

HB

127

<TARGET><BILL>HB 127</BILL><SUBJECT>HB
127</SUBJECT><COMM>SFIN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/11

FURTHER:

DATE TURNED

IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 127(FIN)

HB 127 OMNIBUS CRIME BILL

"An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, and misconduct involving confidential information; relating to probation; relating to the subpoena power of the attorney general in cases involving use of an Internet service account; relating to an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle without possessing proof of motor vehicle liability insurance or a driver's license; relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an effective date."

and recommends:

be replaced with SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____

adopt previous SCS HB 127 (JVD) Same Title Technical Title Change
 New Title/SCR No. _____

attached amendment(s)

adopt _____ Letter of Intent

further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
LAW			X	
COR		X		

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DPS			X	1
ADM		X		3
DHS			X	5
ADM		X		6

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	✓			
	McGuire	✓			
	Olson	✓			
	Ellis	✓			
CO-CHAIR:	Hoffman	✓			
CO-CHAIR:	Thomas	✓			

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB127SCS(FIN)

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 (\$136.44 per day), the increase of cost could be in the range of \$0.0 to \$1,394.4 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. This has the potential to increase mandays by 5,475 beginning in FY12 thru FY17. Applying the current daily cost of care (\$136.44 per day), this could potentially increase costs in the range of \$0.0 to \$747.0 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 (\$136.44 per day) could potentially add costs in the range of \$0.0 to \$747.0 to DOC.

This legislation:

- provides clarifying changes to statute on appearances before a judge. The potential impacts of this change was previously identified and accounted for when the original legislation passed in 2010.
- prohibits the installation or use of keystroke loggers on a computer if the offender has no right to do so or reasonable belief that the offender has such a right.
- amends the crime of sexual assault in the third degree to a class C felony by prohibiting a peace officer from engaging in sexual penetration with a person who is in the custody of the officer.
- amends the crime of sexual assault in the fourth degree to a class A misdemeanor by prohibiting a peace officer from engaging in sexual penetration with a person who is in the custody of the officer.
- clarifies that there is no statute of limitations for the offense of sexual assault in the 3rd degree by a peace officer.
- allows a judge to impose conditions of probation for sex offenders to prohibit them from living within 500 feet of school grounds.

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

The Department of Corrections is unable to determine the fiscal impacts of the passage of this legislation and will closely monitor potential future fiscal impacts.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version SCS CSHB127(JUD)1T
 () Publish Date _____

Identifier (file name): HB127SCSCS(JUD)-LAW-CRIM-04-14-11
 Title Omnibus crime bill. Dept. Affected Law
 Appropriation Criminal
 Allocation Criminal Justice Litigation
 Sponsor Rules
 Requester (S) FIN OMB Component Number 2202

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								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such).

Change in fiscal analysis language.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 4/14/11 2:25 PM
 Date 4/14/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SCS CSHB127(JUD) \T

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.

The bill also eliminates conflicts between court rules and statutes in regard to the deadline for bringing an arrested person before a judicial officer, the offenses of failure to carry and show to law enforcement a driver's license or proof of insurance, and burning a vehicle on public property.

The Senate Judiciary Committee amended the crimes of sexual assault in the third degree and sexual assault in the fourth degree by prohibiting a peace officer from engaging in sexual penetration or sexual contact with a person in custody or apparent custody. The committee also added to the discretion of a judge the ability to require persons convicted of certain sex crimes against children to live more than 500 feet of school grounds.

The crimes in this bill 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 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							
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CHANGE IN REVENUES							
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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

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 6
Bill Version CSHB 127(FIN)
(H) Publish Date 4/4/11

Identifier (file name) CSHB127(JUD)-DOA-OPA-3-21-11 Dept. Affected DOA
Title An Act relating to the crimes of stalking, online enticement . . Appropriation Legal and Advocacy Services
Allocation Office of Public Advocacy
Sponsor Governor
Requester House Finance OMB Component Number 43

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								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	***		***	***	***	***	***	***

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	***		***	***	***	***	***	***

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Rachel Levitt, Acting Director
Division Office of Public Advocacy
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone (907) 269-3504
Date/Time 3/21/11, 5:00 p.m.
Date 3/22/2011

Analysis

This bill expands the definition of "nonconsensual contact" under stalking, specifically prohibits the sending of an explicit image of a minor through various electronic and printed means, and creates a new crime for obtaining the 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 state nexus requirement is met. The bill also specifically allows the Department of Corrections to place a misdemeanor on supervised probation.

The expansion of the definition of "nonconsensual contact", the creation of additional crimes, and increasing the supervision of probationers will likely increase the number of criminal defense cases assigned to the Office of Public Advocacy. The agency is not able to reliably predict the number of new cases, and therefore, the agency cannot precisely predict the resulting fiscal impact on the agency. Accordingly, OPA has submitted an indeterminate fiscal note.

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.

	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								
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CHANGE IN REVENUES								
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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: 5
 Bill Version: CSHB 127(JUD)
 (H) Publish Date: 3/14/11

Identifier (file name): HB127-DHSS-PS-02-04-11 Dept. Affected: Health and Social Services
 Title: Crimes Involving Minors/Stalking/Info Appropriation: Juvenile Justice
 Allocation: Probation Services
 Sponsor: RLs by Request of the Governor
 Requester: House JUD Committee OMB Component Number: 2134

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								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
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 (if initial version, please note as such)

N/A

Prepared by: Barbara Henjum, Director
 Division: Juvenile Justice
 Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Phone 907.465-2112
 Date/Time 2/4/11 5:00 PM
 Date 2/4/2011

FISCAL NOTE #5

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 127(JUD)

Analysis:

If this bill becomes law, Unlawful Exploitation of a Minor would be a class A felony when committed by an adult or juvenile. Under the Juvenile Delinquency statutes (AS 47.12.030), when a juvenile 16 or older is alleged to have committed an A felony against a person, juvenile jurisdiction does not apply and the juvenile is transferred to the adult system. Increasing the charge class for Unlawful Exploitation of a Minor to an A felony therefore would result in these older juveniles being "autowaived" into the adult system, where they would be subject to adult sentencing guidelines.

Criminal laws that are amended or are increased in the severity of their charge class include Stalking, Online Enticement of a Minor, Unlawful Exploitation of a Minor, Endangering the Welfare of a Child (First Degree), Harassment (Second Degree), and Distribution of Indecent Material to Minors. The bill creates three new offenses: Sending An Explicit Image of a Minor, Misconduct Involving Confidential Information (First Degree), and Misconduct Involving Confidential Information (Second Degree). The bill also adds a clarifying section to Title 12 (Sentencing and Probation) to clarify that a person may be prosecuted under Alaska law for committing Online Enticement of a Minor or Sending an Explicit Image of a Minor even though the defendant may be in another state when the offense was committed. The bill also makes changes to sentencing guidelines of Title 12 to reflect the changes in charge class that are proposed for Unlawful Exploitation of a Minor and Online Enticement of a Minor.

If this bill passes, there would be no financial impact to the Division of Juvenile Justice budget.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SEAN PARNELL,
GOVERNOR

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Juneau, AK 99811-0300
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Juneau, AK 99801
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SCS CSHB 127(JUD)
STALKING AND EXPLOITATION OF A MINOR
AND BAIL CLEANUP
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 the victim uses, or on the personal telephone or computer that the victim uses.

Sections 3 and 4 add to the crime of sexual assault in the third degree, a class C felony, a new provision that prohibits a peace officer from engaging in sexual penetration with a person with reckless disregard that that person is in the custody or apparent custody of the offender or is committed to the custody of a law enforcement agency.

Sections 5 and 6 add to the crime of sexual assault in the fourth degree, a class A misdemeanor, a new provision that prohibits a peace officer from engaging in sexual contact with a person with reckless disregard that that person is in the custody or apparent custody of the offender or is committed to the custody of a law enforcement agency.

Section 7 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 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 8 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 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 9 amends the crime of criminal use of a computer, a class C felony, by prohibiting a person who has no right or reasonable ground to believe he has such a right, from installing, enabling, or using a keystroke logger or similar device on a computer, or using a keystroke logger to intercept keystrokes on a computer when the entries are transmitted by non-wired means. Conviction of a class C felony has a maximum term of imprisonment of five years.

Section 10 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 or is charged with child kidnapping. The law currently prohibits a parent or guardian from leaving a child with a person required to register as a sex offender or who is charged with a sex offense.

Section 11 adopts a new crime – sending an explicit image of a minor. It would prohibit a person, acting with the intent to annoy or humiliate another person, from distributing an electronic photograph or video that depicts an image of a minor's genitals, anus, or female breast taken when the minor was under 16 years of age. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person distributes the image to one or more other persons, and a class A misdemeanor (maximum term of imprisonment one year) if the person distributes the image to an Internet website that is accessible to the public.

Section 12 makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crime of sending an explicit image of a minor in **Section 11** is not included in the crime of harassment in the second degree.

Section 13 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 14 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 15 makes a conforming amendment to the statute of limitations for prosecuting certain crimes. It adds the conduct prohibited in **Section 3**, sexual assault in the third degree by a peace officer, to other forms of sexual assault in the third degree that may be brought at any time. In other words, the offense has no statutory time limitation.

Section 16 amends AS 12.25.150(a) (relating to arrest) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 hours to 48 hours of arrest.

Section 17 would allow a court the discretion, in setting conditions of probation on a person convicted of sexual offenses against a minor, child pornography offenses, and distributing indecent material to minors, to impose the condition that the person not live within 500 feet of school grounds.

Section 18 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 online enticement of a minor to the correct level in accord with the changes in **Sections 7 and 8** of the bill. **Section 18** also clarifies the correct sentencing ranges for unlawful exploitation of a minor and distribution of child pornography.

Section 19 amends AS 12.70.130 (relating to extraditions) to conform to the provision in the bail reform legislation last year that changed the deadline for bringing a person arrested before a judicial officer from 24 to 48 hours of arrest.

Section 20 changes the penalty for the offense of failure to possess and present upon request of a peace officer a person's driver's license when driving from a misdemeanor, similar to a class B misdemeanor, to an infraction. The offense currently is correctible, and would continue to be correctible. This offense is also currently on the bail schedule (Rule 43.1, Alaska Rules of Administration) at a \$50 bail. It is not consistent to have an offense at the same time a misdemeanor, which generally requires a court appearance, and an offense disposable under the bail schedule for a \$50 bail amount. The bill removes this inconsistency.

Section 21 changes the penalty for the crime of failure to carry and present upon request to a peace officer proof of automobile insurance when driving from a class B misdemeanor to an infraction. Current law in statute requires a mandatory fine for this offense of at least \$500; at the same time the offense is on the bail schedule for a bail amount of \$500. It is correctible under current law and would continue to be correctible under the bill. Again, it is inconsistent to have a class B misdemeanor on the bail schedule for disposition without court appearance. The bill removes the inconsistency, and at the same time retains the bail amount of \$500.

Section 22 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.

Section 23 resolves an inconsistency in the penalty for burning a vehicle on the Knik River Public Use Area. In 2006 the legislature created the Knik River Public Use Area. The law authorizes the Department of Natural Resources to adopt regulations governing conduct in the area. AS 41.23.220(a) provides that a person who violates the new law or a regulation under the new law commits a violation. AS 41.23.220(b) requires the Alaska Supreme Court to establish a bail schedule for violations of the statutes and regulations. The law specifically requires that the violations be disposed of without court appearance. One of the regulations adopted prohibits burning a vehicle in the area; the bail was adopted in Supreme Court Order 1711 at \$50.

In 2008 the legislature enacted AS 11.46.420, which adopted a new crime, arson in the third degree. This prohibits burning a vehicle on state or municipal land. The penalty for this crime is a class C felony.

These sections correct this inconsistency by excluding burning a vehicle on state land from the prohibitions that are effective in the Knik River Public Use Area.

Section 24 redrafts the law enacted last year allowing the Attorney General to issue administrative subpoenas for law enforcement to obtain limited information from an Internet service provider if there is reasonable cause to believe that an Internet service account has been used in connection with the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, or distribution of indecent material to a minor.

The bill corrects a problem with the service provisions of the law to allow service of the subpoenas in any manner authorized by law or acceptable to the Internet service provider. The bill clarifies that a person who does not obey a subpoena or ask the court to quash the subpoena may be guilty of contempt. The bill does not include a problematic provision of current law which requires either returning information to the Internet service provider or destroying it if a criminal prosecution is not undertaken. There are two problems with this: first, an Internet service provider does not need the documents returned because it already has the information. Second, it is not good public policy for documents in the possession of a public agency be destroyed. It is better policy that this information is kept as part of a confidential police investigation. The bill also provides that a person may not bring a civil action against an Internet service provider for complying with an administrative subpoena.

Section 25 redrafts Rule 5(a)(1), Alaska Rules of Criminal Procedure, to correct a drafting error and to make the rule more readable. The rule was changed last year to extend the deadline from 24 to 48 hours for bringing an arrested person before a judicial officer. This change corrects the drafting error, which currently defines a term that is not used in the rule.

Section 26 notes that the changes included in **Section 23** of the bill have the effect of changing Rule 43.10, Alaska Rules of Administration (the bail schedule) by prohibiting the disposition of cases involving burning a vehicle on state land without a court appearance by mailing to the court a bail amount of \$50.

Section 27 requires the Department of Law, with the help of the Department of Corrections and the Alaska Court System, compile and submit to the legislature a report concerning the number of persons arraigned on state charges within 24 hours of arrest and the number arraigned on state charges within 48 hours of arrest.

Section 28 provides the applicability provisions.

Section 29 provides a severability section.

Section 30 adopts a July 1, 2011 effective date.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SEAN PARNELL,
GOVERNOR

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CS for HOUSE BILL 175(JUD) SPONSOR STATEMENT

Last year the Legislature enacted a bill that updated and changed the bail law in the state; this was significant because the bail laws had not been reorganized in a systematic way since 1966. One of the changes in the law was to extend from 24 to 48 hours the deadline within which a person must be brought before a judicial officer after arrest. This is a deadline – the law still requires that a person be taken before a judicial officer without unnecessary delay. The bill last year changed the court rules, but neglected to change the statutes to conform to the court rules. Section 1 amends AS 12.25.150(a) (relating to arrest) to conform to the provision in the legislation last year. Section 2 amends AS 12.70.130 (relating to extraditions) to conform to the provision in the bail reform legislation adopted last year.

The remaining sections of the bill correct other inconsistencies between statutes and court rules that have arisen over the last several years. These include changing the penalty for the offense of failure to possess and present upon request to a peace officer a person's driver's license when driving from a misdemeanor, similar to a class B misdemeanor, to an infraction.

The bill also changes the penalty for the crime of failure to carry and present upon request to a peace officer proof of automobile insurance when driving from a class B misdemeanor to an infraction. Current law in statute requires a mandatory fine for this offense of at least \$500; at the same time the offense is on the bail schedule for a bail amount of \$500. It is correctible under current law and would continue to be correctible under this bill.

CSHB 175(JUD) resolves a similar inconsistency in the penalty for burning a vehicle on the Knik River Public Use Area. In 2008 the legislature enacted AS 11.46.420, which adopted a new crime, arson in the third degree. This prohibits burning a vehicle on state or municipal land. The penalty for this crime is a class C felony. These sections correct this inconsistency by excluding burning a vehicle on state land from the prohibitions that are effective in the Knik River Public Use Area.

27th Legislature(2011-2011)

Journal Text for HB127 in the 27th LegislatureFull Journal

01-26-2011

House Journal

0124

HB 127

HOUSE BILL NO. 127 by the House Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the Judiciary and Finance Committees.

The following fiscal note(s) apply:

1. Zero, Dept. of Public Safety
2. Zero, Dept. of Law
3. Indeterminate, Dept. of Administration
4. Indeterminate, Dept. of Corrections

The Governor's transmittal letter dated January 24, 2011, follows:

"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.

01-26-2011

House Journal

0125

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,
/s/
Sean Parnell
Governor"

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
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April 14, 2011

The Honorable Bert Stedman, Co-Chair
The Honorable Lyman Hoffinan, Co-Chair
Senate Finance Committee
State Capitol Room 516, 518
Juneau, AK 99801

Re: SCS for CSHB 127(JUD) – relating to stalking and child exploitation

Dear Senators Stedman and Hoffman:

House Bill 127 has passed the Senate Judiciary Committee, and is next assigned to the Senate Finance Committee. The Department of Law respectfully requests a hearing in the Senate Finance Committee on the bill at your earliest convenience. SCS for CSHB 127(JUD) builds on and refines legislation enacted over the past several years to address the serious problems of sexual exploitation and domestic violence. It also corrects inconsistencies between state statutes and court rules.

The bill expands the crime of stalking to prohibit placing a person in fear of injury or death using technology such as global positioning 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 text messages in a way intended to protect the young person depicted in the image.

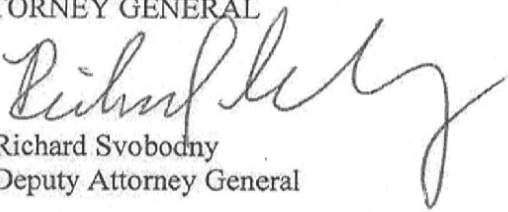
A sectional analysis that describes each section of the bill is attached to this request. A short summary, fiscal notes, and other backup materials are either included or will be forwarded later today. Please let us know if you need any additional information.

Thank you for your consideration of this request.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:


Richard Svobodny
Deputy Attorney General

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

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SCS CSHB 127(JUD) Additions and Changes

<p>Sections 1 and 2 expand the definition of “nonconsensual contact” in the stalking law.</p> <p>Sections 3 and 4 amend the crime of sexual assault in the third degree, a class C felony, by prohibiting a peace officer from engaging in sexual penetration with a person who is in the officer’s custody.</p> <p>Sections 5 and 6 amend the crime of sexual assault in the fourth degree, a class A misdemeanor, by prohibiting a peace officer from engaging in sexual contact with a person who is in the officer’s custody.</p> <p>Section 7 raises the crime of online enticement of a minor by 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.</p> <p>Section 8 raises the crime of online enticement of a minor for a person already required to register as a sex offender or child kidnapper from a class B felony to a class A felony.</p> <p>Section 9 amends the crime of criminal use of a computer, a class C felony, by prohibiting the installation or use of a keystroke logger on a computer, if the offender has no right to do so or reasonable belief that the offender has such a right.</p>	<p>These changes were in the original HB 127.</p> <p>These sections were added to the bill in the Senate Judiciary Committee.</p> <p>These sections were added to the bill in the Senate Judiciary Committee.</p> <p>This was in the original HB 127.</p> <p>This was in the original HB 127.</p> <p>This section was added to the bill in the Senate Judiciary Committee.</p>
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<p>Section 10 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 old with a person the parent or guardian knows is required to register as a child kidnapper.</p>	<p>This was in the original HB 127.</p>
<p>Sections 11 and 12 prohibit a person, with the intent to annoy or humiliate another person, from distributing an explicit image of the female breast, anus, or genitals of a person under 16 years old.</p>	<p>This was in the original HB 127. However, it was changed in the House Judiciary Committee to add the culpable mental state (intent to annoy or humiliate the subject of the image) and the penalties were changed so that the offense is either a class A or B misdemeanor. The class A misdemeanor would apply if the distribution was to a publicly accessible Internet site.</p>
<p>Section 13 adds two crimes to Title 11 – Misconduct involving confidential information in the first and second degrees. It prohibits obtaining confidential information without the legal authority to do so or the consent of the subject of the information. The first degree offense prohibits obtaining this information with the intent to use it to commit a crime or obtain a benefit.</p>	<p>These provisions were in the original HB 127.</p>
<p>Section 14 clarifies that the state may prosecute a person for online enticement of a minor or sending an explicit image of a minor if the offender is outside the state, as long as the victim is in the state.</p>	<p>This was in the original HB 127.</p>
<p>Section 15 is a conforming amendment that clarifies that there is no statute of limitations for the offense of sexual assault in the third degree by a peace officer.</p>	<p>This was added in the Senate Judiciary Committee.</p>
<p>Section 16 amends the statute addressing the deadline for bringing an arrested person</p>	<p>This was originally in HB 175, introduced by the House Judiciary Committee at the</p>

before a judicial officer to conform with the changes made to the court rules in the bail revision last year.

Section 17 allows a judge when imposing conditions of probation of a person charged with sexual felonies against minors, to prohibit the person from residing within 500 feet of school grounds.

Section 18 makes changes to the sentencing statutes to conform to the changes in **Sections 7 and 8** of the bill. It also makes some cleanup changes in the sentencing of sex offenders to conform to the substantive law.

Section 19 amends the statute addressing the deadline for bringing an arrested person before a judicial officer for an arrest on a fugitive warrant from another state to conform with the changes made to the court rules in the bail revision last year.

Section 20 changes the offense of failure to carry and present proof of a driver's license from a class B misdemeanor to an infraction. The offense is a correctible offense in the bail schedules.

Section 21 changes the offense of failure to carry and present proof of automobile insurance from a class B misdemeanor to an infraction. The offense is a correctible offense in the bail schedule.

Section 22 clarifies that a judge may only appoint a probation officer for a person convicted of a misdemeanor at the discretion of the Commissioner of Corrections.

request of the Governor. It was made a part of HB 127 in the House Finance Committee.

This was added to HB 127 in the Senate Judiciary Committee.

This section was in the original HB 127. However, the cleanup changes were added in the Senate Judiciary Committee.

This section was originally in HB 175. It was added to HB 127 in the House Finance Committee.

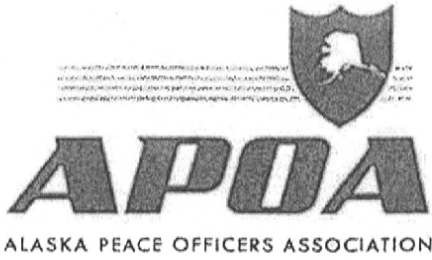
This provision was in the original HB 175.

This provision was in the original HB 175.

This provision was in the original HB 127.

<p>Section 23 corrects a conflict between state statute and court rule. Under current regulations, burning or exploding a vehicle in the Knik River Public Use Area is an infraction with a fine of \$50. In 2008 the legislature made it a class C felony to burn or explode a vehicle on public land. This section provides that the 2008 statute governs this conduct in the Knik River Public Use Area.</p>	<p>This section was in the original HB 175.</p>
<p>Section 24 amends a the administrative subpoena law adopted in SB 222 last year for investigations into child sexual exploitation, by changing the possible methods of service to any means allowed in law or acceptable to the Internet service providers. It specifies the way an ISP may move to quash such a subpoena, and provides for immunity from civil liability for an ISP who responds to the subpoena.</p>	<p>This provision was added to HB 127 in the House Judiciary Committee.</p>
<p>Section 25 amends Rule 5(a)(a), Alaska Rules of Criminal Procedure to correct a drafting error.</p>	<p>This provision was in the original HB 175.</p>
<p>Section 26 describes an indirect court rule change in the bill.</p>	<p>This section was in the original HB 175.</p>
<p>Section 27 requires the Department of Law, with the help of the Department of Corrections and the Alaska Court System, to report to the legislature the time within which offenders are first brought before a judicial officer after arrest for state charges.</p>	<p>This section was added to HB 127 in the Senate Judiciary Committee.</p>
<p>Sections 28, 29, and 30 include applicability, severability, and effective date clauses.</p>	<p>The applicability and effective date clauses were in the original HB 127. The severability section was added in the House Judiciary Committee.</p>

14057



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February 14, 2011

Honorable Sean Parnell
Governor
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell:

On behalf of our respective organizations, we would like to thank you for facilitating the introduction of House Bill 127 and Senate Bill 72, relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a child, sending an explicit image of a minor, harassment, distribution of indecent material to minors, and misconduct involving confidential information; relating to probation; and providing for an effective date.

We met recently to review proposed legislation and decided to unanimously support this bill.

Again, thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organizations can do to assist in the passage of this bill.

Sincerely,

John Lucking Jr., President
Alaska Peace Officers
Association
PO Box 240106
Anchorage AK 99524

Tom Clemons, President
Alaska Association of
Chiefs of Police
183 Nelson Ave
Wasilla AK 99654

Michele Logan, President
Women Police
of Alaska
PO Box 233306
Anchorage AK 99523

OFFICE OF THE GOVERNOR
MAILROOM
FEB 16 2011