

HB 127
STALKING AND EXPLOITATION OF A MINOR
Sectional Analysis (Revised)

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 of the victim, or on the victim’s personal telephone or computer.

Section 3 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 be to 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 4 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 be to 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 5 raises the classification of the crime of unlawful exploitation of a minor from a class B felony to a class A felony for all offenders. Under current law the offense is a class A felony if the person has previously been convicted of unlawful exploitation of a minor, and it is a class B felony for other offenders. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of two to 12 years or five to 15 years (depending on whether it is a first or second offense) to a range of 15 to 30 years for a first offense. Also refer to section 12 of this analysis.

Section 6 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. The law currently prohibits this conduct if the parent or guardian leaves a child with a person required to register as a sex offender.

Section 7 adopts a new crime – sending an explicit image of a minor. It would prohibit publishing or distributing an image of a minor’s genitals, anus, or female breast if the minor is under 16 years of age and the publication or distribution was without the consent of the parent or guardian of the minor. The conduct would not apply to a minor under 16 years of age who publishes or distributes the minor’s own image. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person publishes the image to one or two others; a class A misdemeanor (maximum term of imprisonment one year) if the person publishes the image to three or more others; and a class C felony (maximum term of imprisonment five years) if the person publishes the image on the Internet.

Section 8 makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crimes of sending an explicit image of a minor in **Section 7** are not included in the crime of harassment in the second degree.

Section 9 makes two amendments to the crime of distribution of indecent material to minors; first, to clarify that the person must know that the material distributed depicts the prohibited conduct; and second to clarify that if the minor to whom the material is sent is under 16 years of age, the defendant must be reckless as to that circumstance.

Section 10 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 11 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 12 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 unlawful exploitation of a minor or online enticement of a minor to the correct level in accord with the changes in **Sections 3 – 5** of the bill.

Section 13 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.

Sections 14 and 15 include the applicability and effective date provisions.