

*** Sec. 19.** AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this

subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person, **other than a violation of AS 11.41.455;**

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

* **Sec. 20.** The uncoded law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (1) Except when the person arrested is issued a citation for a
3 misdemeanor or a violation and immediately thereafter released, the arrested person
4 shall be taken before the nearest available judge or magistrate without unnecessary
5 delay **and in any event within 48 hours after arrest, including Sundays and**
6 **holidays.** This appearance may be accomplished by the use of telephonic or television
7 equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY DELAY
8 WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A PERIOD
9 NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST, INCLUDING
10 SUNDAYS AND HOLIDAYS.]

11 * **Sec. 21.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
14 in sec. 17 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
15 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
16 forfeiture of bail amounts.

17 * **Sec. 22.** The uncoded law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. (a) Sections 11, 13, and 20 of this Act apply to arrests for offenses
20 committed before, on, or after the effective date of this Act.

21 (b) Sections 1 - 10, 12, 14, 15, 17, 19, and 21 of this Act apply to offenses committed
22 on or after the effective date of this Act.

23 (c) Sections 16 and 18 of this Act apply to offenses occurring before, on, or after the
24 effective date of this Act.

25 * **Sec. 23.** The uncoded law of the State of Alaska is amended by adding a new section to
26 read:

27 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
28 of it to any person or circumstance, is held invalid, the remainder of this Act and the
29 application to other persons or circumstances is not affected.

30 * **Sec. 24.** This Act takes effect July 1, 2011.