

**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: 3/14/11

Referred: Finance

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; and providing for an effective 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

1 on private property;

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

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

5 (E) contacting that person by telephone;

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

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

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

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

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

16 (5) "device" includes software.

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

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

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

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

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

25 (c) Unlawful exploitation of a minor is a

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) In this section,

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

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

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

31 (c) Sending an explicit image of a minor is

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) obtain a benefit to which the person is not entitled, to injure another  
27 person, or to deprive another person of a benefit.

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

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

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

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

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

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

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

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

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

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

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

21           (i) A defendant convicted of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (D) if the offense is a second felony conviction and the

1 defendant has a prior conviction for a sexual felony, 30 to 40 years;

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

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

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

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

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

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

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

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

23 (4) sexual assault in the third degree, incest, indecent exposure in the  
24 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to  
25 commit sexual assault in the second degree, sexual abuse of a minor in the second  
26 degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child  
27 pornography, may be sentenced to a definite term of imprisonment of not more than  
28 99 years and shall be sentenced to a definite term within the following presumptive  
29 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

31 (B) if the offense is a second felony conviction and does not

1 involve circumstances described in (C) of this paragraph, eight to 15 years;

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

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

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

8 \* **Sec. 12.** AS 33.05.020(a) is repealed and reenacted to read:

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

14 \* **Sec. 13.** AS 44.23.080 is repealed and reenacted to read:

15 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**  
16 **of an Internet service account.** (a) If there is reasonable cause to believe that an  
17 Internet service account has been used in connection with a violation of AS 11.41.452,  
18 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other  
19 information about the account owner will assist in obtaining evidence that is relevant  
20 to the offense, a law enforcement officer may apply to the attorney general or the  
21 attorney general's designee for an administrative subpoena to obtain the business  
22 records of the Internet service provider located inside or outside of the state.

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

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

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

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

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

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

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

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

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

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

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

24 \* **Sec. 14.** AS 47.12.030(a) is amended to read:

25 (a) When a minor who was at least 16 years of age at the time of the offense is  
26 charged by complaint, information, or indictment with an offense specified in this  
27 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense  
28 for which the minor is charged or to any additional offenses joinable to it under the  
29 applicable rules of court governing criminal procedure. The minor shall be charged,  
30 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as  
31 an adult. If the minor is convicted of an offense other than an offense specified in this

1 subsection, the minor may attempt to prove, by a preponderance of the evidence, that  
 2 the minor is amenable to treatment under this chapter. If the court finds that the minor  
 3 is amenable to treatment under this chapter, the minor shall be treated as though the  
 4 charges had been heard under this chapter, and the court shall order disposition of the  
 5 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this  
 6 subsection apply when the minor is charged by complaint, information, or indictment  
 7 with an offense

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

10 (2) of arson in the first degree;

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

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

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

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

24 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
 25 read:

26 APPLICABILITY. (a) Sections 1 - 11 and 14 of this Act apply to offenses committed  
 27 on or after the effective date of this Act.

28 (b) Sections 12 and 13 of this Act apply to offenses occurring before, on, or after the  
 29 effective date of this Act.

30 \* **Sec. 16.** This Act takes effect July 1, 2011.