

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 28, 2011

1:37 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Lindsey Holmes  
Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 127

"An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date."

- HEARD & HELD; ASSIGNED TO A SUBCOMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 127

SHORT TITLE: CRIMES INVOLVING MINORS/STALKING/INFO

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/26/11	(H)	READ THE FIRST TIME - REFERRALS
01/26/11	(H)	JUD, FIN
02/07/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/07/11	(H)	Heard & Held
02/07/11	(H)	MINUTE(JUD)
02/09/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/11	(H)	Heard & Held
02/09/11	(H)	MINUTE(JUD)
02/11/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/11/11	(H)	Scheduled But Not Heard

02/23/11 (H) JUD AT 1:00 PM CAPITOL 120  
02/23/11 (H) Heard & Held  
02/23/11 (H) MINUTE(JUD)  
02/25/11 (H) JUD AT 1:00 PM CAPITOL 120  
02/25/11 (H) Scheduled But Not Heard  
02/28/11 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

THOMAS REIKER, Staff  
Representative Bob Lynn  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Assisted with the explanation of Amendment 1 to HB 127, Version M.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 127.

DOUGLAS GARDNER, Director  
Legal Services  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As the drafter, responded to questions during discussion of Amendment 1 to HB 127, Version M.

**ACTION NARRATIVE**

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**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 1:37 p.m. Representatives Gatto, Pruitt, Thompson, Lynn, and Keller were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

**HB 127 - CRIMES INVOLVING MINORS/STALKING/INFO**

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CHAIR GATTO announced that the only order of business would be HOUSE BILL NO. 127, "An Act relating to the crimes of stalking,

online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date."

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REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 127, Version 27-GH1840\M, Gardner, 2/24/11, as the working document. There being no objection, Version M was before the committee.

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REPRESENTATIVE LYNN made a motion to adopt Amendment 1, labeled 27-GH1840\M.1, Gardner, 2/24/11, which read:

Page 1, line 2, following "**minor**,":  
Insert "**criminal impersonation**,"

Page 2, following line 31:

Insert a new bill section to read:

"\* **Sec. 6.** AS 11.46.565(a) is amended to read:

(a) A person commits the crime of criminal impersonation in the first degree if

(1) the person

(A) [(1)] possesses an access device or identification document of another person;

(B) [(2)] without authorization of the other person, uses the access device or identification document of another person to obtain a false identification document, open an account at a financial institution, obtain an access device, or obtain property or services; and

(C) [(3)] recklessly damages the financial reputation of the other person; or

(2) the person violates AS 11.46.570 and the crime intended is a sex offense; in this paragraph, "sex offense" has the meaning given in AS 12.63.100."

Renumber the following bill sections accordingly.

Page 11, line 16:

Delete "Sections 1 - 12 and 15"

REPRESENTATIVE LYNN, noting that Amendment 1 addresses false caller identification (ID) technology, relayed that although the DOL has expressed some concerns about Amendment 1, [the drafter has indicated his belief] that there might be situations in which its adoption might make it easier to prosecute someone.

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THOMAS REIKER, Staff, Representative Bob Lynn, Alaska State Legislature, indicated that [by altering AS 11.46.565(a), which addresses the crime of criminal impersonation in the first degree,] Amendment 1 would make it a [more serious] crime to use false caller ID technology, a false "Facebook" account, a false instant messaging profile, or a false e-mail account in furtherance of a crime that is a sex offense. Specifically, under Amendment 1, if a person commits the crime of criminal impersonation in the second degree as outlined in AS 11.46.570 and does so in furtherance of a sex offense, then he/she could be charged with the crime of criminal impersonation in the first degree; existing AS 11.46.570 reads:

(a) A person commits the crime of criminal impersonation in the second degree if the person

(1) assumes a false identity and does an act in the assumed character with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled; or

(2) pretends to be a representative of some person or organization and does an act in the pretended capacity with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled.

(b) Criminal impersonation in the second degree is a class A misdemeanor.

MR. REIKER, in response to questions, gave some examples of how a sexual predator might easily use [the aforementioned types of technology] to give his/her victims a false sense of security with regard to who they think they are interacting with.

The committee took an at-ease from 1:46 p.m. to 1:48 p.m.

MR. REIKER, in response to further questions, relayed that under Amendment 1, committing the crime of criminal impersonation in the second degree in furtherance of a sex offense would be a class B felony; that although some of the sex offenses referenced via Amendment 1 are misdemeanors, whether a

perpetrator would be charged with a violation of Amendment 1's proposed AS 11.46.565(a)(2) would be at the discretion of the prosecutor; and that Amendment 1 could provide prosecutors with another option regarding what they could charge someone with.

REPRESENTATIVE THOMPSON questioned whether the behavior Amendment 1 is intended to address was already covered under the statute pertaining to the crime of online enticement of a minor - AS 11.41.452.

MR. REIKER relayed that the sponsor didn't feel that it was. In response to another question, he noted that the crime of criminal impersonation in the second degree is a class A misdemeanor, and the crime of criminal impersonation in the first degree is a class B felony, and reiterated that under Amendment 1, committing the second-degree crime in furtherance of a sex offense would result in the penalty associated with the first-degree crime.

REPRESENTATIVE GRUENBERG characterized that as a significant jump in penalties, and noted that under Amendment 1, the term, "sex offense" has the meaning given in AS 12.63.100.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), observed that AS 12.63.100(6) defines the term, "sex offense" for purposes of registering as a sex offender. She then read provisions of AS 12.63.100(6), clarified which specific crimes were being referenced therein, and responded to questions about some of those various crimes; AS 12.63.100(6) read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

- (iii) sexual abuse of a minor in the first degree; or
- (iv) sexual abuse of a minor in the second degree; or
- (C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:
  - (i) AS 11.41.410 - 11.41.438;
  - (ii) AS 11.41.440(a)(2);
  - (iii) AS 11.41.450 - 11.41.458;
  - (iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;
  - (v) AS 11.61.125 - 11.61.128;
  - (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense;
  - (vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; or
  - (viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense;

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REPRESENTATIVE THOMPSON surmised that prosecuting someone under Amendment 1 would be difficult if the person violating AS 11.46.570 weren't also convicted of one of the aforementioned sex offenses.

MS. CARPENETI concurred, adding that she couldn't imagine a circumstance in which it would be possible.

MR. REIKER, in response to comments, elaborated that Amendment 1 is intended to make the underlying criminal impersonation crime a more serious offense if the person's intent in committing that crime is to then commit a sex offense. This approach, rather than narrowing the sex offense statutes themselves to address false caller ID technology, was taken because the drafter felt that the use of false caller ID technology was already covered under the criminal impersonation statutes. In response to a question, he clarified that the use of false caller ID technology would only be a crime if the person using that technology did so with the intent to commit a crime or obtain a benefit to which he/she was not entitled. He too relayed that

the drafter felt that there might be situations in which the adoption of Amendment 1 might make it easier to prosecute someone.

MS. CARPENETI, in response to comments and questions, indicated that the DOL's concern with Amendment 1 revolves around the fact that it addresses a property crime that includes a specific intent to commit a crime against a person. The DOL would have to prove beyond a reasonable doubt that when the person assumed the false identity, that he/she intended to commit a sex offense - a crime against a person. Furthermore, because the crime of criminal impersonation is a property crime, someone convicted under Amendment 1 wouldn't be required to register as a sex offender. Given the problems Alaska has with regard to sexual assault crimes and sexual abuse of a minor crimes, and given the [administration's] stance on this issue, prosecuting a sex offense as a non-sex-offense is not something the DOL would generally do, because sex offenses are too serious. Also, because the use of false caller ID technology is already covered under existing law, in situations where a person uses such technology in furtherance of a sex offense, the DOL could already charge the person with both the crime of criminal impersonation in the second degree, and the underlying sex offense. Approaching such situations in this manner would avoid "this kind of crossover of property [crimes] versus sex crimes" that the DOL is concerned about with Amendment 1.

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DOUGLAS GARDNER, Director, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter of HB 127, in response to questions and comments, offered his understanding that [the presumptive sentencing range] for a class B felony offense that isn't a sex offense is 3 to 5 years, with a maximum sentence of 10 years, whereas [the presumptive sentencing range] for a class B felony sex offense is 5 to 15 years, with a maximum sentence of 99 years; and that he could conceive of a situation in which Amendment 1 might be used instead of the existing sex offense statutes if a perpetrator [through the use of the aforementioned types of technology] intends to commit a sex offense but hasn't yet taken a substantial step towards doing so.

MS. CARPENETI, in response to comments, reiterated that the DOL has a policy against reducing a sex crime to a crime that isn't a sex crime, because, again, a convicted perpetrator wouldn't have to register as a sex offender.

REPRESENTATIVE GRUENBERG suggested that the issues raised by Amendment 1 be researched further.

[The motion to adopt Amendment 1 was left pending.]

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MS. CARPENETI - in response to questions regarding the phrase, ", with the intent to annoy or embarrass another person," as used in Section 7, on page 3, lines 23-24 - explained that that phrase addressing the person's culpable mental state was added to Version M so that proposed AS 11.61.116, establishing the new crime of sending an explicit image of a minor, wouldn't apply in situations where someone sends around baby pictures or other accidentally-explicit depictions.

REPRESENTATIVE GRUENBERG expressed a preference for using the word, "humiliate" on page 3, line 24, instead of the word, "embarrass", because the word, "humiliate" would perhaps be a stronger term for purposes of criminalizing the behavior.

MS. CARPENETI relayed that although her supervisor thinks that more people understand the word, "embarrass", she thinks he doesn't feel strongly either way about replacing it with the word, "humiliate".

CHAIR GATTO suggested instead simply adding the word, "humiliate" to that phrase.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to replace the word, "embarrass" on page 3, line 24, with the word, "humiliate".

CHAIR GATTO offered his belief that use of the word, "humiliate" sets a pretty high standard, perhaps too high. He asked whether such a substitution would be helpful.

MS. CARPENETI indicated that it would be helpful just in terms of arriving at a compromise. In response to concerns expressed about the word, "annoy", she pointed out that that term has been used for a number of years, without problem, in the statutes pertaining to the crime of harassment; specifically, AS 11.61.120(a) says in part, ", with intent to harass or annoy another person,".

REPRESENTATIVE GRUENBERG withdrew Amendment 2.

CHAIR GATTO surmised that if the act of annoying a victim is enough to charge a person under proposed AS 11.61.116, then it matters not that the person also went so far as to engage in the act of humiliating the victim.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, to replace the word, "embarrass" on page 3, line 24, with the word, "harass".

REPRESENTATIVE KELLER objected. He said he didn't consider using the word, "embarrass", to be a problem regardless that it might set a standard that could be easily proved. Instead, he surmised, the problem is going to be in proving the intent of the person, regardless of which terms are used.

CHAIR GATTO expressed a preference for using the word, "harass", in that it could provide for an easier threshold to arrive at.

REPRESENTATIVE LYNN questioned, though, whether to "harass" someone requires a series of actions.

CHAIR GATTO acknowledged that point.

MS. CARPENETI relayed that the word, "humiliate" would be preferable to the word, "harass" because the phrase, "to annoy or harass" already constitutes the culpable mental state required for the crime of harassment, and so it would be good to make some sort of distinction between the two culpable mental states. In response to a question, she added that she is merely concerned that using a phrase in proposed AS 11.61.116(a) so similar to that used in AS 11.61.120(a) would raise the question of whether a separate crime is even necessary. The dictionary definition of the word, "humiliate" is not confusing, she remarked, and predicted that the courts could apply it without difficulty. In response to comments and further questions, she explained that in order for a person to be found guilty of violating proposed AS 11.61.116, the State would have to prove that the person intended for his/her behavior to result in a particular outcome - that being to affect how the victim felt or how others felt about the victim as a result of the behavior - regardless of whether that outcome was actually achieved. The DOL, would prefer that Section 7 retain the phrase, ", with the intent to annoy or embarrass another person,", but would be

amenable to having the word, "embarrass" changed to the word, "humiliate".

REPRESENTATIVE GRUENBERG expressed concern that by using the word, "embarrass", the person could intend to make the victim feel embarrassed and it would be a crime even though very little harm to the victim actually occurs. The word, "embarrass" might be too broad, he concluded.

MS. CARPENETI again relayed that the DOL would be amenable to having the word, "embarrass" changed to the word, "humiliate".

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REPRESENTATIVE GRUENBERG withdrew Amendment 3.

REPRESENTATIVE GRUENBERG remade the motion to adopt Amendment 2, to replace the word, "embarrass" on page 3, line 24, with the word, "humiliate".

CHAIR GATTO ventured that in the context of proposed AS 11.61.116 - which would criminalize the act of sending an explicit image of a minor under the age of 16 - it seems like almost any word would be suitable.

REPRESENTATIVE LYNN opined that being humiliated is much worse than merely being annoyed or embarrassed, particularly given that many [seemingly inconsequential] actions can annoy or embarrass someone.

MS. CARPENETI, in response to a question, characterized Amendment 2 as being fine.

REPRESENTATIVE KELLER objected to the motion to adopt Amendment 2. He questioned whether it would be better to instead replace the phrase, "annoy or embarrass" with the word, "harm"; Section 7 would then in part read, ", with the intent to harm another person,".

MS. CARPENETI said such a change would be concerning because she wouldn't know what the word, "harm" means in the context of prosecuting someone for the crime of sending an explicit image of a minor. It would be better, therefore, to specify what is meant, as both the current language and Amendment 2 do. Changing the current language as Amendment 2 proposes would be easier for the DOL to deal with, she concluded.

REPRESENTATIVE KELLER removed his objection to the motion to adopt Amendment 2.

CHAIR GATTO, noting that there were no further objections, announced that Amendment 2 was adopted.

CHAIR GATTO, observing that more work on both the bill and Amendment 1 was warranted, assigned HB 127 [Version M] to a subcommittee chaired by Representative Gruenberg.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.