

HB

127

<TARGET><BILL>HB 127</BILL><SUBJECT>HB
127</SUBJECT><COMM>HJUD27</COMM></TARGET>

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste. 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

January 27, 2011

The Honorable Carl Gatto, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

received
01/27/11 1:09pm 8A

Re: House Bill 127 -- relating to stalking and child exploitation

Dear Representative Gatto:

I am writing to request that you schedule House Bill 127 for a hearing in the House Judiciary Committee at your earliest convenience. HB 127 is a bill that builds on and refines legislation adopted by the legislature in the past several years to address the serious problems of sexual exploitation and domestic violence.

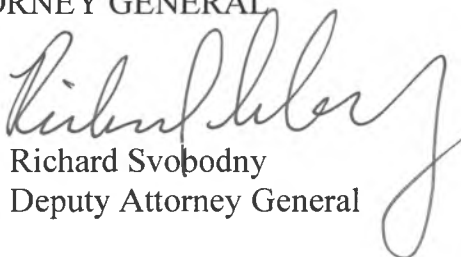
The bill expands the crime of stalking to prohibit placing a person in fear of death or physical injury using technology such as global position devices or devices that invade, record or photograph events in private places like the home or office. It also addresses the issue of young people sending explicit images of themselves to others in a way that seeks to protect the young person.

A sectional analysis is attached that describes each provision of the bill. I expect Annie Carpeneti, Legislative Liaison from the Department of Law, Criminal Division and Sue Stancliff, Legislative Liaison from the Department of Public Safety to testify regarding this legislation. No teleconference sites are expected. Thank you for your consideration of this request.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:


Richard Svobodny
Deputy Attorney General

HB127 CRIMES INVOLVING MINORS/STALKING/INFO

Witness List

In person:

Valerie Robinson (Department of Law)

Sue Stancliff (Department of Public Safety)

Annie Carpeneti (Department of Law)

Sgt. Derek DeGraaf (Alaska State Troopers)

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532



550 West 7th Avenue #1700
Anchorage, Alaska 99501
907-269-7450
fax 907-269-7463
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Sean Parnell
STATE OF ALASKA

January 24, 2011

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Together, we can better protect Alaska's children against abuse, exploitation, harm, and fear. To that end, and under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill 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 and probation.

The bill would strengthen Alaska laws related to sexual exploitation of children and domestic violence. The bill prohibits the creation of indecent images of children, online enticement of a child, and using a computer to solicit or entice a minor to engage in sexual behavior.

The bill would expand the crime of stalking to include those acts of following or monitoring the victim with a global positioning device, and using or installing a device to record or photograph events in the victim's home, workplace, vehicle, or on the victim's telephone or computer. These changes are in response to technologies that stalkers have available to terrorize victims.

Also, the bill would prohibit graphic texting, commonly known as "sexting." Perpetrators would be punished for distributing a sexually explicit image of a child under 16 years old.

The bill clarifies that conduct by predators outside the state that harm victims in Alaska may be prosecuted in this state. The bill also clarifies that a child under 16 years old may not be left with an individual who must register as a child kidnapper.

Finally, the bill would clarify that a court may order active supervision for probationers who are on felony probation. Active supervision in particular cases enhances public safety by requiring close supervision of certain offenders. Active supervision could also be provided to certain misdemeanants in the discretion of the commissioner of corrections.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell".

Sean Parnell
Governor

Enclosure

HB 127
STALKING AND EXPLOITATION OF A MINOR
Sectional Analysis

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 (maximum term of imprisonment five years) to a class B felony (maximum term of imprisonment 10 years).

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 (maximum term of imprisonment 10 years) to a class A felony (maximum term of imprisonment 20 years).

Section 5 raises the classification of the crime of unlawful exploitation of a minor from a class B felony (maximum term of imprisonment 10 years) to a class A felony (maximum term of imprisonment 20 years).

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.

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.

Sec. 11.41.270. Stalking in the second degree.

(a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

(1) "course of conduct" means repeated acts of nonconsensual contact involving the victim or a family member;

(2) "family member" means a

(A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;

(B) person who lives, or has previously lived, in a spousal relationship with the victim;

(C) person who lives in the same household as the victim; or

(D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

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

(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;

(4) "victim" means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

History -

(Sec. 1 ch 40 SLA 1993)

History Reports -

For Senate letter of intent in connection with the enactment of this section, see 1993 Senate Journal 1026 - 1027.

Decisions -

Constitutionality. - The potential due process and overbreadth problems in the definition of stalking do not require invalidation of the stalking statutes; rather, those problems should be resolved on a case-by-case basis. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

Sufficiency of evidence. - Grand jury evidence was sufficient for indictment for first-degree stalking, under AS 11.41.260, where there was a protective order in place against defendant who nevertheless made ongoing contact with victim, including numerous hang-up calls to the victim and victim's boyfriend, paging the victim when she attended one of her boyfriend's musical performances, and slashing tires on her and her boyfriend's cars. *Kenison v. State*, 107 P.3d 335 (Alaska Ct. App. 2005).

Construction of "contact". - Inclusion within AS 18.66.100(c)(2) of the phrase "or otherwise communicating" immediately after "contacting" strongly suggests that nonphysical contact must involve

some element of direct or indirect communication and does not merely mean coming within view; further, "nonconsensual contact" in this section is not all that is needed for a crime to take place; the contact must also be "repeated," so that it is a course of conduct, and it must place the protected person in fear, and the need for these additional requirements to make stalking a crime argues against a construction that makes merely appearing in the sight of a protected person, without more, a crime. *Cooper v. Cooper*, 144 P.3d 451 (Alaska 2006).

Stalking of ex-wife as domestic violence. - Ex-husband's threatening communications to his ex-wife constituted stalking; these acts by the ex-husband were sufficient support for the issuance of a protective order under AS 18.66.990(3)(A) because stalking in the second degree is a crime involving domestic violence when committed against a former spouse. *McComas v. Kirn*, 105 P.3d 1130 (Alaska 2005).

Legitimate nonconsensual contacts and telephone calls not prohibited. - The stalking statutes do not prohibit telephone calls or other nonconsensual contact made for a legitimate purpose, even when the defendant knows that the person contacted may or will unreasonably perceive the contact as threatening. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

Husband admitted to having been at a mall at a time when his wife, who had sought a protective order against the husband, was also there, but he denied having seen his wife. Only knowing contact was required, but the superior court's error was harmless in holding that contact must be intentional because there was no conduct that amounted to "contacting" within the meaning of AS 18.66.100(c)(2); being in the mere presence of the husband's wife did not mean the husband was "contacting" his wife; the meaning of "contacting" had a normal meaning, and a nonphysical "contact" did not mean merely coming within view. *Cooper v. Cooper*, 144 P.3d 451 (Alaska 2006).

Stated in *Cook v. State*, 36 P.3d 710 (Alaska Ct. App. 2001).

Cited in *Prentzel v. State*, 169 P.3d 573 (Alaska 2007).

Sec. 11.41.452. Online enticement of a minor.

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS

11.41.455(a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

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

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455(a)(1) - (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is 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.

History -

(Sec. 1 ch 97 SLA 2005)

Effective Date Notes -

Section 1, ch. 97, SLA 2005, which enacted this section, took effect on November 28, 2005.

Editors Notes -

Section 5, ch. 96, SLA 2005, provides that this section applies "to offenses occurring on or after November 28, 2005."

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

- (1) 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.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

History -

(Sec. 3 ch 166 SLA 1978; am Sec. 1 ch 57 SLA 1983; am Sec. 1 - 3, ch 161 SLA 1990; am Sec. 8 ch 79 SLA 1992; am Sec. 1, 2 ch 65 SLA 2000; am Sec. 1 ch 131 SLA 2004)

Cross References -

For crime of distribution of child pornography, see AS 11.61.125.

Amendment Notes -

The 2000 amendment, effective May 23, 2000, inserted ", video, electronic, or electromagnetic" and "or aurally" in subsections (a) and (b) and deleted "printed" preceding "material" near the end of subsection (b).

The 2004 amendment, effective September 27, 2004, added paragraph (c)(2) and made related changes.

Decisions -

"Live performance". - This section covers private, noncommercial live performances; however, "live performance" does not include the situation in which a single adult requests a child to display his or her genitals to that adult in private. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Statutory construction. - Defendant's interpretation of this section under the rule of lenity, alleging that it was absurd that he was permitted to have sex with someone between the ages of 16 and 18, yet he was prohibited from photographing someone between those ages, was not persuasive; the relevant provisions simply refer to a child under 18 years of age, and do not distinguish between child

pornography produced or possessed for private purposes and that intended for distribution. *State v. Parker*, 147 P.3d 690 (Alaska 2006).

AS 11.61.127(a) forbids the possession of pornographic material that is generated by the conduct prohibited by AS 11.41.455(a), pornography that was generated by the use of a child under the age of 18; the government had to prove that defendant knew that this child pornography was in their possession and that defendant acted knowingly with respect to the circumstance that the pornography was generated illegally. *Ferrick v. State*, 217 P.3d 418 (Alaska Ct. App. 2009).

Joinder of offenses. - Where defendant was charged with sexual abuse of a minor, unlawful exploitation of a minor, distribution of child pornography, and possession of child pornography stemming from his sexual involvement with his girlfriend's minor daughter, the trial court did not err in denying defendant's motion to sever the sexual abuse charges from the pornography charges because all charges stemmed from defendant's inappropriate relationship with the young girl and were connected. *Ogletree v. State*, - P.3d - (Alaska Ct. App. Aug. 19, 2009).

Solicitation of crime. - Where defendant was charged with soliciting the crime of unlawful exploitation of a minor based on his asking victims to take off their clothes and let him photograph them, defendant's argument that he did not "solicit" the crime because the victims could not be guilty of the intended crime was foreclosed by the provision of AS 11.31.110 that it is no defense that the person solicited could not be guilty of the crime that is the object of the solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Defendant's convictions for soliciting the crime of unlawful exploitation of a minor which were based on his asking victims to take off their clothes and let him photograph them were erroneous since defendant did not ask anyone else to engage in the prohibited conduct, i.e., inducing a child to engage in one of the sexual activities prohibited by this section, and thus he did not commit the crime of solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Aggravating factors. - Where the superior court found an aggravating factor at the defendant's original sentencing, he faced a sentence more severe than the four-year presumptive term for second felony offenders at the time of his sentencing for exploitation of a minor. *Harris v. State*, 980 P.2d 482 (Alaska Ct. App. 1999).

Conviction and sentence upheld. - See *Depp v. State*, 686 P.2d 712 (Alaska Ct. App. 1984).

Withdrawal of plea bargain denied. - Where defendant pleaded no contest to three felonies as part of a plea bargain, his decision to plead no contest was not materially influenced by his mistaken understanding concerning the consequences of winning a suppression motion; trial court did not err in denying defendant's motion to withdraw his plea. *Parker v. State*, 90 P.3d 194 (Alaska Ct. App. 2004).

"Least serious" mitigator held inapplicable. - Defendant's alleged lack of intent to distribute pornographic photographs and videos of children, purportedly evidenced by his concealment of them in a locked briefcase in a closet in his house, even if proven by clear and convincing evidence, did not mandate a "least serious" mitigator. *State v. Parker*, 147 P.3d 690 (Alaska 2006).

Applied in *Qualle v. State*, 652 P.2d 481 (Alaska Ct. App. 1982); *Harris v. State*, 790 P.2d 1379 (Alaska Ct. App. 1990); *Parker v. State*, 151 P.3d 478 (Alaska Ct. App. 2006).

Cited in *Lawrence v. State*, 764 P.2d 318 (Alaska Ct. App. 1988); *Scroggins v. State*, 951 P.2d 442 (Alaska Ct. App. 1998); *Labrake v. State*, 152 P.3d 474 (Alaska Ct. App. 2007).

Sec. 33.05.020. Duties of commissioner.

(a) The commissioner shall appoint and make available to the superior court, where necessary, qualified probation officers and assistants.

(b) The commissioner shall fix probation officers' and assistants' salaries, assign them to the various judicial districts, and shall provide for their necessary expenses including clerical services and travel. The commissioner may assign to all probation officers and personnel any duties concerning the administration of the parole system as provided in AS 33.16.

(c) The commissioner shall by regulation

(1) establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation or as part of a sentence under AS 12.55.102 or another statute; and

(2) establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

(d) The regulations in (c) of this section must require that the ignition interlock device operate reliably over the range of automobile environments, otherwise known as automobile manufacturing standards, for the geographic area for which the device is certified.

(e) The commissioner shall notify the manufacturer of the ignition interlock device when the device is certified. The commissioner may not certify an ignition interlock device unless the device prominently displays a label warning that a person circumventing or tampering with the device violates AS 11.76.140 and may be imprisoned and fined.

History -

(Sec. 2 ch 105 SLA 1960; am Sec. 8 ch 57 SLA 1989; am Sec. 10, 11 ch 85 SLA 2010)

Amendment Notes -

The 2010 amendment, effective September 14, 2010, in (c), substituted "as a condition of probation or as part of a sentence under AS 12.55.102 or another statute;" for "as a condition of probation under AS 12.55.102"; in (e), substituted "violates AS 11.76.140 and may be imprisoned and fined" for "in violation of AS 11.76.140 may be imprisoned up to 30 days and fined up to \$500".

Decisions -

Probation officers executive officers. The constitution does not assign probation officers to the exclusive jurisdiction of either the executive or the judicial branch of government, such that placing probation officers in the executive branch does not violate the separation of powers doctrine. *Smith v. State, Dep't of Cors.*, 872 P.2d 1218 (Alaska 1994).

Judicial supervision of probation held proper. - Nothing in this section prohibits a trial judge from imposing, on a juvenile defendant who has violated AS 04.16.050, a requirement for defendant to report back to the judge every other week to provide updates on the status of the probation. *Jackson v. State*, 127 P.3d 835 (Alaska Ct. App. 2006).

Applied in *Granato v. Occhipinti*, 602 P.2d 442 (Alaska 1979).

Quoted in *State v. Alaska Pub. Employees Ass'n*, 644 P.2d 236 (Alaska 1982).

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children.

(a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

- (1) the name of the person holding the account;
- (2) the address and physical location associated with the account; and
- (3) length of service, including service start date, and types of service used

by the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition a court of competent jurisdiction for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials.

History -

(Sec. 19 ch 18 SLA 2010)

Effective Date Notes -

Section 22, ch. 18, SLA 2010, makes this section effective July 1, 2010.

Editors Notes -

Section 21(b), ch. 18, SLA 2010, provides that the 2010 enactment of this section applies to offenses committed before, on, or after July 1, 2010.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
 Bill Version HB 127
 (H) Publish Date 1/26/11

Identifier (file name): 1840-LAW-CRIM-01-11-11 Dept. Affected Law
 Title An act relating to crimes of stalking, online enticement, and exploitation Appropriation Criminal
of a minor, harassment, distribution of indecent material to a minor, and misconduct. Allocation Criminal Justice Litigation
 Sponsor Rules
 Requester Request of the Governor OMB Component Number 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version

Prepared by Dave Blaisdell, Director
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-3673
 Date/Time 1/11/11 12:00 AM
 Date 1/11/2011

FISCAL NOTE #2

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127

Analysis

This bill amends the law relating to stalking by adding to the definition of nonconsensual conduct methods of contacting people with modern technology such as global positioning systems. It makes a clarifying amendment to AS 11.51.100, which prohibits endangering the welfare of a minor. It adopts new statutes to prohibit sending an explicit image of a minor and misconduct involving confidential information. It also increases the penalties for the crimes of online enticement of a minor and unlawful exploitation of a minor. The bill makes it clear that the commissioner of corrections may, in his or her discretion, provide supervised probation to a person on probation for conviction of a misdemeanor.

Although the bill would adopt new crimes we believe that they can be prosecuted with current resources.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
 Bill Version HB 127
 (H) Publish Date 1/26/11

Identifier (file name): LL1840-DPS-DET-01-12-11 Dept. Affected Public Safety
 Title "An Act relating to the crimes of stalking, online enticement... of a minor, related offenses, and misconduct..." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Rules Committee
 Requester Governor OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES								

FUND SOURCE (Thousands of Dollars)

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Not applicable, initial version.

Prepared by Lt. Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
 Date/Time 1/24/11 2:20 PM
 Date 1/12/2011

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127

Analysis

This bill expands the crime of stalking by adding to the definition of nonconsensual contact, monitoring the victim with a GPS device and using or installing a device to record or photograph events concerning the victim. It also increases penalties for unlawful exploitation of a minor, online enticement of a minor, and provides for the prosecution of offenders from out of state. Finally, this bill adopts new offenses to include: sending explicit images of a minor, and misconduct involving confidential information.

Passage of this legislation will have no fiscal impact on the department.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 3
 Bill Version HB 127
 (H) Publish Date 1/26/11

1840-DOA-PDA-1-12-11
 Title An Act relating to the crimes of stalking, online enticement ...
 Sponsor Rules Committee
 Requester Governor
 Dept. Affected Administration
 Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***		***	***	***	***	***

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES							
---------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL							

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Prepared by Quinlan Steiner, Director
 Division Public Defender Agency
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907 334-4414
 Date/Time 1/12/11 2:45 PM
 Date _____

FISCAL NOTE #3

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127

Analysis

This bill expands the definition of "nonconsensual contact" under stalking; creates a new crime for sending an explicit image of a minor without the consent of the minor's parent; and creates new crimes for obtaining confidential information of another person.

The bill also provides for the prosecution of an out of state individual for online enticement of a minor if the communications involve an individual in the State of Alaska. Finally, the bill specifically permits the Department of Corrections to provide active supervision to a person placed on probation for a misdemeanor offense.

Expanding the definition of nonconsensual contact, creating additional crimes, and providing for supervised misdemeanor probation will likely result in an increase in cases assigned to the Public Defender Agency. It is not possible to reliably predict the number of cases that will be assigned to the Agency, however. The Agency, therefore, submits an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 4
 Bill Version HB 127
 (H) Publish Date 1/26/11

Identifier (file name) 1840-DOC-OC-01-20-11 Dept. Affected DOC
 Title "An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering..." Appropriation Administration and Support
 Allocation Office of the Commissioner
 Sponsor Rules Committee
 Requester Governor OMB Component Number 684

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	**	**	**	**	**	**	**	**

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	**	**	**	**	**	**	**	**

Estimate of any current year (FY2011) cost **

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version

This is the first version of the bill

Prepared by Leslie Houston, Director
 Division DOC Admin. Services
 Approved by Joe Schmidt, Commissioner
DOC

Phone 465-3339
 Date/Time 01/25/11 1:00 p.m.
 Date 1/25/2011

FISCAL NOTE #4

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127

Analysis

DOC averages two new incarcerations per year for the crime of enticement of a minor. This bill would increase the penalty for this crime from a Class C felony to a Class B felony. This change has the potential to increase mandays by 10,220 in FY12 thru FY17. Applying the current cost of care (\$134.21 per day), the increase of cost could be in the range of \$0.0 to \$1,371.60 to DOC.

DOC averages two incarcerations per year for the crime of online enticement of a minor. This bill increases the penalty for this crime from a Class B felony to a Class A felony if the defendant was, at the time of the offense, a registered or required to register as a sex offender or child kidnapper. This would increase the penalty three years. Applying the current daily cost of care (\$134.21 per day), this could potentially increase costs in the range of \$0.0 to \$734.80 to DOC.

DOC averages one new incarceration per year for the crime of unlawful exploitation of a minor. This bill would increase the penalty for this crime from a Class B felony to a Class A felony. This would increase the penalty three years. This has the potential to increase mandays by 5,475 beginning in FY12 thru FY17. Applying the current daily cost of care (\$134.21 per day) could potentially add costs in the range of \$0.0 to \$734.80 to DOC.

Other provisions that the department is unable to quantify at this time but will closely monitor for potential fiscal impact are as follows:

- Adding Monitoring a Person with a Global Positioning Device or Similar Technology Means
- Adding Child Kidnapper to 2(A) under AS12.63
- Adding Sending and Explicit Image of a Minor in the Degree and Second Degree to Statute
- Adding Crimes Involving Minors Committed Out of State, Specifically Online Enticement to Statute
- Adding Online Enticement of a Minor to Statute



February 4, 2011

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

OFFICERS AND DIRECTORS
SUSAN WINGROVE, Anchorage
PRESIDENT

RICH CURTNER, Anchorage
VICE PRESIDENT

LLOYD EGGAN, Anchorage
TREASURER

TONY STRONG, Juneau
SECRETARY

WILLIE ANDERSON, Juneau
AFFIRMATIVE ACTION OFFICER

KIRSTEN BEY, Nome
DONNA GOLDSMITH, Anchorage
PAUL GRANT, Juneau
SCOTT HENDERSON, Anchorage
KATIE HURLEY, Wasilla
MARJORIE KAISER, Anchorage
MICHAEL KING, Anchorage
KAY MARTIN, Anchorage
CONNIE OZER, Anchorage
GALEN PAINE, Sitka
STEPHANIE PAWLOWSKI, Anchorage
JUNE PINNELL-STEPHENS, Fairbanks
NADINE WINTERS, Fairbanks

ZACH FICK, Anchorage
STUDENT ADVISOR

The Honorable Carl Gatto, Chair
The Honorable Steve Thompson, Vice-Chair
House Judiciary Committee
Alaska House of Representatives
Juneau, AK 99801

via email: [Representative Carl Gatto@legis.state.ak.us](mailto:Representative_Carl_Gatto@legis.state.ak.us)
[Representative Steve Thompson@legis.state.ak.us](mailto:Representative_Steve_Thompson@legis.state.ak.us)

Re: **House Bill 127**
ACLU Review of Constitutional Issues

Chair Gatto, Vice-Chair Thompson:

Thank you for the opportunity to submit written testimony with respect to House Bill 127.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that respect, we wish to advise you of constitutional issues with the Bill.

As you may know, the ACLU of Alaska Foundation is currently representing several Alaska bookstores and others in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns*. The federal court has already granted a preliminary injunction, on First Amendment grounds, against AS 11.61.128(a).

House Judiciary Committee
H.B. 127 – Constitutional Issues
February 4, 2011
Page 2

Section 9 of H.B. 127 would narrow AS 11.61.128(a) to only criminalize the distribution of material “harmful to minors” by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipients age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a) which was enjoined October 21, but even with these changes the law would still violate the First Amendment and the Commerce Clause of the US Constitution. We welcome the opportunity to work with the Attorney General and this Committee to amend Section 9 to make it constitutionally sound. We believe that modest changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Wes Keller, [Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)
Representative Bob Lynn, [Representative Bob Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)
Representative Lance Pruitt, [Representative Lance Pruitt@legis.state.ak.us](mailto:Representative_Lance_Pruitt@legis.state.ak.us)
Representative Max Gruenberg, [Representative Max Gruenberg@legis.state.ak.us](mailto:Representative_Max_Gruenberg@legis.state.ak.us)
Representative Lindsey Holmes, [Representative Lindsey Holmes@legis.state.ak.us](mailto:Representative_Lindsey_Holmes@legis.state.ak.us)
Representative Mike Chenault, [Representative Mike Chenault@legis.state.ak.us](mailto:Representative_Mike_Chenault@legis.state.ak.us)



American Booksellers Foundation for Free Expression Association of American Publishers, Inc. Comic Book Legal Defense Fund Entertainment Consumers Association Entertainment Merchants Association
Entertainment Software Association Freedom to Read Foundation Motion Picture Association of America, Inc. National Association of Recording Merchandisers Recording Industry Association of America, Inc.

February 4, 2011

The Honorable Carl Gatto, Chair
Representative Thompson, Vice-Chair
House Judiciary Committee
Alaska State House of Representatives
Juneau, AK 99801

Delivered by email

Re: Section 9 of House Bill 127

Dear Chairman Gatto and Vice-Chair Thompson,

The members of Media Coalition have asked me to communicate their concerns regarding H.B. 127 sec. 9. The trade associations and other organizations that comprise Media Coalition have many members throughout the country, including Alaska: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers. Some of our members are plaintiffs in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns* (preliminary injunction granted as *ABFFE v. Sullivan*) a First Amendment challenge to 11.61.128(a).

Section 9 of H.B. 127 would narrow AS 11.61.128(a) to only criminalize the distribution of material “harmful to minors” by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipients age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a) which was enjoined October 21, but even with these changes the law would still violate the First Amendment and the Commerce Clause of the US Constitution. We welcome the opportunity to work with the Attorney General and this Committee to amend Section 9 to make it constitutionally sound. We believe that modest changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

We appreciate the chance to share our concerns with the Judiciary Committee. If you

Executive Director: David Horowitz Chair: Judith Platt, Association of American Publishers
Immediate past Chair: Chris Finan, American Booksellers Foundation for Free Expression Treasurer: Vans Stevenson, Motion Picture Association of America
General Counsel: Michael A. Bamberger, SNR Denton US LLP

would like to discuss further our position on this bill, please contact me at 212-587-4025 #3 or at horowitz@mediacoalition.org.

Respectfully submitted,

/s/ David Horowitz

David Horowitz
Executive Director
Media Coalition, Inc.

cc: Representative Keller
Representative Lynn
Representative Pruitt
Representative Gruenberg
Representative Holmes
Representative Cheneault, Alternate

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.

House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Floor Leader

Member

Standing Committees:

Judiciary
State Affairs
Transportation
Rules

Finance Subcommittees:

Corrections
Courts
Law

Interim:
716 W 4th Avenue, Rm 350
Anchorage, Alaska 99501-2133
Phone: (907) 269-0123
Fax: (907) 269-0124

Session:
Alaska State Capitol, Rm 110
Juneau, Alaska 99801-1182
Phone: (907) 465-4940
Toll Free: (866) 465-4940
Fax: (907) 465-3766

Email:
Rep.Max.Gruenberg@legis.state.ak.us

February 8, 2011

Anne Carpeneti, Assistant Attorney General
Department of Law
Criminal Division
Juneau, AK 99801

Dear Ms. Carpeneti:

As a follow-up to yesterday's House Judiciary Committee hearing on House Bill 127, I would appreciate a written response to the following questions:

- Sec. 1:** 1) Page 2, line 13: What if the residence or vehicle is not in the victim's name?
- Sec. 3,4&5:** 1) Is raising the penalties necessary? Is this to cure a known deficiency in current law?
- Sec 6:**
- 1) Has leaving children with child kidnappers been a problem?
 - 2) What if a child is left with a group of people and one of them is a sex offender or child kidnapper?
 - 3) Page 3, lines 11-16: Should we amend the statute to allow children to be left with people whose charges have been dismissed? If so, can DOL suggest language for an amendment?
- Sec. 7:**
- 1) How will prosecution of a minor under this section be handled?
 - 2)
 - (a) What constitutes "publication" and "distribution"? Does DOL have suggested definitions we could add in an amendment?
 - (b) Would showing a picture on your phone to another person count as distribution or publication? Eg. If a 15 year-old girl texts an explicit photo of herself to her 15 year-old boyfriend and he shows his phone to his friend sitting next to him, is that publication and/or distribution?

- 3) If a minor (or anyone else) is convicted under this section, might they need to register as a sex offender in another state?
- 4) If a person distributed pictures of their infant niece/nephew in the bath, could they be convicted under this section?
- 5) Page 4, lines 5-7: What about posting a photo on a restricted access webpage where the user can make a photo "private" and only available for viewing under his/her login? It seems that under the definition of "internet", this would also be a class C felony, despite the fact that no one else can access the photo.
- 6) What is the definition of "female breast"?

Sec. 9:

- 1) Page 5, lines 8-9: What must an online bookseller do to avoid being reckless as to a purchaser's age? Is Amazon reckless by not asking for the customer's age when a customer is purchasing "indecent" materials? Need they ask for age? Ask for proof of age? What is the duty?
- 2) Would all online booksellers who sell materials to people in Alaska be subject to this section? There probably wouldn't be adequate notice that they are all now required to ask for a customer's age if they want to avoid prosecution in Alaska.

Sec. 11:

- 1) Doesn't current law already provide for this? Is this section necessary?

Sec. 14:

- 1) Page 9, lines 11-12: Does current law allow for active supervision of misdemeanants? Could active supervision be considered part of the punishment for a crime? If it could be considered as punishment and current law does not allow for active supervision of misdemeanants, could there be ex post facto issues with this section?

If you have any questions, please contact my legislative aide, Gretchen Staft, at 465-4940. Thank you very much for your time.

Cordially,



Rep. Max Gruenberg

CC: Sarah Munson
Rep. Carl Gatto, Chair
House Judiciary Committee

Alaska State Legislature



Chairman
State Affairs Committee

Member
Judiciary Committee
Energy Special Committee
Joint Armed Services Special Committee
Military and Veterans' Affairs Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans' Affairs

REPRESENTATIVE BOB LYNN
District 31 Anchorage

Session:
Alaska State Capitol #108
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

TO: Rep. Carl Gatto, Chair
House Judiciary Committee

FR: Rep. Bob Lynn

RE: Conceptual Amendment to HB 127

Given that HB 127 deals with predatory use of computers and telephones, I would like to offer a conceptual amendment to prohibit false caller identification. Anyone can download software off the Internet that allows them to make calls that show up on the recipient's cell phone or Caller ID as coming from another number. A predator could use this technology to convince an innocent victim that he is calling from the police department, a local school, or the home of a close personal friend. It is not my intention that this amendment should prohibit any activities by law enforcement or U.S. intelligence agencies. I simply want to insure that the State of Alaska prohibits the average person from using false caller identification to defraud or mislead our citizens.

This is a conceptual amendment, and as such I am open to whatever construction suits the members of the committee and satisfies the drafting attorney. I have included the following construction for the purposes of discussion.

Page 5, line 27 add:

“knowingly obtains confidential information about the other person or knowingly represents the other person’s telephone number as their own for the purposes of misleading another, commonly known as false caller ID.”

Page 6, line 1 add:

“(c) the telephone provision listed in (a) of this section does not apply to

(1) law enforcement agencies of the federal government, the state government, or a municipality; or

(2) intelligence or security agencies of the United States government”

Renumber the proceeding sections accordingly.

AMENDMENT

OFFERED IN THE HOUSE
JUDICIARY COMMITTEE
TO: HB 127

BY _____

1 Page 9, following line 6:

2 Insert a new bill section to read:

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

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

10 If the minor is convicted of an offense other than an offense specified in this subsection,
11 the minor may attempt to prove, by a preponderance of the evidence, that the minor is
12 amenable to treatment under this chapter. If the court finds that the minor is amenable to
13 treatment under this chapter, the minor shall be treated as though the charges had been
14 heard under this chapter, and the court shall order disposition of the charges of which the
15 minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when
16 the minor is charged by complaint, information, or indictment with an offense

17 (1) that is an unclassified felony or a class A felony and the felony is a
18 crime against a person, **except a violation of AS 11.41.455;**

19 (2) of arson in the first degree;

20 (3) that is a class B felony and the felony is a crime against a person in
21 which the minor is alleged to have used a deadly weapon in the commission of the

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

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

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

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

13 Renumber the following bill sections accordingly.

14
15 Page 9, line 9:

16 Delete "Sections 1 - 12"

17 Insert "Sections 1 - 12 and 14"

AMENDMENT

OFFERED IN THE HOUSE
JUDICIARY COMMITTEE
TO: HB 127

BY _____

1 Page 1, line 4, following "**probation;**"

2 Insert: "**relating to the subpoena power of the attorney general in cases involving use**
3 **of an Internet service account;**"

4
5 Page 9, following line 6:

6 Insert a new bill section to read:

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

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

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

- 19 (1) the name and other identifying information of the account holder;
20 (2) the address and physical location associated with the account;
21 (3) a description of the length of service, service start date, and types of

1 service associated with the account.

2 (c) A subpoena issued under (b) of this section shall prescribe a reasonable time
3 after service for the production of the information.

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

9 (e) An Internet service provider who knowingly fails to produce the information
10 required to be produced by the subpoena or court order is guilty of contempt under
11 AS 09.50.010.

12 (f) Nothing in this section limits the authority of law enforcement from obtaining
13 process from the court or through a grand jury subpoena to obtain the information
14 described in (b) of this section.

15 (g) A person may not bring a civil action against an Internet services provider, its
16 officers, employees, agents, or other person for complying with an administrative
17 subpoena issued under (b) of this section or a court order issued under (d) of this section."
18

19 Renumber the following bill sections accordingly.

20
21 Page 9, line 11:

22 Delete "Section 13 of this Act applies"

23 Insert "Sections 13 and 14 of this Act apply"

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 127

BY REPRESENTATIVE LYNN

1 Page 1, line 3, following "**minors**,"

2 Insert "**criminal impersonation**,"

3

4 Page 2, following line 30:

5 Insert a new bill section to read:

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

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

8 **(1)** the person

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

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

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

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

19

20 Renumber the following bill sections accordingly.

21

22 Page 9, line 9:

23 Delete "Sections 1 - 12"

- 1 Insert "Sections 1 - 13"
- 2
- 3 Page 9, line 11:
- 4 Delete "Section 13"
- 5 Insert "Section 14"

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 127

BY REPRESENTATIVE THOMPSON

- 1 Page 3, line 7, following "person":
2 Insert "is"
3
4 Page 3, line 8:
5 Delete "is"
6 Insert "[IS]"
7
8 Page 3, line 11:
9 Delete "has been"
10 Insert "[HAS BEEN]"
11
12 Page 3, line 14:
13 Delete "has been"
14 Insert "[HAS BEEN]"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 127

1 Page 9, following line 6:

2 Insert a new bill section to read:

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

4 (a) When a minor who was at least 16 years of age at the time of the offense is
5 charged by complaint, information, or indictment with an offense specified in this
6 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
7 for which the minor is charged or to any additional offenses joinable to it under the
8 applicable rules of court governing criminal procedure. The minor shall be charged,
9 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
10 an adult. If the minor is convicted of an offense other than an offense specified in this
11 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
12 the minor is amenable to treatment under this chapter. If the court finds that the minor
13 is amenable to treatment under this chapter, the minor shall be treated as though the
14 charges had been heard under this chapter, and the court shall order disposition of the
15 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
16 subsection apply when the minor is charged by complaint, information, or indictment
17 with an offense

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

20 (2) of arson in the first degree;

21 (3) that is a class B felony and the felony is a crime against a person in
22 which the minor is alleged to have used a deadly weapon in the commission of the
23 offense and the minor was previously adjudicated as a delinquent or convicted as an

1 adult, in this or another jurisdiction, as a result of an offense that involved use of a
2 deadly weapon in the commission of a crime against a person or an offense in another
3 jurisdiction having elements substantially identical to those of a crime against a
4 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
5 weapon" has the meaning given in AS 11.81.900(b); or

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

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

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

12 Renumber the following bill sections accordingly.
13

14 Page 9, line 9:

15 Delete "Sections 1 - 12"

16 Insert "Sections 1 - 12 and 14"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 127

1 Page 1, line 4, following "probation":

2 Insert "relating to the subpoena power of the attorney general in cases involving
3 use of an Internet service account;"

4

5 Page 9, following line 6:

6 Insert a new bill section to read:

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

8 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
9 **of an Internet service account.** (a) If there is reasonable cause to believe that an
10 Internet service account has been used in connection with a violation of AS 11.41.452,
11 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
12 information about the account owner will assist in obtaining evidence that is relevant
13 to the offense, a law enforcement officer may apply to the attorney general or the
14 attorney general's designee for an administrative subpoena to obtain the business
15 records of the Internet service provider located inside or outside of the state.

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

19 (1) the name and other identifying information of the account holder;
20 (2) the address and physical location associated with the account;
21 (3) a description of the length of service, service start date, and types
22 of service associated with the account.

23 (c) A subpoena issued under (b) of this section must prescribe a reasonable

1 time after service for the production of the information.

2 (d) At any time before the return date specified on the subpoena, the Internet
3 service provider may petition a court of competent jurisdiction for the judicial district
4 in which the provider resides or does business for an order modifying or setting aside
5 the subpoena or for an order sealing the court record.

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

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

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

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

21
22 Renumber the following bill sections accordingly.

23
24 Page 9, line 11:

25 Delete "Section 13 of this Act applies"

26 Insert "Sections 13 and 14 of this Act apply"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 127

1 Page 3, line 20, through page 4, line 7:

2 Delete all material and insert:

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

4 **Sec. 11.61.116. Sending an explicit image of a minor.** (a) A person commits
5 the offense of sending an explicit image of a minor if the person, with intent to annoy
6 or embarrass another person, distributes an electronic photograph or video that depicts
7 the genitals, anus, or female breast of that other person taken when that person was a
8 minor under 16 years of age.

9 (b) Sending an explicit image of a minor is

10 (1) a violation if the person distributes the image to one or two people;

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

13 (3) a class A misdemeanor if the person distributes the image to an
14 Internet site that is accessible to the public.

15 (c) In this section,

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 127

1 Page 2, line 13:

2 Delete "of"

3 Insert "used by"

4

5 Page 2, line 14:

6 Delete "of"

7 Insert "used by"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 127

- 1 Page 5, line 25:
- 2 Delete "if"
- 3 Insert "of"

DRAFT DRAFT DRAFT

* **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, 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) 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 site that is accessible to the public.

(b) In this section,

(1) "distributes" means to deliver the image to another person by sending it to the other person's computer or telephone; ^{electronic device capable of retaining the image}

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

11.46.990 (3)

27-GH1840\M
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;

1 (B) approaching or confronting that person in a public place or
2 on private property;

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

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

6 (E) contacting that person by telephone;

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

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

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

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

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

17 (5) "device" includes software.

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

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

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

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

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

26 (c) Unlawful exploitation of a minor is a

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) In this section,

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

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

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

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

2 (1) a violation if the person distributes the image to one or two people;

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (A) sexual penetration;

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

31 (C) masturbation;

- 1 (D) bestiality;
- 2 (E) the lewd exhibition of a person's genitals, anus, or female
- 3 breast; or
- 4 (F) sexual masochism or sadism;
- 5 (2) the material is harmful to minors; and
- 6 (3) either
- 7 (A) the other person is a child under 16 years of age **and the**
- 8 **person acts recklessly regarding the age of the child;** or
- 9 (B) the person believes that the other person is a child under 16
- 10 years of age.

11 * **Sec. 10.** AS 11.76 is amended by adding new sections to read:

12 **Sec. 11.76.113. Misconduct involving confidential information in the first**

13 **degree.** (a) A person commits the crime of misconduct involving confidential

14 information in the first degree if the person violates AS 11.76.115 and obtains the

15 confidential information with the intent to

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

17 (2) obtain a benefit to which the person is not entitled, to injure another

18 person, or to deprive another person of a benefit.

19 (b) Conviction under this section does not limit a person's ability to obtain

20 civil relief from another person.

21 (c) Misconduct involving confidential information in the first degree is a class

22 A misdemeanor.

23 **Sec. 11.76.115. Misconduct involving confidential information in the**

24 **second degree.** (a) A person commits the crime of misconduct involving confidential

25 information in the second degree if the person, without legal authority or the consent

26 of another person, knowingly obtains confidential information about the other person.

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

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

29 (2) information encoded on an access device, identification card issued

30 under AS 18.65.310, or driver's license.

31 (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

L

1 EXPLOITATION OF A MINOR], or distribution of child pornography may be
2 sentenced to a definite term of imprisonment of not more than 99 years and shall be
3 sentenced to a definite term within the following presumptive ranges, subject to
4 adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

14 (4) sexual assault in the third degree, incest, indecent exposure in the
15 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
16 commit sexual assault in the second degree, sexual abuse of a minor in the second
17 degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child
18 pornography, may be sentenced to a definite term of imprisonment of not more than
19 99 years and shall be sentenced to a definite term within the following presumptive
20 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

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

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

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

6 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
 7 **of an Internet service account.** (a) If there is reasonable cause to believe that an
 8 Internet service account has been used in connection with a violation of AS 11.41.452,
 9 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
 10 information about the account owner will assist in obtaining evidence that is relevant
 11 to the offense, a law enforcement officer may apply to the attorney general or the
 12 attorney general's designee for an administrative subpoena to obtain the business
 13 records of the Internet service provider located inside or outside of the state.

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

- 18 (1) the name and other identifying information of the account holder;
- 19 (2) the address and physical location associated with the account;
- 20 (3) a description of the length of service, service start date, and types
 21 of service associated with the account.

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

24 (d) At any time before the return date specified on the subpoena, the Internet
 25 service provider may petition a court of competent jurisdiction for the judicial district
 26 in which the provider resides or does business for an order modifying or setting aside
 27 the subpoena or for an order sealing the court record.

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

1 subpoena.

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

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

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

12 (i) The attorney general shall adopt regulations prescribing the manner of
13 issuance of an administrative subpoena under (b) of this section.

14 * **Sec. 15.** AS 47.12.030(a) is amended to read:

15 (a) When a minor who was at least 16 years of age at the time of the offense is
16 charged by complaint, information, or indictment with an offense specified in this
17 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
18 for which the minor is charged or to any additional offenses joinable to it under the
19 applicable rules of court governing criminal procedure. The minor shall be charged,
20 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
21 an adult. If the minor is convicted of an offense other than an offense specified in this
22 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
23 the minor is amenable to treatment under this chapter. If the court finds that the minor
24 is amenable to treatment under this chapter, the minor shall be treated as though the
25 charges had been heard under this chapter, and the court shall order disposition of the
26 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
27 subsection apply when the minor is charged by complaint, information, or indictment
28 with an offense

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

31 (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 uncodified 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.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE LYNN

TO: CSHB 127(JUD), Draft Version "M"

1 Page 1, line 2, following "minor,":

2 Insert "criminal impersonation,"

3

4 Page 2, following line 31:

5 Insert a new bill section to read:

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

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

8 (1) the person

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

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

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

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

19

20 Renumber the following bill sections accordingly.

21

22 Page 11, line 16:

23 Delete "Sections 1 - 12 and 15"

1 Insert "Sections 1 - 13 and 16"

2

3 Page 11, line 18:

4 Delete "Sections 13 and 14"

5 Insert "Sections 14 and 15"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 127(JUD), Draft Version "M"

1 Page 4, line 2:

2 Delete all material.

3

4 Renumber the following paragraphs accordingly.

5

6 Page 4, lines 3 - 4:

7 Delete "three or more people"

8 Insert "another person"

Member

Standing Committees:
Judiciary
State Affairs
Transportation
Rules

Finance Subcommittees:
Corrections
Courts
Law

Alaska State Legislature

House of Representatives



Representative Max F. Gruenberg, Jr.
House District 20

Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Floor Leader

Interim:
716 W 4th Avenue, Rm 350
Anchorage, Alaska 99501-2133
Phone: (907) 269-0123
Fax: (907) 269-0124

Session:
Alaska State Capitol, Rm 110
Juneau, Alaska 99801-1182
Phone: (907) 465-4940
Toll Free: (866) 465-4940
Fax: (907) 465-3766

Email:
Rep Max Gruenberg@legis.state.ak.us

MEMORANDUM

TO: Representative Carl Gatto, Chair
House Judiciary Committee

FROM: Gretchen Staft, Legislative Aide
Representative Max Gruenberg

DATE: March 10, 2011

RE: Amendment to Section 7 of CSHB 127(JUD), Version M

.....

The attached amendment would eliminate the provision on page 4, line 2 of CSHB 127(JUD) which sets the penalty for distribution of an explicit image of a minor to one or two people as a violation. This is because it came to our attention that the penalty under this provision for distributing a nude picture of a minor is a lesser offense than distributing a nude picture of an adult, which is a class B misdemeanor under AS 11.61.120(a)(6). It seems that it was not the intention of the Department of Law or the members of the committee that we treat the distribution of nude pictures of minors as a lesser offense than the distribution of the same types of photos of adults. This amendment would simply make sending an explicit image of a minor to "another person" a class B misdemeanor, which is on par with the penalty for distributing explicit pictures of an adult under AS 11.61.120(a)(6). Distributing an explicit image of a minor to a publicly-accessible website would remain a class A misdemeanor.

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF JUVENILE JUSTICE

Sean Parnell, GOVERNOR

*P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-1382
FAX (907) 465-2333*

March 10, 2011

Representative Carl Gatto
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, AK 99801

Dear Representative Gatto:

As the House Judiciary Committee considers amendments to House Bill 127 it may be helpful to recognize how the new offense created in Section 7 of the bill ("Sending An Explicit Image of a Minor") would be managed in the juvenile justice system.

Law enforcement officers refer minors to the Division of Juvenile Justice when the minors are alleged to have violated criminal laws. The Division assesses each minor and may provide any of a range of responses and services to the minor and victims depending on the seriousness of the offense, the risks for future offending, the needs of the victims, and the social and personal needs presented by the minor. For example, a youth who is referred to the Division for a misdemeanor and who has involved parents, a strong academic record, remorse for his behavior, no prior involvement with us, and other protective factors will likely have their offense handled outside of the formal court process. This youth might be given the opportunity to repair the harm he has done by writing a letter of apology to the victim, paying restitution, or participating in counseling. If he meets these expectations, the referral will be closed. On the other hand, a youth who is referred to the Division for the same misdemeanor, but whose parents show little concern for his behavior, who is failing in school, or has a history of disruptive behavior or substance abuse, would be more likely to have his offense petitioned to court. If adjudicated delinquent by a court, the youth may be placed under probation supervision or in the department's custody so the Division can be more assertive in ensuring that he is held accountable and receiving the services he needs.

In managing youth who would be referred to us on the new offense, "Sending An Explicit Image of a Minor," the Division would use a similar intake assessment process to determine the most appropriate response.

Some of the discussion about this bill has included a suggestion to classify "Sending an Explicit Image of a Minor" as a violation when the individual distributes an explicit image of a minor to one or two people. Note that because violations are non-criminal offenses they are not referred to the Division of Juvenile Justice, but are instead managed through District Courts. District Court management of a violation typically would entail a court appearance or payment of a fine, and the court records about the offense would be publicly available. In contrast, if the offense of sending an explicit image of a minor to one or two people is classified as a misdemeanor, the offense would be referred to the Division of Juvenile Justice, which would seek to tailor its response to the needs of both the offender and the victim. Juvenile delinquency court records are sealed after a youth turns 18, and Division of Juvenile Justice agency records are not disclosable except under the specific conditions provided in AS 47.12.310, AS 47.12.315, and AS 47.12.320.

Please let me know if I can provide further information.

Sincerely,

A handwritten signature in cursive script that reads "Tony Newman".

Tony Newman
Social Services Program Officer
Department of Health and Social Services, Division of Juvenile Justice

cc: Representative Steve Thompson, Vice Chair, House Judiciary Committee
Representative Wes Keller, Member, House Judiciary Committee
Representative Lindsey Holmes, Member, House Judiciary Committee
Representative Bob Lynn, Member, House Judiciary Committee
Representative Max Gruenberg, Member, House Judiciary Committee
Representative Lance Pruitt, Member, House Judiciary Committee

AMENDMENT

OFFERED IN THE HOUSE

BY THE HOUSE JUDICIARY

TO: CSHB 127(JUD), Draft Version "M"

COMMITTEE

1 Page 9, lines 15 - 16:

2 Delete ", consistent with regulations adopted under (i) of this section,"

3

4 Page 9, line 24, following "(d)":

5 Insert "Service of a subpoena issued under (b) of this section may be by any method
6 authorized by law or acceptable to the Internet service provider."

7

8 Page 9, line 26:

9 Delete "setting aside"

10 Insert "quashing"

11

12 Page 10, lines 12 - 13:

13 Delete all material and insert:

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

AMENDMENT

OFFERED IN THE HOUSE

BY THE HOUSE JUDICIARY

TO: CSHB 127(JUD), Draft Version "M"

COMMITTEE

1 Page 1, line 3:

2 Delete "**distribution of indecent material to minors,**"

3

4 Page 4, line 22, through page 5, line 10:

5 Delete all material.

6

7 Renumber the following bill sections accordingly.

8

9 Page 11, line 16:

10 Delete "Sections 1 - 12 and 15"

11 Insert "Sections 1 - 11 and 14"

12

13 Page 11, line 18:

14 Delete "Sections 13 and 14"

15 Insert "Sections 12 and 13"



American Booksellers Foundation for Free Expression Association of American Publishers, Inc. Comic Book Legal Defense Fund Entertainment Consumers Association Entertainment Merchants Association
Entertainment Software Association Freedom to Read Foundation Motion Picture Association of America, Inc. National Association of Recording Merchandisers Recording Industry Association of America, Inc.

March 3, 2011

The Honorable Carl Gatto, Chair
The Honorable Steve Thompson, Vice-Chair
Chair, House Judiciary Committee
Alaska State House of Representatives
Juneau, AK 99801

Delivered by email

Re: Memo in Opposition to Section 9 of House Bill 127 and proposed amendments

Dear Chairman Gatto and Vice Chairman Thompson,

The members of Media Coalition have asked me to communicate their concerns regarding H.B. 127 sec. 9. The trade associations and other organizations that comprise Media Coalition have many members throughout the country, including Alaska: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers. Some of our members are plaintiffs in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns*, a First Amendment challenge to 11.61.128(a). (D. Alaska 3:10-CV-193 Oct. 20, 2010). A preliminary injunction was granted October 20, 2010 barring enforcement of the law as enacted last spring.

Section 9 of H.B. 127 would narrow AS 11.61.128(a) to only criminalize the distribution of material "harmful to minors" by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipients age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a), but even with these changes the law would still violate the First Amendment. We welcome the opportunity to work with the Committee to amend Section 9 to make it constitutionally sound. We believe that small changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them. I have attached to this letter our proposed changes to the bill which we ask the Committee to consider.

In addition to *ABFFE v. Burns*, there is a substantial body of case law striking down similar state and federal legislation that restricted such content on the Internet. The U.S. Supreme Court has already declared unconstitutional two federal laws that restricted the availability of sexual matter inappropriate for minors on the Internet. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *Ashcroft v. ACLU*, 534 F.2d 181 (3d Cir 2008), cert. den. 129 Sup. Ct. 1032

Executive Director: David Horowitz Chair: Judith Platt, Association of American Publishers
Immediate past Chair: Chris Finan, American Booksellers Foundation for Free Expression Treasurer: Vans Stevenson, Motion Picture Association of America
General Counsel: Michael A. Bamberger, SNR Denton US LLP

(2009). In addition to the ruling in the Third Circuit Court of Appeals, four other U.S. Courts of Appeal have struck down laws banning material harmful to minors on the Internet. *See, PSINet v. Chapman*, 63 F.3d 227 (4th Cir. 2004); *American Booksellers Foundation for Free Expression v. Dean*, 342 F.3d 96 (2d Cir 2003); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999). Three more state laws have been struck down by U.S. District Courts. *See, Southeast Booksellers v. McMasters* 282 F. Supp 2d 1180 (D. S.C. 2003); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002); *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997). Most recently, Massachusetts enacted a law very similar to AS 11.61.128(a). A legal challenge to the law was brought by some of the same plaintiffs as challenged Alaska's law and a preliminary injunction has been granted barring the statute's enforcement. *American Booksellers Foundation for Free Expression v. Coakley*, 2010 WL 4273802 (D. Mass. 2010). The legislature is considering a bill supported by the Attorney General, similar to what we are proposing to this Committee, that the communication must directed to specific which the sender has actual knowledge or believes is a minor. If passed, this bill will resolve this case.

The reckless standard does not overcome the First Amendment case law cited above. It is an inadequate knowledge requirement for criminalizing distribution of harmful to minors material, particularly on the Internet. Unlike a brick and mortar store, there is no way to know whether a particular person receiving sexually frank material is a minor or an adult. So there is no reasonable way to restrict access to such material solely to adults. As the Supreme Court found, anyone who makes material available on the Internet through a website, listserv or chat room knows that there is a reasonable likelihood that there are minors accessing their content. With hundreds or thousands of people accessing a website or chat room, it is inevitable that a minor is among the visitors. To assume there are no minors accessing a site would be reckless regarding a minor's presence. Thus, the effect of banning the dissemination on the Internet of material "harmful to minors" is to force a provider of such material to deny access to both minors and adults, depriving adults of their First Amendment rights or to risk being prosecuted.

We appreciate the chance to share our concerns with the Judiciary Committee. If you would like to discuss further our position on this bill, please contact me at 212-587-4025 #3 or at horowitz@mediacoalition.org.

Respectfully submitted,

/s/ David Horowitz

David Horowitz
Executive Director

cc: Representative Keller
Representative Lynn
Representative Pruitt
Representative Gruenberg
Representative Holmes
Representative Cheneault, Alternate

M.L.E

Media Coalition's proposed amendments to House Bill 127

* **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** distributing **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 distributing the material knows that the recipient is a child under 16 years of age; or~~
- (B) the person believes that the other person is a child under 16 years of age.

~~A person who distributes an electronic communication with the intent to distribute it does not violate this section unless such person intends to direct the communication to a specific person he or she knows or believes to be a child under 16 years of age.~~

~~Deleted: known to the person to be~~

~~Deleted: and the person is reckless regarding the age of the child~~

Formatted: Normal

Deleted: specifically

Deleted: t

Formatted: Character scale: 100%, Not Expanded by / Condensed by

27-GH1840\B
Gardner
3/11/11

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, 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

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. 12.** 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. 13.** 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 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.

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.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2011

SUBJECT: Bill Section 10 -- Provision Disclaiming Limitation on Civil Relief
(CSHB 127(JUD) - Work Order No. 27-GH1840\M)

TO: Representative Carl Gatto
Chair of the House Judiciary Committee
Attn: Sarah Munson

FROM: Doug Gardner
Director

Enclosed is the draft CS(JUD) you requested. I have a concern with sec. 10 of the draft. Section 10 creates two new crimes dealing with ~~misconduct involving confidential information~~, AS 11.76.113 and 11.76.115. Both sections contain a subsection -- subsection (b) in AS 11.76.113, and subsection (c) in AS 11.76.115 -- that provides:

Conviction under this section does not limit a person's ability to obtain civil relief from another person.

As drafted, the goal of these subsections is unclear.

If the goal of these subsections is to clarify that the existence of this new crime does not interfere with a person's right to seek damages or another civil remedy from another person then neither subsection is needed. AS 11.81.210 provides:

Sec. 11.81.210. Limitation on applicability. This title does not bar, suspend, or otherwise affect any right to or liability for damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.

Providing a special statement that just applies to these two new crimes could eventually lead a court to conclude that this general civil remedy savings clause does not actually do what we think it does and possibly limit the authority of a victim of a crime proscribed by another law from seeking civil relief.¹

¹ The reasoning would be:

If AS 11.81.210 means what it says why would the legislature adopt these new subsections? Obviously AS 11.81.210 must not mean what it says hence the need to adopt subsection (b) type language for every crime in Title 11.

Representative Carl Gatto

February 25, 2011

Page 2

The language of these new subsections can also be interpreted in a way that may not have been intended. The subsections may mean that a person who is convicted under these two new crimes is not limited in seeking civil relief from another person. That is, the defendant convicted of one of these new crimes is not prevented from defending in a civil suit and denying that the offense occurred or from suing the victim or another person and asserting that the other person is liable in the civil action. This would amount to a major change in the law. Normally, a defendant who is convicted of a crime is estopped from denying that the offense occurred or that the defendant committed the crime. See, e.g., *Pomeroy v. Rizzo*, 182 P.3d 1185 (Alaska 2008); *Lamb v. Anderson*, 147 P.3d 736 (Alaska 2006); *Burcina v. City of Ketchikan*, 902 P.2d 817 (Alaska 1995). Subsection (b) of these two new crimes appears to abrogate this line of case law in Alaska.

The other issue that the committee may want to address, is placement of proposed AS 11.76.113 and 11.76.115 in statute. AS 11.76 contains statutes that contain offenses that may not fit well with the subject matter of other chapters. In the case of AS 11.76.113 and 11.76.115, there is an argument that these proposed sections fit better in AS 11.56, Article 6. In fact, given the similarity between AS 11.56.860 (misuse of confidential information) and proposed AS 11.76.113 and 11.76.115, it would not be a difficult drafting assignment to combine existing AS 11.56.860 with AS 11.76.113 and 11.76.115 into a first and second degree offense if the committee chose to do so by way of a conceptual amendment.

DDG:ljlw
11-140.ljlw

Enclosure