

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

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SCS CSHB 127(JUD) STALKING AND EXPLOITATION OF A MINOR AND BAIL CLEANUP Sectional Analysis

Sections 1 and 2 expand the crime of stalking by amending the definition of “nonconsensual contact”. Stalking prohibits a person from engaging in a course of conduct that places another in fear of death or physical injury. “Course of conduct” is defined as repeated acts of nonconsensual conduct. The bill adds two ways that a defendant may contact a victim that is beyond the victim’s consent. First, it includes following or monitoring the victim with a global positioning device. Second, it includes installing or attempting to install a device for observing, recording, or photographing events in the home, workplace, or vehicle the victim uses, or on the personal telephone or computer that the victim uses.

Sections 3 and 4 add to the crime of sexual assault in the third degree, a class C felony, a new provision that prohibits a peace officer from engaging in sexual penetration with a person with reckless disregard that that person is in the custody or apparent custody of the offender or is committed to the custody of a law enforcement agency.

Sections 5 and 6 add to the crime of sexual assault in the fourth degree, a class A misdemeanor, a new provision that prohibits a peace officer from engaging in sexual contact with a person with reckless disregard that that person is in the custody or apparent custody of the offender or is committed to the custody of a law enforcement agency.

Section 7 raises the classification of the crime of online enticement of a minor for a person who is not required to register as a sex offender or child kidnapper from a class C felony to a class B felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would raise the penalty from a range of zero to two years for a first offense (maximum term of five years) to a range of five to 15 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

Section 8 raises the classification of the crime of online enticement of a minor for a person who is required to register as a sex offender or child kidnapper from a class B felony to a class A felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would raise the penalty from a range of one to three years

(maximum term of 10 years) to a range of 15 to 30 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

Section 9 amends the crime of criminal use of a computer, a class C felony, by prohibiting a person who has no right or reasonable ground to believe he has such a right, from installing, enabling, or using a keystroke logger or similar device on a computer, or using a keystroke logger to intercept keystrokes on a computer when the entries are transmitted by non-wired means. Conviction of a class C felony has a maximum term of imprisonment of five years.

Section 10 amends the crime of endangering the welfare of a child in the first degree by prohibiting a parent or guardian from leaving a child under 16 years of age with a person who is required to register as a child kidnapper or is charged with child kidnapping. The law currently prohibits a parent or guardian from leaving a child with a person required to register as a sex offender or who is charged with a sex offense.

Section 11 adopts a new crime – sending an explicit image of a minor. It would prohibit a person, acting with the intent to annoy or humiliate another person, from distributing an electronic photograph or video that depicts an image of a minor’s genitals, anus, or female breast taken when the minor was under 16 years of age. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person distributes the image to one or more other persons, and a class A misdemeanor (maximum term of imprisonment one year) if the person distributes the image to an Internet website that is accessible to the public.

Section 12 makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crime of sending an explicit image of a minor in **Section 11** is not included in the crime of harassment in the second degree.

Section 13 adopts two new crimes – misconduct involving confidential information in the first and second degrees. The second degree offense prohibits a person from obtaining the confidential information about another person without legal authority or consent to do so. This conduct would be a class B misdemeanor (maximum term of imprisonment 90 days).

Misconduct involving confidential information in the first degree would prohibit a person from violating the second degree prohibition *and* using the confidential information to commit a crime or to obtain a benefit to which a person is not entitled, or injure or deprive another person of a benefit. This conduct would be a class A misdemeanor (maximum term of imprisonment one year).

Section 14 clarifies that a person may be prosecuted for online enticement of a minor and for sending an explicit image of a minor if the minor whose image is published, or with

whom the person communicated, was in this state, even if the defendant was in another jurisdiction at the time he or she committed the prohibited acts.

Section 15 makes a conforming amendment to the statute of limitations for prosecuting certain crimes. It adds the conduct prohibited in **Section 3**, sexual assault in the third degree by a peace officer, to other forms of sexual assault in the third degree that may be brought at any time. In other words, the offense has no statutory time limitation.

Section 16 amends AS 12.25.150(a) (relating to arrest) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 hours to 48 hours of arrest.

Section 17 would allow a court the discretion, in setting conditions of probation on a person convicted of sexual offenses against a minor, child pornography offenses, and distributing indecent material to minors, to impose the condition that the person not live within 500 feet of school grounds.

Section 18 amends AS 12.55.125(i) (terms of imprisonment for persons who commit sex offenses) by conforming the terms of imprisonment for persons who commit online enticement of a minor to the correct level in accord with the changes in **Sections 7 and 8** of the bill. **Section 18** also clarifies the correct sentencing ranges for unlawful exploitation of a minor and distribution of child pornography.

Section 19 amends AS 12.70.130 (relating to extraditions) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 to 48 hours of arrest.

Section 20 changes the penalty for the offense of failure to possess and present upon request of a peace officer a person's driver's license when driving from a misdemeanor, similar to a class B misdemeanor, to an infraction. The offense currently is correctible, and would continue to be correctible. This offense is also currently on the bail schedule (Rule 43.1, Alaska Rules of Administration) at a \$50 bail. It is not consistent to have an offense at the same time a misdemeanor, which generally requires a court appearance, and an offense disposable under the bail schedule for a \$50 bail amount. The bill removes this inconsistency.

Section 21 changes the penalty for the crime of failure to carry and present upon request to a peace officer proof of automobile insurance when driving from a class B misdemeanor to an infraction. Current law in statute requires a mandatory fine for this offense of at least \$500; at the same time the offense is on the bail schedule for a bail amount of \$500. It is correctible under current law and would continue to be correctible under the bill. Again, it is inconsistent to have a class B misdemeanor on the bail schedule for disposition without court appearance. The bill removes the inconsistency, and at the same time retains the bail amount of \$500.

Section 22 clarifies the law by stating that while the Commissioner of Corrections provides probation officers to the superior court for the active supervision of person on probation for felony offenses, the Commissioner may, at his or her discretion, also provide probation officers for the active supervision of persons released for misdemeanor offenses.

Section 23 resolves an inconsistency in the penalty for burning a vehicle on the Knik River Public Use Area. In 2006 the legislature created the Knik River Public Use Area. The law authorizes the Department of Natural Resources to adopt regulations governing conduct in the area. AS 41.23.220(a) provides that a person who violates the new law or a regulation under the new law commits a violation. AS 41.23.220(b) requires the Alaska Supreme Court to establish a bail schedule for violations of the statutes and regulations. The law specifically requires that the violations be disposed of without court appearance. One of the regulations adopted prohibits burning a vehicle in the area; the bail was adopted in Supreme Court Order 1711 at \$50.

In 2008 the legislature enacted AS 11.46.420, which adopted a new crime, arson in the third degree. This prohibits burning a vehicle on state or municipal land. The penalty for this crime is a class C felony.

These sections correct this inconsistency by excluding burning a vehicle on state land from the prohibitions that are effective in the Knik River Public Use Area.

Section 24 redrafts the law enacted last year allowing the Attorney General to issue administrative subpoenas for law enforcement to obtain limited information from an Internet service provider if there is reasonable cause to believe that an Internet service account has been used in connection with the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, or distribution of indecent material to a minor.

The bill corrects a problem with the service provisions of the law to allow service of the subpoenas in any manner authorized by law or acceptable to the Internet service provider. The bill clarifies that a person who does not obey a subpoena or ask the court to quash the subpoena may be guilty of contempt. The bill does not include a problematic provision of current law which requires either returning information to the Internet service provider or destroying it if a criminal prosecution is not undertaken. There are two problems with this: first, an Internet service provider does not need the documents returned because it already has the information. Second, it is not good public policy for documents in the possession of a public agency be destroyed. It is better policy that this information is kept as part of a confidential police investigation. The bill also provides that a person may not bring a civil action against an Internet service provider for complying with an administrative subpoena.

Section 25 redrafts Rule 5(a)(1), Alaska Rules of Criminal Procedure, to correct a drafting error and to make the rule more readable. The rule was changed last year to extend the deadline from 24 to 48 hours for bringing an arrested person before a judicial officer. This change corrects the drafting error, which currently defines a term that is not used in the rule.

Section 26 notes that the changes included in **Section 23** of the bill have the effect of changing Rule 43.10, Alaska Rules of Administration (the bail schedule) by prohibiting the disposition of cases involving burning a vehicle on state land without a court appearance by mailing to the court a bail amount of \$50.

Section 27 requires the Department of Law, with the help of the Department of Corrections and the Alaska Court System, compile and submit to the legislature a report concerning the number of persons arraigned on state charges within 24 hours of arrest and the number arraigned on state charges within 48 hours of arrest.

Section 28 provides the applicability provisions.

Section 29 provides a severability section.

Section 30 adopts a July 1, 2011 effective date.