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Gardner  
2/24/11

**CS FOR HOUSE BILL NO. 127(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY 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, distribution of indecent material to minors, and misconduct**  
4 **involving confidential information; relating to probation; relating to the subpoena**  
5 **power of the attorney general in cases involving use of an Internet service account; and**  
6 **providing for an effective date."**

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

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

9 (3) "nonconsensual contact" means any contact with another person  
10 that is initiated or continued without that person's consent, that is beyond the scope of  
11 the consent provided by that person, or that is in disregard of that person's expressed  
12 desire that the contact be avoided or discontinued; "nonconsensual contact" includes

13 (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 embarrass 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 violation if the person distributes the image to one or two people;

(2) a class B misdemeanor if the person distributes the image to three or more people;

(3) 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 11.61.128(a) is amended to read:

(a) A person commits the crime of distribution of indecent material to minors if

(1) the person, being 18 years of age or older, knowingly distributes to another person any material that **the person knows** depicts the following actual or simulated conduct:

(A) sexual penetration;

(B) the lewd touching of a person's genitals, anus, or female breast;

(C) masturbation;

(D) bestiality;

(E) the lewd exhibition of a person's genitals, anus, or female breast; or

(F) sexual masochism or sadism;

(2) the material is harmful to minors; and

(3) either

(A) the other person is a child under 16 years of age and the person acts recklessly regarding the age of the child; or

(B) the person believes that the other person is a child under 16 years of age.

\* **Sec. 10.** 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

1 civil relief from another person.

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

4 \* **Sec. 11.** AS 12.05 is amended by adding a new section to read:

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

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

12 (i) A defendant convicted of

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

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

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

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

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

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

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

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

1 to 60 years;

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

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

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

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

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

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

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

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

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

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

30 (3) sexual assault in the second degree, sexual abuse of a minor in the  
31 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 33.05.020(a) is repealed and reenacted to read:

(a) The commissioner shall appoint and make available to the superior court,



when ordered under AS 12.55.015(a), a qualified probation officer for the active supervision of a person placed on probation for a felony offense. The commissioner may provide active supervision to a person placed on probation for a misdemeanor offense.

\* **Sec. 14.** AS 44.23.080 is repealed and reenacted to read:

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

(b) If an application meets the requirements of (a) of this section, the attorney general or the attorney general's designee may, consistent with regulations adopted under (i) of this section, issue an administrative subpoena to the Internet service provider requiring the production of the following records:

- (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) 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 setting aside 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) The attorney general shall adopt regulations prescribing the manner of issuance of an administrative subpoena under (b) of this section.

\* **Sec. 15.** 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;

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

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

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

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

14 \* **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to  
15 read:

16 APPLICABILITY. (a) Sections 1 - 12 and 15 of this Act apply to offenses committed  
17 on or after the effective date of this Act.

18 (b) Sections 13 and 14 of this Act apply to offenses occurring before, on, or after the  
19 effective date of this Act.

20 \* **Sec. 17.** This Act takes effect July 1, 2011.