

HOUSE BILL NO. 127

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/11

Referred: Judiciary, Finance

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; and providing for an effective**
5 **date."**

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

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

8 (3) "nonconsensual contact" means any contact with another person
9 that is initiated or continued without that person's consent, that is beyond the scope of
10 the consent provided by that person, or that is in disregard of that person's expressed
11 desire that the contact be avoided or discontinued; "nonconsensual contact" includes
12 (A) following or appearing within the sight of that person;
13 (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 of that person, or on the personal telephone or computer of that person;

* **Sec. 2.** AS 11.41.270(b) is amended to add 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** [CLASS C] felony.

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

(e) Online enticement is a **class A** [CLASS 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** [CLASS 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

(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 crime of sending an explicit image of a minor if the person

(1) publishes or distributes an electronic or printed photograph, picture, or film that depicts the genitals, anus, or female breast of a minor under 16 years of age; and

(2) makes the publication or distribution without the consent of the parent or legal guardian of the minor described in (1) of this subsection.

(b) The provisions of (a) of this section do not apply to a minor under 16 years of age who publishes or distributes an electronic or printed photograph, picture, or film that depicts the minor's own genitals, anus, or female breast.

(c) Sending an explicit image of a minor is

1 (1) a class B misdemeanor if the person publishes or distributes the
2 depiction to one or two other people;

3 (2) a class A misdemeanor if the person publishes or distributes the
4 depiction to three or more other people;

5 (3) a class C felony if the person publishes or distributes the depiction
6 on the Internet.

7 (d) In this section, "Internet" has the meaning given in AS 11.46.710(d).

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

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

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

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

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

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

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

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

23 * **Sec. 9.** AS 11.61.128(a) is amended to read:

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

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

29 (A) sexual penetration;

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

31 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 is reckless 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 if 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. 11.** AS 12.05 is amended by adding a new section to read:

Sec. 12.05.030. Crimes involving minors committed outside state. 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, online enticement of a minor, if the other person with whom the defendant communicated was in the state; or (2) AS 11.61.116, sending an explicit image of a minor, if the minor whose image is published or distributed was in the state. This jurisdiction is in addition to any other jurisdictional basis expressed or implied in law.

* **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.

1 * **Sec. 13.** AS 33.05.020(a) is repealed and reenacted to read:

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

7 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** (a) Sections 1 - 12 of this Act apply to offenses committed on or
10 after the effective date of this Act.

11 (b) Section 13 of this Act applies to offenses occurring before, on, or after the
12 effective date of this Act.

13 * **Sec. 15.** This Act takes effect July 1, 2011.