

HB

127

<TARGET><BILL>HB 127</BILL><SUBJECT>HB
127</SUBJECT><COMM>SJUD27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 127(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.

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

This bill also 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.

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.



April 11, 2011

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The Honorable Hollis French, Chair
The Honorable Bill Wielechowski, Vice-Chair
Senate Judiciary Committee
Alaska State Senate
Juneau, AK 99801-1182
via email: Senator_Hollis_French@legis.state.ak.us
Senator_Bill_Wielechowski@legis.state.ak.us

Re: **CS for HB 127 (FIN) – Section 11**
ACLU Review of Legal Issues

Chair French, Vice-Chair Wielechowski:

Thank you for the opportunity to submit written testimony with respect to the Committee Substitute (Finance) for House Bill 127.

As you know, the American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we would like to advise the Committee of some issues with respect to CS for HB 127 (FIN), and in particular, Section 11.

Need to Revisit Unwarranted Expansion of 24 Hour Rule

Last year, HB 324 was passed (26th Legislature, Chapter No. 19, SLA 2010, Effective Date: July 1, 2010), amending Alaska Rule of Criminal Procedure 5 to permit a new arrestee to be held for up to 48 hours before the initial appearance before a judge or magistrate, rather than the 24 hour period

which had long been the law. Section 11 of HB 127 would create consistency between the amended rule and the statute relating to pretrial detention. **Given the significant overcrowding issues which are rapidly being exacerbated in our detention facilities, and the numerous financial issues pressing on the Department of Corrections, of which the Legislature is aware, HB 127 presents a good opportunity to revisit whether the revision passed last year in HB 324 is the best policy for the State of Alaska.**

Under *Gerstein v. Pugh*, a probable cause hearing must be held without unreasonable delay. 420 U.S. 103 (1975). After *Gerstein*, a standard of 24 hours was adopted by most states and most circuits. Years later, a narrowly divided US Supreme Court stated that the initial appearance must be made only within 48 hours. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). However, *Riverside* does not bind the states in their interpretation of their own constitutions.

In one accounting of state responses to *Gerstein*, most states had concluded that 24 hours was the appropriate term of detention before appearing before a magistrate or judge, and only seven states explicitly permitted more than 24 hours prior to an initial hearing. *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 333-34 (Mass. 1993).

Since Alaska had guaranteed a 24-hour window for initial appearances for 18 years since the Riverside decision, the state courts may be hard pressed to see why a 48-hour window would not likely permit “unreasonable delay.” The Alaska courts have not yet had a chance to rule on the dimensions of the “speedy trial” provision of Article I, section 11 as it relates to initial appearances, since Rule 5 has long guaranteed a 24-hour window of appearance. The Alaska Supreme Court could very well decide that the state constitutional provisions relating to speedy trial and due process require no more than a 24-hour window prior to initial appearance, just as the Massachusetts Supreme Court did in *Jenkins*.

Given that the currently existing rules of criminal procedure already provide an exception for defendants arrested far from urban centers and allow the prosecution to request a delay to gather more information where necessary for a bail hearing, the state’s success over the last 18 years in providing an initial appearance within 24 hours strongly suggests that a delay of more than 24 hours would represent unnecessary delay, making the statute unconstitutional.

Increased Costs Resulting From Prison Over-Crowding,

In particular, as the Judiciary Committee is no doubt aware, **almost half of all Alaska prisoners are being held pretrial**, typically constituting 46 to 48% of all prisoners in Alaskan institutions. The high rate of pre-trial detention contributes substantially to the state of overcrowding in Alaska prisons and the need to build more of the prisons that cost our state dearly. Consider that the Department of Law reports that almost 27,000 new criminal cases were filed last year – roughly 6,000 felony cases and roughly 21,000 misdemeanor cases. If every one of those 27,000 arrests results in a single extra day in custody, that increase of 27,000 prisoner-days would impose a similar burden in on the correctional system as 74 prisoners spending a year in prison.

Every prisoner-year in custody costs roughly \$45,000. **The cost of additional incarceration from the policy change contemplated in HB 127 could cost up to \$3.3 million in increased costs every year, just by adding a single day of initial incarceration for each arrest.**

Extension of the post-arrest time that a prisoner can be kept in custody without any bail will merely serve to increase our prison population unnecessarily, mostly by increased incarceration of prisoners accused only of misdemeanors. **While there may be good intentions to make the 48 hour rule the exception – rather than the norm – common sense, experience of human nature, and the realities of the legal load encountered by modern court systems, support the idea that over time – and perhaps quickly – the 48 hour rule WILL become the norm.**

The Judiciary Committee should assist the Legislature in reversing course on this provision, and return to the 24-hour window Alaska observed for decades. We are not aware of any evidence of a single incident in which a prisoner was released wrongfully because of any limitation imposed by the 24-hour window before the initial appearance. Locking up thousands of people accused of misdemeanors for longer periods of time and spending millions of dollars to keep our prisons crowded is not good public policy.

Thank you again permitting us to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Joe Paskvan, Senator_Joe_Paskvan@legis.state.ak.us
Senator Lesil McGuire, Senator_Lesil_McGuire@legis.state.ak.us
Senator John Coghill, Senator_John_Coghill@legis.state.ak.us

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Saturday, April 09, 2011 12:21 PM
To: Cindy Smith
Subject: RE: Message from 4th fl00r copier

Hello Cindy. Yes, scheduling modifications for both ex parte and long term orders with a maximum of three days notice will create scheduling problems for us. As you note, AS 18.66.120 provides for three days notice for ex parte modifications in DV cases (after all, they are only 20 days in duration and the respondent never had an opportunity to participate), but 20 days notice for long-term (six month) orders. There is less of a need for such a short scheduling time because the order is for a much longer period of time and the respondent had an opportunity to participate in the six-month hearing.

Although we do not have a fiscal note on this bill (because the conservatorship caseload is still pretty light), over time we will see a lot of these and it becomes very difficult to keep space open in judge's calendars to allow for all of the short-notice hearings. I would ask that the long-term modification notice period match 20 days established for the long-term modification for a long-term DV protective order.

Thanks for letting me know about this. Doug

From: Cindy Smith [mailto:Cindy_Smith@legis.state.ak.us]
Sent: Saturday, April 09, 2011 11:53 AM
To: Doug Wooliver
Subject: FW: Message from 4th fl00r copier

Attached. Let me know what you think ASAP, as we'd like to get this in front of the committee Monday.

The restraining order language has been reorganized into sections and begins on page 5 – modifications on page 6.

Cindy Smith
Office of Senator Hollis French
(907) 465-3892
www.senate.org

From: postmaster@legis.state.ak.us [mailto:postmaster@legis.state.ak.us]
Sent: Saturday, April 09, 2011 11:47 AM
To: Cindy Smith
Subject: Message from 4th fl00r copier

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STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

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GOVERNOR**

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CSHB 127(JUD) and SB 72

CSHB 127(JUD) (HB 127 in this comparison) and SB 72 are different in the following ways:

Section 6 of HB 127 and SB 72 – HB 127 makes minor changes to drafting in current law; it changes “has been charged by complaint . . .” to “is charged” to clarify that the law does not apply to a person who has been charged and then acquitted.

Section 7 of HB 127 and SB 72– often called the “sexting” provision, was changed to (1) require the state prove the culpable mental state that the offender acted with the intent to annoy or humiliate another person; and (2) changed the penalties so that a person who distributes an image to another person commits a class B misdemeanor, and a person who places the image on an Internet site accessible to the public commits a class A misdemeanor. No felony level offense is included in HB 127.

Section 9 of SB 72 – that clarified the culpable mental states for the crime of distribution of indecent material to minors, was removed from HB 127.

Sections 11 and 13 of HB 127 – were added to HB 127. They were originally in HB 175 and were added to HB 127 in the House Finance Committee. They change from 24 to 48 hours the statutory deadline within which law enforcement must bring an arrested person before a judicial officer. The law continues to require that law enforcement bring such a person before a judicial officer without unnecessary delay. This was debated extensively last year, and the court rules have already been changed from 24 to 48 hours. The statutes need to be changed to conform with the court rules.

Section 14 of HB 127 – changes the offense of failure to carry and present to a law enforcement officer proof of an operator’s license from a class B misdemeanor to a violation. Although in Title 28 this offense is a misdemeanor, it is also on the bail schedule as a \$50 correctible offense. HB 127 corrects this inconsistency. This change also was originally in HB 175.

Section 15 of HB 127 – corrects a similar (to section 14) inconsistency in the offense of failure to carry proof of automobile insurance. In Title 28 this is a class B misdemeanor, and it is also a correctible offense in the bail schedules. By changing this offense to an infraction, HB 127 corrects this inconsistency.

Section 17 of HB 127 – resolves a similar inconsistency in the penalty for burning a vehicle in 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 other prohibitions that are effective in the Knik River Public Use Area. This change was originally in HB 175.

Section 18 of HB 127 -- 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.

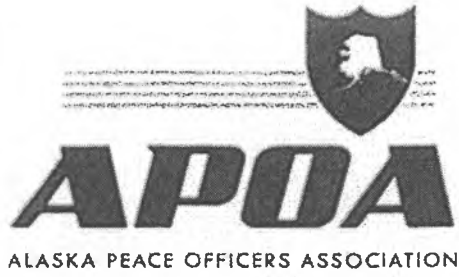
The bill allows a designee of the attorney general, still within the Department of Law, to issue the administrative subpoenas. It corrects a problem with the service provisions of the law to allow service of the subpoenas in any manner authorized by law or acceptable to the Internet service provider. 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 they already have 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 19 of HB 127 -- provides that the crime of unlawful exploitation of a minor is not included in the crimes that require an automatic waiver from juvenile to adult court for a person who is 16 or 17 years of age who is charged with commission of the offense.

Section 20 of HB 127 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.

14057



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nt
cl

February 14, 2011

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

OFFICE OF THE GOVERNOR
MAILROOM
FEB 16 2011

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

Cindy Smith

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Thursday, February 10, 2011 3:43 PM
To: Cindy Smith
Subject: SB 72 Statistics

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Cindy. I was unable to attend your Monday hearing on SB 72 (the governor's crime bill), but I did listen to the recording of the hearing. During that hearing the committee wondered how many cases would be impacted by the increased penalties reflected in sections 3, 4 and 5 of the bill. I asked our data people how many times those offenses were charged in FY 10. There were 4 cases of online enticement under AS 11.41.452(d) (section 3) and 1 case under AS 11.41.452(e) (section 4). There were 7 cases filed under AS 11.41.455, (section 5 of the bill), though I can't tell from the numbers I received if any were under the provision that already makes these a class A felony.

Although whenever we compare case numbers with others in the criminal justice system we invariably end up with slightly different numbers, our numbers seem consistent with those included in the Department of Corrections fiscal note (an average of five cases per year for these three case types). If the committee's question is whether there are a lot of these case or just a few, I think the answer is just a few.

Doug

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean *SMc*
Director, Criminal Division

Subject: **Other State Rules - First
Appearance After Arrest**

General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.

Summary - First Appearance Following Warrantless Arrest, By Total Number of States

- 3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
- 1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
- 6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)
- 1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)
- 7 states - 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
- 1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
- 1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
- 1 state - 48 hours if 1st appearance is combined w/prob. cause hearing (court decision) (WI)
- 2 states - 72 hours, including weekends and holidays (NJ, WY)
- 1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
- 1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
- 21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)
- 2 states - "forthwith" (SC, VA)
- 1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)
- 1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	<i>See, State v. Watkins</i> , 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	<i>See, Larson v. Dorney</i> , __ F.Supp. __, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. <i>State v. Pirowski</i> , 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R, Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	<i>See, People v. Willis</i> , 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites <i>McLaughlin</i> as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	" promptly" 24 hr. rule repealed, 1995 Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1	<i>See, State v. Larson</i> , 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	<i>See, State v. Carrow</i> , 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites <i>McLaughlin</i> as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	72 hours excluding Sat., Sun, holidays 48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A) LSA –C. Cr. P. Art. 230.2(A)	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	Although statute does not specifically state "including weekends", it is clear from case law. <i>See, e.g., Odum v. State</i> , 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"accused shall be brought before court then in session, and, if not at its next session". Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day. <i>See, Jenkins v. Chief Justice of Dist. Court Dept.</i> , 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun. and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V. Ann. Mo. C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest
Montana	without unnecessary delay	MCA 46-7-101	See, <i>St. v. Brown</i> , 933 P.2d 672, 675-676 (Mont. 1999) acknowledging <i>McLaughlin</i> 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest 72 hours- arrest with warrant	N.R.S. 171-1771 N.R.S. 171-178	See, <i>Powell v. State</i> , 930 P.2d 1123 (Nev. 1997), acknowledging that <i>McLaughlin</i> requires probable cause hearing within 48 hours
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	See, <i>Black v. State</i> , 871 P.2d 35, 39 (Okl. Cr. 1994). Citing <i>McLaughlin</i> , court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	<i>State v. Larson</i> , 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined – 72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary. If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. <i>State v. Carter</i> , 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V. Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay- 48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723 Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forthwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 24 hours, including weekends and holidays 48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c) Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the <i>Riverside</i> probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's <i>Riverside</i> (<i>v. McLaughlin</i>) determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest <i>State v. Evans</i> , 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P. 5(a)	



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



February 4, 2011

**AMERICAN CIVIL
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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

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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)
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Representative Mike Chenault, [Representative Mike Chenault@legis.state.ak.us](mailto:Representative_Mike_Chenault@legis.state.ak.us)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AMERICAN BOOKSELLERS
FOUNDATION FOR FREE
EXPRESSION, et al.,

Plaintiffs,

vs.

DANIEL S. SULLIVAN, in his
official capacity as ATTORNEY
GENERAL OF THE STATE OF
ALASKA,

Defendant.

Case No. 3:10-cv-0193-RRB

ORDER GRANTING
PRELIMINARY INJUNCTION

I. MOTION PRESENTED

Pursuant to Fed. R. Civ. P. 65, Plaintiffs move for a preliminary injunction and other appropriate relief against enforcement of AS 11.61.128, both as amended by Sections 9-12 in Senate Bill No. 222, 26th Leg., 2d Sess., and as prior to amendment, which purports to limit access to materials deemed "harmful to minors." A copy of the statute at issue is found at Docket 7-2. Plaintiffs represent a spectrum of individuals and organizations - including booksellers, a photographer, libraries, and organizations representing booksellers, publishers, and other media interests - that communicate, disseminate, display, and

access a broad range of speech in the physical world as well as through the Internet. This matter has been fully briefed and the Court enters the following order.

II. BACKGROUND

In January of 2010, Alaska passed a bill, SB 222, that amended a variety of statutes with the stated intent of strengthening initiatives relating to sexual assault and domestic violence. The bill included Sections 9-12, which amended and (according to Plaintiffs) expanded an existing censorship law. These sections imposed what Plaintiffs complain are "severe content-based restrictions on the availability, display, and dissemination of constitutionally protected speech on the Internet and physically within the State of Alaska."¹

Plaintiffs argue that the application of the amended act to the Internet violates the First, Fifth, and Fourteenth Amendments because: it restricts adults from engaging in protected speech on the Internet; it is substantially overbroad; it criminalizes protected speech among and to older minors; it is unconstitutionally vague; and requires that, for the determination of community standards, the relevant community be local, rather than the nation. In addition, Plaintiffs argue the application of

¹ Docket 7 at 8.

the amended act to the Internet violates the Commerce Clause because: it regulates speech that occurs wholly outside the borders of Alaska; it imposes an unjustifiable burden on the interstate commerce over the Internet; and it subjects online speakers to inconsistent state laws.

Plaintiffs do not challenge the Alaska laws criminalizing child pornography, sexual solicitation or luring of minors, or obscenity on the Internet. Plaintiffs also do not challenge the portions of SB 222 that do not amend AS 11.61.128.

III. STANDARD OF REVIEW

In order for the Court to grant a preliminary injunction, the Plaintiffs must demonstrate:

1. a strong likelihood of success on the merits,
2. the possibility of irreparable injury to Plaintiffs if preliminary relief is not granted,
3. a balance of hardships favoring the Plaintiffs, and
4. advancement of the public interest (in certain cases).²

A preliminary injunction requires Plaintiffs to show *probable* success on the merits, but only the *possibility* of irreparable harm.³

² *Earth Island Inst. v. United States Forest Service*, 351 F.3d 1291, 1298 (9th Cir. 2003).

³ *Id.*

IV. DISCUSSION

A. Likelihood of Success on the Merits

Plaintiffs argue that they are likely to be successful on the merits because the amended act bans a large amount of speech that adults have a constitutional right to receive, and because the amended act fails strict scrutiny, is overbroad, and violates the Commerce Clause.⁴ Plaintiffs argue that 18 federal judges in five circuits have struck down state statutes forbidding Internet communications deemed harmful to minors like the one at issue here.⁵ In response, the State argues that because the amended act

⁴ Docket 7 at 15.

⁵ See *PSInet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004), reh'g. denied, 372 F.3d 671, aff'g 167 F. Supp. 2d 878 (W.D. Va. 2001); *Amer. Booksellers Found. for Free Expression v. Dean*, 342 F.3d 96 (2d Cir. 2003), aff'g 202 F. Supp. 2d 300 (D.Vt. 2002); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), aff'g 4 F. Supp. 2d 1029 (D.N.M. 1998); *Southeast Booksellers Ass'n v. McMaster*, 371 F. Supp. 2d 773 (D.S.C. 2005); *ACLU v. Napolitano*, Civ. No. 00-0505 (D.Ariz. June 14, 2002) (permanent injunction), sub nom. *ACLU v. Goddard*, 2004 WL 3770439 (D. Ariz. Apr. 23, 2004) (statute as amended in 2003 permanently enjoined); *Cyberspace Commc'ns, Inc. v. Engler*, 142 F. Supp. 2d 827 (E.D. Mich. 2001) (summary judgment and permanent injunction), 55 F. Supp. 2d 737 (E.D. Mich. 1999) (preliminary injunction), aff'd, 238 F.3d 420 (6th Cir. 2000) (unpublished); *Am. Libraries Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997). The COPA statute, a federal statute similar to the Amended Act, was held unconstitutional. *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), aff'd sub nom. *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008), cert. denied, 129 S. Ct. 1032 (2009). In addition, the Wisconsin Supreme Court found the Wisconsin statute unconstitutional for lacking an appropriate scienter requirement. *State v. Weidner*, 611 N.W. 2d. 684 (Wis. 2000).

is narrower than the other statutes found unconstitutional, they are unlikely to succeed on the merits.

The State provides little support for its conclusory statement. Even a cursory review of the cases cited by Plaintiffs reveal legitimate concerns regarding AS 11.61.128. In *Reno v. ACLU*,⁶ a unanimous Supreme Court struck down a similar federal statute, agreeing with the District Court that the word "indecent" was too vague to provide the basis for a criminal prosecution.⁷ Although the Alaska Statute enumerates what is "indecent" and contains a definition of what is considered "harmful to minors" (elements missing in the *Reno* case), the Third Circuit concluded that "harmful to minors" language in the Child Online Protection Act (COPA) did not save that Federal statute. The Third Circuit found that the COPA was not narrowly tailored so as to survive a strict scrutiny analysis.⁸

The Court concludes that there is a strong likelihood of success on the merits in this matter.

B. Likelihood of Irreparable Harm if the Injunction is Denied

Although there are no pending prosecutions under the Amended Act against any of the Plaintiffs, they argue they will suffer

⁶ 521 U.S.844 (1997).

⁷ *Id.* at 861.

⁸ *ACLU v. Mukasey*, 534 F.3d 181, 198 (3d Cir. 2008).

irreparable harm in the absence of an injunction because "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."⁹

The State argues that none of the Plaintiffs or any other entity brought suit under the original 2005 statute complaining that it infringed on their constitutional rights. Further, none of the Plaintiffs have alleged actual harms beyond a "chilling effect." Such a delay in seeking a preliminary injunction, the State argues, is a factor to be considered in weighing the relief. The State's brief provides examples of the types of activities that result in charges under this statute and notes that "the statute was designed and is employed in a way to stop predators from sexually grooming children and should be allowed to be used this way while the complaint is pending."¹⁰ In response, Plaintiffs argue that they fear future prosecution and are chilled by the amended act. It is irrelevant, they argue, that no Plaintiff has been prosecuted thus far.

The Court agrees with Plaintiffs. "The alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution."¹¹ "[I]f

⁹ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

¹⁰ Docket 33 at 5.

¹¹ *Virginia v. Amer. Booksellers*, 484 U.S. 383, 392 (1988).

[Plaintiffs'] interpretation of the statute is correct, [they] will have to take significant and costly compliance measures or risk criminal prosecution."¹² While the State argues that it will not, in fact, pursue criminal charges against any of the Plaintiffs, nothing prevents the State from doing so absent an injunction from this Court.

C. Harm to Defendant vs. Harm to Plaintiffs

Plaintiffs argue the only legitimate harm that Defendant could allege is an inability to prosecute persons under the amended act. On the other hand, Plaintiffs are faced with unconstitutional restrictions on their communicative activities with the potential of a criminal charge hanging over them.¹³

The State complains that the amended act is designed to prosecute those predators who use pornography to groom children for sexual abuse, and that without this statute the State would have to wait until a child was actually sexually assaulted before intervening. The State argues this outweighs any chilling effect on the Plaintiffs. However, the State's argument is overstated, given other statutes that are available for prosecution of predators via the internet. Specifically, AS 11.41.452, which has been in place since November of 2005, addresses "online enticement

¹² *Id.*

¹³ Docket 7 at 16.

of a minor." A person commits the crime of online enticement of a minor under this statute if that 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." AS 11.41.455 addresses "unlawful exploitation of a minor" and prohibits inducing or employing a child under 18 years of age to engage in actual or simulated conduct that mirrors the conduct in the statute at issue in this case.

In short, the State has clear alternative options for prosecuting sexual predators.

D. Public Interest.

Plaintiffs argue a preliminary injunction would serve the public interest by upholding the constitutional rights of the public.¹⁴ The State argues that it is not in the public's interest for the State to have to wait to act until a child has already been molested.¹⁵ For the reasons identified in section C, the State's argument is not persuasive. The State has other mechanisms for prosecution of online predators.

¹⁴ Docket 7 at 17.

¹⁵ Docket 33 at 6.

V. CONCLUSION

In light of the foregoing, the Preliminary Injunction requested at Docket 5 is **GRANTED**. Although the Attorney General has argued "the statute was designed and is employed in a way to stop predators from sexually grooming children and should be allowed to be used this way while the complaint is pending,"¹⁶ the State has not provided the Court with a viable alternative that would both protect Plaintiffs during the pendency of this proceeding and allow the State to use the statute as it argues was "intended." Accordingly, the Preliminary Injunction prevents any enforcement of AS 11.61.128 until further Order of this Court, or until the parties enter into a stipulation that would eliminate the need for such an injunction. The oral argument scheduled for November 3, 2011, is **VACATED**.

IT IS SO ORDERED.

ENTERED this 20th day of October, 2010.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

¹⁶ Docket 33 at 5.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AMERICAN BOOKSELLERS
FOUNDATION FOR FREE
EXPRESSION, et al.,

Plaintiffs,

vs.

DANIEL S. SULLIVAN, in his
official capacity as ATTORNEY
GENERAL OF THE STATE OF
ALASKA,

Defendant.

Case No. 3:10-cv-0193-RRB

ORDER OF CLARIFICATION

Before the Court at Docket 48 is Defendant with a Motion for Clarification which is opposed by Plaintiffs at Docket 49.

The Court's Order at Docket 47 does not preclude law enforcement from seeking legitimate search warrants relating to violations of AS 11.41.452 or AS 11.41.455.

However, for the reasons set forth in its Order Granting Preliminary Injunction at Docket 47, AS 11.61.128 appears to be vague and over-broad on its face. Rather than specifically addressing the conduct apparently sought to be criminalized, i.e. the knowing transmittal of photographs of adult or prepubescent genitalia to a minor by one seeking to groom the minor for

exploitation, which would likely be a legitimate prohibition, the statute uses broad language that has been disfavored by many courts in the past. The Court has therefore found that Plaintiffs have shown a strong likelihood of success on the merits, a possibility of irreparable injury, and a balance of hardship favoring Plaintiffs.

Given the Court's previous order, AS 11.61.128 shall not be enforced pending further order of this Court.

IT IS SO ORDERED.

ENTERED this 17th day of November, 2010.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

AMERICAN BOOKSELLERS
FOUNDATION FOR FREE
EXPRESSION, et al.,

Plaintiffs,

vs.

DANIEL S. SULLIVAN, in his
official capacity as ATTORNEY
GENERAL OF THE STATE OF
ALASKA,

Defendant.

Case No. 3:10-cv-0193-RRB

**ORDER REGARDING SECOND
MOTION FOR CLARIFICATION**

On October 20, 2010, at Docket 47, this Court entered a Preliminary Injunction prohibiting enforcement of A.S. § 11.61.128 until further Order of this Court, or until the parties enter into a stipulation that would eliminate the need for such an injunction. On January 5, 2011, at Docket 54, the Department of Law sought clarification of this Court's Order, specifically regarding its ability to defend against an appeal based on "the former A.S. § 11.61.128."

It is unclear what version of the statute the Department of Law is referencing. However, the Court notes that the Preliminary Injunction in this case specifically addresses changes made to the

statute in January 2010, pursuant to Alaska Bill SB 222, sections 9-12. It is these changes to which Plaintiffs have objected in this lawsuit. Accordingly, if individuals were charged under a previous form of the statute, this Preliminary Injunction does not prohibit the Department of Law from defending against any appeals based on a prior version of A.S. § 11.61.128.

ENTERED this 8th day of February, 2011.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT COURT

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March 26, 2011

A Girl's Nude Photo, and Altered Lives

By JAN HOFFMAN

LACEY, Wash. — One day last winter Margarite posed naked before her bathroom mirror, held up her cellphone and took a picture. Then she sent the full-length frontal photo to Isaiah, her new boyfriend.

Both were in eighth grade.

They broke up soon after. A few weeks later, Isaiah forwarded the photo to another eighth-grade girl, once a friend of Margarite's. Around 11 o'clock at night, that girl slapped a text message on it.

"Ho Alert!" she typed. "If you think this girl is a whore, then text this to all your friends." Then she clicked open the long list of contacts on her phone and pressed "send."

In less than 24 hours, the effect was as if Margarite, 14, had sauntered naked down the hallways of the four middle schools in this racially and economically diverse suburb of the state capital, Olympia. Hundreds, possibly thousands, of students had received her photo and forwarded it.

In short order, students would be handcuffed and humiliated, parents mortified and lessons learned at a harsh cost. Only then would the community try to turn the fiasco into an opportunity to educate.

Around the country, law enforcement officials and educators are struggling with how to confront minors who "sext," an imprecise term that refers to sending sexual photos, videos or texts from one cellphone to another.

But adults face a hard truth. For teenagers, who have ready access to technology and are growing up in a culture that celebrates body flaunting, sexting is laughably easy, unremarkable and even compelling: the primary reason teenagers sext is to look cool and sexy to someone they find attractive.

Indeed, the photos can confer cachet.

“Having a naked picture of your significant other on your cellphone is an advertisement that you’re sexually active to a degree that gives you status,” said Rick Peters, a senior deputy prosecuting attorney for Thurston County, which includes Lacey. “It’s an electronic hickey.”

In the fall of 2009, Margarite, a petite, pretty girl with dark hair and a tiny diamond stud in her nose, was living with her father, and her life was becoming troubled. Her relationship with her father’s new wife was tense. Her grades were in a free fall.

Her social life was deteriorating. A good friendship with a girl had soured, abetted by a fight over a boy. This girl would be the one who would later brand Margarite’s photo and forward it.

Margarite’s former friend is tough and strong-willed, determined to stand out as well as fit in, according to those who know her. Her parents, recent immigrants, speak limited English and were not able to supervise her texting.

In the shifting power dynamics of middle school girls, the former friend understood well that she who sneers first sneers best. The flick of a cutting remark, swiftly followed by “Just kidding!” The eye roll. As the animosity between the two girls escalated, Margarite felt shunned by an entire group of girls and was eating lunch by herself. At home she retreated to her bedroom, alone with her cellphone and computer.

Her mother would later speculate that Margarite desperately needed to feel noticed and special. That December, just before the holidays, she took the photo of herself and sent it to Isaiah, a low-key, likable athlete she had recently gotten to know.

After the winter break, Margarite was preparing a fresh start. She would move back in with her mother and transfer to a school in a nearby district.

But one night in late January, a few days before her transfer, Margarite’s cellphone began vibrating around 1 a.m., waking her. She was being bombarded by texts — alerts from worried friends, leers from boys she scarcely knew.

The next morning in her mother’s car, Margarite lowered her head, hiding her reddened eyes, her terrible secret.

“Are you O.K.?” asked her mother, Antoinette, who like other parents and children who agreed to be interviewed asked to be identified by only first or middle names to protect their privacy.

“Yeah.”

“Are you sure?”

“Yeah.”

But her mother knew otherwise. Earlier that morning a parent had phoned Kirsten Rae, the principal of Margarite’s school, Chinook Middle, complaining about a naked photo sent to her child. The child knew at least a dozen students who had received it.

The principal then called Antoinette. The police wanted to question Margarite. On the drive to school, the girl sobbed uncontrollably, feeling betrayed and degraded.

The school was buzzing. “When I opened my phone I was scared,” recalled an eighth grader. “I knew who the girl in the picture was. It’s hard to unsee something.”

Meanwhile, another middle school principal in Lacey had begun investigating a sexting complaint that morning. Ms. Rae realized that Margarite’s photo had gone viral.

Students were summoned to Ms. Rae’s office and questioned by the police. Their cellphones were confiscated.

Ms. Rae went into crisis management. Parents were calling, wanting to know whether their children would be arrested and how she would contain the spread. She drafted a letter for school families. Administrators planned a districtwide voicemail to the families of middle school students. Chinook teachers would discuss the issue in homerooms the next day.

By late morning, Isaiah and Margarite’s former friend had been identified and pulled out of class.

Then Isaiah’s mother, Jennifer, got the call. “Naked?” she shouted. “How naked?”

When Jennifer, who works for an accountant, arrived at the school, she ran to Isaiah, a tall, slender boy with the startled air of an unfolding foal. He was weeping.

“I was in shock that I was in trouble,” he recalled during a recent interview. “I didn’t go out of my way to forward it, but I felt responsible. It was bad. Really bad.”

He told the police that the other girl had pressured him into sending her Margarite’s photo, vowing she just wanted to look at it. He said he had not known that their friendship had disintegrated.

How had the sexting from Margarite begun? “We were about to date, and you’ll be like, ‘Oh, blah blah, I really like you, can you send me a picture?’ ” Isaiah recalled.

“I don’t remember if I asked her first or if she asked me. Well, I think I did send her a picture. Yeah, I’m pretty sure. Mine was, like, no shirt on.

“It is very common,” he said. “I’d seen pictures on other boys’ cellphones.”

Mr. Peters, the county prosecutor, had been hearing that sexting was becoming a problem in the community. In a recent interview, he said that if the case had just involved photos sent between Isaiah and Margarite, he would have called the parents but not pressed charges.

“The idea of forwarding that picture was bad enough,” he said. “But the text elevated it to something far more serious. It was mean-girl drama, an all-out attempt to destroy someone without thinking about the implications.”

He decided against charging Margarite. But he did charge three students with dissemination of child pornography, a Class C felony, because they had set off the viral outbreak.

After school had been let out that day in late January, the police read Isaiah his rights, cuffed his hands behind his back and led him and Margarite’s former friend out of the building. The eighth graders would have to spend the night in the county juvenile detention center.

The two of them and a 13-year-old girl who had helped forward the photo were arraigned before a judge the next day. (Margarite’s former friend declined to be interviewed, as did the girl who helped her.)

Officials took away Isaiah’s clothes and shoes. He changed into regulation white briefs and a blue jumpsuit. He was miserable and terrified.

“My socks got wet in the shower,” Isaiah said.

WHERE TO DRAW THE LINE?

Sexting is not illegal.

Two adults sending each other naughty pictures, dirty language? Just garden-variety First Amendment-protected speech.

A November 2009 AARP article, “Sexting Not Just For Kids,” reported approvingly on the practice for older people, too. In women’s magazines and college students’ blogs, coy guides include pragmatic tips like making sure to keep your face out of the photo.

But when that sexually explicit image includes a participant — subject, photographer, distributor or recipient — who is under 18, child pornography laws may apply.

“I didn’t know it was against the law,” Isaiah said.

That is because culturally, such a fine distinction eludes most teenagers. Their world is steeped in highly sexualized messages. Extreme pornography is easily available on the Internet. Hit songs and music videos promote stripping and sexting.

“Take a dirty picture for me,” urge the pop stars Taio Cruz and Kesha in their recent duet, “Dirty Picture.” “Send the dirty picture to me. Snap.”

In a 2010 Super Bowl advertisement for Motorola, the actress Megan Fox takes a cellphone picture of herself in a bubble bath. “I wonder what would happen if I were to send this out?” she muses. The commercial continues with goggle-eyed men gaping at the forwarded photo — normalizing and encouraging such messages.

“You can’t expect teenagers not to do something they see happening all around them,” said Susannah Stern, an associate professor at the University of San Diego who writes about adolescence and technology.

“They’re practicing to be a part of adult culture,” Dr. Stern said. “And in 2011, that is a culture of sexualization and of putting yourself out there to validate who you are and that you matter.”

The prevalence of under-age sexting is unclear and can often depend on the culture of a particular school or circle of students. An Internet poll conducted for The Associated Press and MTV by Knowledge Networks in September 2009 indicated that 24 percent of 14- to 17-year-olds had been involved in “some type of naked sexting,” either by cellphone or on the Internet. A December 2009 telephone poll from the Pew Research Center’s Internet and American Life Project found that 5 percent of 14- to 17-year-olds had sent naked or nearly naked photos or video by cellphone, and that 18 percent had received them. Boys and girls send photos in roughly the same proportion, the Pew survey found.

But a double standard holds. While a boy caught sending a picture of himself may be regarded as a fool or even a boastful stud, girls, regardless of their bravado, are castigated as sluts.

Photos of girls tend to go viral more often, because boys and girls will circulate girls’ photos in part to shame them, explained Danah Boyd, a senior social media researcher at Microsoft and a fellow at Harvard University’s Berkman Center for Internet and Society.

In contrast, when a boy sends a revealing photo of himself to a girl, Dr. Boyd noted, she usually does not circulate it. And, Dr. Boyd added, boys do not tend to circulate photos of

other boys: “A straight-identified boy will never admit to having naked photos of a boy on his phone.”

Policy makers are beginning to recognize that a uniform response to these cases does not fit.

“I hate the word ‘sexting,’ ” said Andrew J. Harris, an assistant professor of criminology at the University of Massachusetts in Lowell, who is leading a study of the practice among adolescents to help develop policies to address it. “We’re talking about a lot of different behaviors and a lot of different motivations.”

There is the high-tech flirt. The troubled attention-seeker. A couple’s consensual exchanges. Drunken teenagers horsing around. Pressure from a boyfriend. Malicious distribution. A teenager who barrages another with unsolicited lewd photos or texts. Or, as in a 2009 Wisconsin case of “sextortion,” a boy, pretending to be a girl online, who solicited explicit pictures of boys, which he then used as blackmail to compel those boys to have sex with him.

The content of the photos can vary widely too, from suggestive to sadistic.

Adults in positions of authority have been debating how to respond. Many school districts have banned sexting and now authorize principals to search cellphones. According to the National Conference of State Legislatures, at least 26 states have tried to pass some sort of sexting legislation since 2009.

“The majority of states are trying to put something in place to educate kids before and after the event,” said Justin T. Fitzsimmons, a senior attorney at the National District Attorneys Association who specializes in Internet crimes against children. “We have to protect kids from themselves sometimes. We’re on the cusp of teaching them how to manage their electronic reputations.”

But if the Lacey students were convicted of dissemination of child pornography, they could be sentenced to up to 36 weeks in a juvenile detention center. They would be registered as sex offenders. Because they were under 15, however, after two years they could petition a court to remove their names from the registry, if they could prove they no longer posed a threat to the public.

PENALTIES AND PREVENTION

Rick Peters, the prosecuting attorney, never intended for the Chinook Middle School students to receive draconian sentences. But he wanted to send a scared-straight message to them, as well as to the community.

Yet when the local news media storm cascaded, the outcry was not about the severe penalties for a felony sexting conviction. It was about why Mr. Peters had not also arrested Margarite.

“She’s a victim,” Mr. Peters said. “She made an ill-advised decision to share that picture with her boyfriend. As far as she knew, that was as far as it would go.

“What good would come from prosecuting her? What lesson could we teach her that she hasn’t already learned now 1,000 times over?”

Eventually a deal was brokered for the three teenagers who were charged. The offense would be amended from the child pornography felony to a gross misdemeanor of telephone harassment. Isaiah and the two girls who had initially forwarded Margarite’s photo would be eligible for a community service program that would keep them out of court, and the case could be dismissed.

Those three students would have to create public service material about the hazards of sexting, attend a session with Margarite to talk about what happened and otherwise have no contact with her.

After Margarite and her mother approved the conditions, Mr. Peters signed off, pleased.

Throughout last spring, on Monday afternoons after school, Eric Fredericks, Isaiah’s math teacher, met with the three students to help them develop their material.

Margarite’s former friend made a PowerPoint presentation, with slides copied from the Internet.

The younger girl made a poster dense with warnings about sexting’s consequences. She concluded: “I am a 13 year old teen that made a bad choice and got my life almost totaled forever. I regret what I did more than anything but I cant take it back.”

Isaiah created a two-page brochure, citing studies from the Internet, accompanied by a tumble of adolescent feeling:

“Not only does it hurt the people that are involved in the pictures you send, it can hurt your family and friends around you, the way they see you, the way you see yourself. The ways they feel about you. Them crying because of your mistakes.”

Ms. Rae has yet to distribute the material. Chinook, with 630 seventh and eighth graders, still has students who know those involved in last year’s episode. She wants to give Isaiah, Margarite and the others more time to distance themselves.

While the case was on its way to resolution, prosecutors and district educators decided to put its aftershock to good use.

“After the story broke, parents called us because they didn’t know about the law that could send kids to jail for a bad choice,” said Courtney Schrieve, a spokeswoman for the North Thurston Public Schools. “Kids didn’t know about it either. So we decided to turn this into an opportunity to educate teachers, parents and students.”

In October, Ms. Rae, the police, prosecutors and Mr. Fitzsimmons of the National District Attorneys Association held separate forums about sexting for Lacey’s teachers, parents and student delegations from the four middle schools.

The students then returned to their homerooms to teach classmates what they had learned.

Elizabeth Colón taught a session with Jon Reid. Both are eighth graders at Chinook.

“Most of the questions were about penalties,” she said. “Kids wanted to know if they would get into trouble just for receiving the picture.”

Jon spoke about long-term consequences. “I said that people may look at you differently,” he said. “They’ll know what kind of person you were, even though you changed.”

One spring evening, the three students who had been disciplined met for a mediation session with Margarite and two facilitators from Community Youth Services. The searing, painful session, which included the students’ parents and Mr. Fredericks, lasted several hours. Everyone was asked to talk about his or her role in the episode.

Mr. Fredericks listed all the people who had spent hours trying to clean the mess the students had created in a matter of seconds: police officers, lawyers, teachers, principals, hundreds of families.

Then it was Isaiah’s turn. He looked Margarite in the eye. “He poured his heart out,” Mr. Fredericks recalled. Isaiah said that he was ashamed of himself, but that most of all, he was sorry he had broken Margarite’s trust. Then he asked for her understanding and forgiveness. “He cried,” Mr. Fredericks said. “I choked up.”

The former friend who had forwarded the photo, creating the uproar, was accompanied by her mortified father, an older sister and a translator. She came across as terse and somewhat perfunctory, recalled several people who were there.

One of the last to speak was Margarite’s father, Dan, an industrial engineer.

“I could say it was everyone else’s fault,” Dan said. “But I had a piece of it, too. I learned a big lesson about my lack of involvement in her use of the phone and texting. I trusted her too much.”

He had not expected the students to be punished severely, he continued. But they needed to understand that their impulsive actions had ramifications.

“When you walk out of here tonight, it’s over, you’re done with it,” he said, looking around the room.

“Keep in mind that the only person this will have a lasting impact on,” he concluded, is his daughter.

The photo most certainly still exists on cellphones, and perhaps on social networking sites, readily retrievable.

“She will have to live with this for the rest of her life.”

THE VICTIM

When the police were finished questioning Margarite at Chinook in January 2010, her mother, a property manager, laid down the law. For the time being, no cellphone. No Internet. No TV.

Margarite, used to her father’s indulgence and unfettered access to technology, was furious.

But the punishment insulated Margarite from the wave of reaction that surged online, in local papers and television reports, and in texted comments by young teenagers throughout town. Although the police and the schools urged parents to delete the image from their children’s phones, Antoinette heard that it had spread to a distant high school within a few days.

The repercussions were inescapable. After a friend took Margarite skating to cheer her up, he was viciously attacked on his MySpace page. Kids jeered, telling him to change schools and go with “the whore.”

The school to which Margarite had transferred when she moved back in with her mother was about 15 miles away. She badly wanted to put the experience behind her. But within weeks she was recognized. A boy at the new school had the picture on his cellphone. The girls began to taunt her: Whore. Slut.

Margarite felt depressed. Often she begged to stay home from school.

In January, almost a year to the day when her photo went viral, she decided to transfer back to her old district, where she figured she at least had some friends.

The episode stays with her still. One recent evening in her mother's condominium, Margarite chatted comfortably about her classes, a smile flashing now and then. But when the moment came to recount the events of the winter before, she slipped into her bedroom, shutting the door.

As Antoinette spoke about what had happened, the volume on the television in Margarite's room grew louder.

Finally, she emerged. The smell of pizza for supper was irresistible.

What is it like to be at school with her former friend?

"Before I switched back, I called her," Margarite said. "I wanted to make sure the drama was squashed between us. She said, were we even legally allowed to talk? And I said we should talk, because we'd have math together. She apologized again."

What advice would Margarite give anyone thinking of sending such a photo?

She blushed and looked away.

"I guess if they are about to send a picture," she replied, laughing nervously, "and they have a feeling, like, they're not sure they should, then don't do it at all. I mean, what are you thinking? It's freaking stupid!"

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March 26, 2011

States Struggle With Minors' Sexting

By JAN HOFFMAN

In the last two years, legislators have been weighing graduated responses to sexting between minors. Some legal scholars refer to the images as "self-produced child pornography."

Some states have amended their statutes on child pornography, obscenity or Internet crimes. Many allow juvenile offenders to be charged with a misdemeanor or a lesser offense, so they can qualify for diversion programs and have their records expunged.

A few states have tried to define a sexting offense.

The laws have had a mixed response. While many experts, educators and parents applaud the lessening of sanctions for what is often seen as thoughtless adolescent risk-taking, others deplore the establishment of a new crime that could not only intrude on First Amendment rights but could also sweep more children into the court system.

As Susan Hanley Duncan notes in a recent article in the *Oregon Law Review* about such legislation, the states disagree philosophically about the nature of the offense, which participants should be punished and which factors may aggravate or mitigate the criminal charge.

Provisions in a new Nebraska law punish those who forward an image but not its creator. A proposed law in Ohio would charge minors who produced the image as well.

A proposal in North Dakota would increase sanctions for someone who circulated a photo with the intention to humiliate the minor. Conversely, a few states, like Texas, propose to grant immunity to minors who destroy the image or report it to the authorities within 48 hours.

Not only do states disagree about who should be prosecuted, they also differ over how to define the content to be criminalized.

Some states propose new misdemeanor crimes for minors who exchange photos that are "lewd and lascivious." Others would create a misdemeanor for minors who send a minor's "nude" images — a category that might not survive First Amendment challenges.

Pennsylvania is proposing relatively mild sanctions for minors who transmit images of "sexually explicit conduct," but the depiction of activities like penetration, sadism and masturbation could bring more severe penalties.

New Jersey is considering a bill that would send first-time juvenile offenders to educational diversion programs. Other proposed bills would require schools to provide students and parents with information on sexting and require stores that sell cellphones to give customers pamphlets on it.

Some district attorneys have made such cases a priority but, using prosecutorial discretion, have designed specialized diversion programs.

Mathias H. Heck Jr., prosecuting attorney for Montgomery County, Ohio, requires teenagers charged with sexting to turn in their cellphones, perform community service and receive education about age-appropriate sexual behavior and the legal and social consequences of sexting. Since the six-month program was started about two years ago, about 60 teenagers have attended.

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SENATE CS FOR CS FOR HOUSE BILL NO. 127(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE 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, sexual assault in the third degree, sexual
2 assault in the fourth degree, unlawful exploitation of a minor, distribution of child
3 pornography, online enticement of a minor, endangering the welfare of a child, sending
4 an explicit image of a minor, harassment, and misconduct involving confidential
5 information; making the installation, enabling, or use of keystroke loggers or other
6 devices criminal use of a computer; relating to probation; relating to the subpoena
7 power of the attorney general in cases involving use of an Internet service account;
8 relating to an appearance before a judicial officer after arrest; relating to conditions of
9 probation in criminal cases involving sex offenses; relating to penalties for operating a
10 vehicle without possessing proof of motor vehicle liability insurance or a driver's license;
11 relating to penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of
12 Criminal Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for

1 **an effective date."**

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

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

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

8 (A) following or appearing within the sight of that person;

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

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

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

14 (E) contacting that person by telephone;

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

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

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

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

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

25 (5) "device" includes software.

26 * **Sec. 3.** AS 11.41.425(a) is amended to read:

27 (a) An offender commits the crime of sexual assault in the third degree if the
28 offender

29 (1) engages in sexual contact with a person who the offender knows is

30 (A) mentally incapable;

1 (B) incapacitated; or

2 (C) unaware that a sexual act is being committed;

3 (2) while employed in a state correctional facility or other placement
4 designated by the commissioner of corrections for the custody and care of prisoners,
5 engages in sexual penetration with a person who the offender knows is committed to
6 the custody of the Department of Corrections to serve a term of imprisonment or
7 period of temporary commitment; [OR]

8 (3) engages in sexual penetration with a person 18 or 19 years of age
9 who the offender knows is committed to the custody of the Department of Health and
10 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
11 the person; or

12 (4) while employed in the state by a law enforcement agency as a
13 peace officer, or while acting as a peace officer in the state, engages in sexual
14 penetration with a person with reckless disregard that the person is in the
15 custody or the apparent custody of the offender, or is committed to the custody of
16 a law enforcement agency.

17 * Sec. 4. AS 11.41.425 is amended by adding a new subsection to read:

18 (c) In this section, "peace officer" has the meaning given in AS 01.10.060.

19 * Sec. 5. AS 11.41.427(a) is amended to read:

20 (a) An offender commits the crime of sexual assault in the fourth degree if

21 (1) while employed in a state correctional facility or other placement
22 designated by the commissioner of corrections for the custody and care of prisoners,
23 the offender engages in sexual contact with a person who the offender knows is
24 committed to the custody of the Department of Corrections to serve a term of
25 imprisonment or period of temporary commitment; [OR]

26 (2) the offender engages in sexual contact with a person 18 or 19 years
27 of age who the offender knows is committed to the custody of the Department of
28 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
29 guardian of the person; or

30 (3) while employed in the state by a law enforcement agency as a
31 peace officer, or while acting as a peace officer in the state, engages in sexual

1 contact with a person with reckless disregard that the person in the custody or
2 the apparent custody of the offender, or is committed to the custody of a law
3 enforcement agency.

4 * **Sec. 6.** AS 11.41.427 is amended by adding a new subsection to read:

5 (c) In this section, "peace officer" has the meaning given in AS 01.10.060.

6 * **Sec. 7.** AS 11.41.452(d) is amended to read:

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

9 * **Sec. 8.** AS 11.41.452(e) is amended to read:

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

13 * **Sec. 9.** AS 11.46.740(a) is amended to read:

14 (a) A person commits the offense of criminal use of a computer if, having no
15 right to do so or any reasonable ground to believe the person has such a right, the
16 person knowingly

17 **(1)** accesses, causes to be accessed, or exceeds the person's authorized
18 access to a computer, computer system, computer program, computer network, or any
19 part of a computer system or network, and, as a result of or in the course of that
20 access,

21 **(A)** [(1)] obtains information concerning a person;

22 **(B)** [(2)] introduces false information into a computer,
23 computer system, computer program, or computer network with the intent to
24 damage or enhance the data record or the financial reputation of a person;

25 **(C)** [(3)] introduces false information into a computer,
26 computer system, computer program, or computer network and, with criminal
27 negligence, damages or enhances the data record or the financial reputation of
28 a person;

29 **(D)** [(4)] obtains proprietary information of another person;

30 **(E)** [(5)] obtains information that is only available to the public
31 for a fee;

1 (F) [(6)] introduces instructions, a computer program, or other
 2 information that tampers with, disrupts, disables, or destroys a computer,
 3 computer system, computer program, computer network, or any part of a
 4 computer system or network; or

5 (G) [(7)] encrypts or decrypts data; or

6 (2) installs, enables, or uses a keystroke logger or other device or
 7 program that has the ability to record another person's keystrokes or entries on a
 8 computer; or

9 (3) uses a keystroke logger or other device or program to intercept
 10 or record another person's keystrokes or entries on a computer when those
 11 entries are transmitted wirelessly or by other non-wired means.

12 * **Sec. 10.** AS 11.51.100(a) is amended to read:

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

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

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

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

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

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

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

1 * **Sec. 11.** AS 11.61 is amended by adding a new section to read:

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

7 (b) In this section,

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

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

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

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

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

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

17 * **Sec. 12.** AS 11.61.120(a) is amended to read:

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

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

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

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

25 (4) makes an anonymous or obscene telephone call, an obscene
26 electronic communication, or a telephone call or electronic communication that
27 threatens physical injury or sexual contact;

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

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

1 * **Sec. 13.** AS 11.76 is amended by adding new sections to read:

2 **Sec. 11.76.113. Misconduct involving confidential information in the first**
3 **degree.** (a) A person commits the crime of misconduct involving confidential
4 information in the first degree if the person violates AS 11.76.115 and obtains the
5 confidential information with the intent to

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

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

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

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

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

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

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

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

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

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

25 * **Sec. 14.** AS 12.05 is amended by adding a new section to read:

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

1 * **Sec. 15.** AS 12.10.010(a) is amended to read:

2 (a) Prosecution for the following offenses may be commenced at any time:

3 (1) murder;

4 (2) attempt, solicitation, or conspiracy to commit murder or hindering
5 the prosecution of murder;

6 (3) felony sexual abuse of a minor;

7 (4) sexual assault that is an unclassified, class A, or class B felony or a
8 violation of AS 11.41.425(a)(2) - (4) [AS 11.41.425(a)(2) OR (3)];

9 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
10 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
11 who, at the time of the offense, was under 18 years of age;

12 (6) kidnapping.

13 * **Sec. 16.** AS 12.25.150(a) is amended to read:

14 (a) A person arrested shall be taken before a judge or magistrate without
15 unnecessary delay, and in any event within 48 [24] hours after arrest, including
16 Sundays and holidays. This requirement applies to municipal police officers to the
17 same extent as it does to state troopers.

18 * **Sec. 17.** AS 12.55.100(e) is amended to read:

19 (e) In addition to other conditions imposed on the defendant, while on
20 probation and as a condition of probation

21 (1) for a sex offense, as described in AS 12.63.100, the defendant

22 (A) shall be required to submit to regular periodic polygraph
23 examinations;

24 (B) may be required to provide each electronic mail address,
25 instant messaging address, and other Internet communication identifier that the
26 defendant uses to the defendant's probation officer; the probation officer shall
27 forward those addresses and identifiers to the Alaska state troopers and to the
28 local law enforcement agency;

29 (2) if the defendant was convicted of a violation of AS 11.41.434 -
30 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the
31 defendant may be required to refrain from

- 1 (A) using or creating an Internet site;
2 (B) communicating with children under 16 years of age; [OR]
3 (C) possessing or using a computer; or
4 **(D) residing within 500 feet of school grounds; in this**
5 **subparagraph, "school grounds" has the meaning given in AS 11.71.900.**

6 * **Sec. 18.** AS 12.55.125(i) is amended to read:

7 (i) A defendant convicted of

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

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

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

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

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

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

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

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

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

31 (2) **unlawful exploitation of a minor under AS 11.41.455(c)(2),**

1 **online enticement of a minor under AS 11.41.452(e), or** attempt, conspiracy, or
2 solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the
3 first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2)
4 may be sentenced to a definite term of imprisonment of not more than 99 years and
5 shall be sentenced to a definite term within the following presumptive ranges, subject
6 to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

17 (D) if the offense is a second felony conviction and the
18 defendant has a prior conviction for a sexual felony, 30 to 40 years;

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

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

25 (3) sexual assault in the second degree, sexual abuse of a minor in the
26 second degree, **online enticement of a minor under AS 11.41.452(d),** unlawful
27 exploitation of a minor **under AS 11.41.455(c)(1),** or distribution of child
28 pornography **under AS 11.61.125(e)(2)** may be sentenced to a definite term of
29 imprisonment of not more than 99 years and shall be sentenced to a definite term
30 within the following presumptive ranges, subject to adjustment as provided in
31 AS 12.55.155 - 12.55.175:

- 1 (A) if the offense is a first felony conviction, five to 15 years;
2 (B) if the offense is a second felony conviction and does not
3 involve circumstances described in (C) of this paragraph, 10 to 25 years;
4 (C) if the offense is a second felony conviction and the
5 defendant has a prior conviction for a sexual felony, 15 to 30 years;
6 (D) if the offense is a third felony conviction and does not
7 involve circumstances described in (E) of this paragraph, 20 to 35 years;
8 (E) if the offense is a third felony conviction and the defendant
9 has two prior convictions for sexual felonies, 99 years;
10 (4) sexual assault in the third degree, incest, indecent exposure in the
11 first degree, possession of child pornography, distribution of child pornography
12 under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual
13 assault in the second degree, sexual abuse of a minor in the second degree, unlawful
14 exploitation of a minor, or distribution of child pornography, may be sentenced to a
15 definite term of imprisonment of not more than 99 years and shall be sentenced to a
16 definite term within the following presumptive ranges, subject to adjustment as
17 provided in AS 12.55.155 - 12.55.175:
18 (A) if the offense is a first felony conviction, two to 12 years;
19 (B) if the offense is a second felony conviction and does not
20 involve circumstances described in (C) of this paragraph, eight to 15 years;
21 (C) if the offense is a second felony conviction and the
22 defendant has a prior conviction for a sexual felony, 12 to 20 years;
23 (D) if the offense is a third felony conviction and does not
24 involve circumstances described in (E) of this paragraph, 15 to 25 years;
25 (E) if the offense is a third felony conviction and the defendant
26 has two prior convictions for sexual felonies, 99 years.

27 * **Sec. 19.** AS 12.70.130 is amended to read:

28 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be
29 lawfully made by a peace officer or a private person without a warrant upon
30 reasonable information that the accused stands charged in the courts of another state
31 with a crime punishable by death or imprisonment for a term exceeding one year, but

1 when arrested the accused must be taken before a judge or magistrate without
2 unnecessary delay and, in any event, within 48 [24] hours after arrest, including
3 Sundays and holidays, and complaint shall be made against the accused under oath
4 setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the
5 accused shall be heard as if the accused had been arrested on a warrant.

6 * **Sec. 20.** AS 28.15.131 is amended by adding a new subsection to read:

7 (b) Violation of this section is an infraction.

8 * **Sec. 21.** AS 28.22.019(c) is amended to read:

9 (c) A person convicted under this section is guilty of an infraction [A CLASS
10 B MISDEMEANOR] and shall be sentenced to pay a mandatory fine of \$500
11 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
12 AT LEAST \$500 MUST BE IMPOSED].

13 * **Sec. 22.** AS 33.05.020(a) is repealed and reenacted to read:

14 (a) The commissioner shall appoint and make available to the superior court,
15 when ordered under AS 12.55.015(a), a qualified probation officer for the active
16 supervision of a person placed on probation for a felony offense. The commissioner
17 may provide active supervision to a person placed on probation for a misdemeanor
18 offense.

19 * **Sec. 23.** AS 41.23.220 is amended to read:

20 **Sec. 41.23.220. Penalty.** (a) Except for conduct that is a violation of
21 AS 11.46.420, a [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
22 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
23 in AS 11.81.900.

24 (b) Except for conduct that is a violation of AS 11.46.420, the [THE]
25 supreme court shall establish by order or rule a schedule of bail amounts for violations
26 under (a) of this section that allow the disposition of a citation without a court
27 appearance.

28 * **Sec. 24.** AS 44.23.080 is repealed and reenacted to read:

29 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
30 **of an Internet service account.** (a) If there is reasonable cause to believe that an
31 Internet service account has been used in connection with a violation of AS 11.41.452,

1 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other
2 information about the account owner will assist in obtaining evidence that is relevant
3 to the offense, a law enforcement officer may apply to the attorney general for an
4 administrative subpoena to obtain the business records of the Internet service provider
5 located inside or outside of the state.

6 (b) If an application meets the requirements of (a) of this section, the attorney
7 general may issue an administrative subpoena to the Internet service provider
8 requiring the production of the following records:

9 (1) the name and other identifying information of the account holder;
10 (2) the address and physical location associated with the account;
11 (3) a description of the length of service, service start date, and types
12 of service associated with the account.

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

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

21 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
22 of this section, the superior court may, upon application of the attorney general, issue
23 an order requiring the Internet service provider to appear at the office of the attorney
24 general with the information described in the subpoena.

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

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

31 (h) A person may not bring a civil action against an Internet service provider,

1 its officers, employees, agents, or other person for complying with an administrative
2 subpoena issued under (b) of this section or a court order issued under (e) of this
3 section.

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

6 DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of
7 Criminal Procedure, is amended to read:

8 (1) Except when the person arrested is issued a citation for a
9 misdemeanor or a violation and immediately thereafter released, the arrested person
10 shall be taken before the nearest available judge or magistrate without unnecessary
11 delay and in any event within 48 hours after arrest, including Sundays and
12 holidays. This appearance may be accomplished by the use of telephonic or television
13 equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY DELAY
14 WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A PERIOD
15 NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST, INCLUDING
16 SUNDAYS AND HOLIDAYS.]

17 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
20 in sec. 23 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
21 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
22 forfeiture of bail amounts.

23 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 REPORT TO THE LEGISLATURE. On or before April 1, 2012, the Department of
26 Law shall submit a report to the legislature concerning the total number of arraignments that
27 were heard within 24 hours after a person's arrest and the total number of arraignments that
28 were heard after 24 hours, but within 48 hours after a person's arrest. The report shall include
29 this information for cases prosecuted by the State of Alaska. The Department of Corrections
30 and the Alaska Court System shall cooperate with the Department of Law in preparing this
31 report.

1 * **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. (a) Sections 16, 19, and 25 of this Act apply to arrests for offenses
4 committed before, on, or after the effective date of this Act.

5 (b) Sections 1 - 15, 18, 20, 21, 23, and 26 of this Act apply to offenses committed on
6 or after the effective date of this Act.

7 (c) Sections 22 and 24 of this Act apply to offenses occurring before, on, or after the
8 effective date of this Act.

9 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
12 of it to any person or circumstance, is held invalid, the remainder of this Act and the
13 application to other persons or circumstances is not affected.

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

27-LS0822\A

Gardner

4/12/11

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 127, relating to the crimes of stalking, online**
3 **enticement of a minor, unlawful exploitation of a minor, endangering the welfare of a**
4 **child, sending an explicit image of a minor, harassment, and misconduct involving**
5 **confidential information; relating to probation; relating to the subpoena power of the**
6 **attorney general in cases involving use of an Internet service account; relating to an**
7 **appearance before a judicial officer after arrest; relating to penalties for operating a**
8 **vehicle without possessing proof of motor vehicle liability insurance or a driver's license;**
9 **relating to penalties for certain arson offenses; and amending Rule 5(a)(1), Alaska Rules**
10 **of Criminal Procedure, and Rule 43.10, Alaska Rules of Administration.**

11 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
13 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding

1 changes to the title of a bill, are suspended in consideration of House Bill No. 127, relating to
2 the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor,
3 endangering the welfare of a child, sending an explicit image of a minor, harassment, and
4 misconduct 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; relating to
6 an appearance before a judicial officer after arrest; relating to penalties for operating a vehicle
7 without possessing proof of motor vehicle liability insurance or a driver's license; relating to
8 penalties for certain arson offenses; and amending Rule 5(a)(1), Alaska Rules of Criminal
9 Procedure, and Rule 43.10, Alaska Rules of Administration.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

Explanation of Changes SCS for CS for HB 127(JUD) Omnibus Crime Bill:

1. Deleted section 3 in version "I" which provided an increased penalty for enticement of a minor, first offense. The section had increased the penalty from a C to B felony, so this would keep a first offense a C felony.
2. Deleted sections 5 and 19 pertaining to unlawful exploitation of a minor - this provision needs to be reworked and the committee will commit to doing that over the interim. There were conforming amendments in sentencing sections to return to the current penalties..
3. Added language in Sections 3 through 6 to create penalties for police officers engaging in sex with a person in their custody, following those already in law for correctional officers. There are also conforming amendments in the sentencing section of the bill.
4. In section 21, the language providing for an attorney general's designee has been deleted (all other language remains the same as in version "I").
5. In section 24, the Department of Law is required to report on the number of arraignments heard within 24 hours and the total number after 24 hours but within 48 hours of a person's arrest. The report is due April 1, 2012.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

April 12, 2011

TO: Leg. Legal

From: Cindy Smith

RE: SCS for CS for HB 127 (FIN)

Please prepare a SCS for CS for SB 127(JUD) with the following changes:

1. Delete Section 3, with any necessary conforming amendments throughout the bill.
(online enforcement 1st offense stays class C)
2. Delete sections 5, with any conforming amendments through the bill (note - section 19 is deleted as well). *(unlawful exploitation - summer rewrite)*
3. In section 28, delete the phrase "or the attorney general's designee" where it occurs and delete "i".
new section "21"
4. Add language from amendment GS1840\A.1. (written to SB72, attached), with the following language change "that the person is in the custody or apparent custody of the offender" in each place that the provision is added. [Call me about this]. *new section 3-6*
5. Add a new section in uncodified law that requires that the Department of Law make a report to the Legislature by April 1, 2012 as to the number of bail cases that were heard within 24 hours and the number that exceeded 24 hours under the new 48-hour bail provisions.
sec 24
6. Please look at the provisions in HB23, attached, and see if they comport with and can be added into the provisions of HB127 at Section 9. If so, please do that. If not, please give me a call.
(amendment)

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

April 12, 2011

TO: Leg. Legal

From: Cindy Smith

RE: SCS for CS for HB 127 (FIN)

Please prepare a SCS for CS for SB 127(JUD) with the following changes:

1. Delete Section 3, with any necessary conforming amendments throughout the bill.
2. Delete sections 5, with any conforming amendments through the bill (note - section 19 is deleted as well).
3. In section 28, delete the phrase "or the attorney general's designee" where it occurs and delete "i".
4. Add language from amendment GS1840\A.1. (written to SB72, attached), with the following language change "that the person is in the custody or apparent custody of the offender" in each place that the provision is added. [Call me about this].
5. Add a new section in uncodified law that requires that the Department of Law make a report to the Legislature by April 1, 2012 as to the number of bail cases that were heard within 24 hours and the number that exceeded 24 hours under the new 48-hour bail provisions.
6. Please look at the provisions in HB23, attached, and see if they comport with and can be added into the provisions of HB127 at Section 9. If so, please do that. If not, please give me a call.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 72

1 Page 1, line 1, following "stalking,":

2 Insert "sexual assault in the third degree, sexual assault in the fourth degree,"

3

4 Page 2, following line 16:

5 Insert new bill sections to read:

6 "* Sec. 3. AS 11.41.425(a) is amended to read:

7 (a) An offender commits the crime of sexual assault in the third degree if the
8 offender

9 (1) engages in sexual contact with a person who the offender knows is

10 (A) mentally incapable;

11 (B) incapacitated; or

12 (C) unaware that a sexual act is being committed;

13 (2) while employed in a state correctional facility or other placement
14 designated by the commissioner of corrections for the custody and care of prisoners,
15 engages in sexual penetration with a person who the offender knows is committed to
16 the custody of the Department of Corrections to serve a term of imprisonment or
17 period of temporary commitment; [OR]

18 (3) engages in sexual penetration with a person 18 or 19 years of age
19 who the offender knows is committed to the custody of the Department of Health and
20 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
21 the person; **or**

22 **(4) while employed in the state by a law enforcement agency as a**
23 **peace officer, or while acting as a peace officer in the state, engages in sexual**

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penetration with a person with reckless disregard that the person is committed to
the custody of the offender, or is ^{or the apparent custody} committed to the custody of a law enforcement
agency.

* Sec. 4. AS 11.41.425 is amended by adding a new subsection to read:

(c) In this section, "peace officer" has the meaning given in AS 01.10.060.

* Sec. 5. AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; [OR]

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; or

(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual contact with a person with reckless disregard that the person is committed to the custody of the offender, or is committed to the custody of a law enforcement agency.

* Sec. 6. AS 11.41.427 is amended by adding a new subsection to read:

(c) In this section, "peace officer" has the meaning given in AS 01.10.060."

Renumber the following bill sections accordingly.

Page 6, following line 12:

Insert a new bill section to read:

** Sec. 16. AS 12.10.010(a) is amended to read:

(a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

1 (2) attempt, solicitation, or conspiracy to commit murder or hindering
2 the prosecution of murder;

3 (3) felony sexual abuse of a minor;

4 (4) sexual assault that is an unclassified, class A, or class B felony or a
5 violation of AS 11.41.425(a)(2) - (4) [AS 11.41.425(a)(2) OR (3)];

6 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
7 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
8 who, at the time of the offense, was under 18 years of age;

9 (6) kidnapping."

10
11 Renumber the following bill sections accordingly.

12
13 Page 9, line 9:

14 Delete "Sections 1 - 12"

15 Insert "Sections 1 - 17"

16
17 Page 9, line 11:

18 Delete "Section 13"

19 Insert "Section 18"

CS FOR HOUSE BILL NO. 23()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PETERSEN AND HOLMES, Gruenberg

A BILL
FOR AN ACT ENTITLED

1 **"An Act making the installation, enabling, or use of keystroke loggers or other devices**
2 **criminal use of a computer."**

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

4 *** Section 1.** AS 11.46.740(a) is amended to read:

5 (a) A person commits the offense of criminal use of a computer if, having no
6 right to do so or any reasonable ground to believe the person has such a right, the
7 person knowingly

8 **(1)** accesses, causes to be accessed, or exceeds the person's authorized
9 access to a computer, computer system, computer program, computer network, or any
10 part of a computer system or network, and, as a result of or in the course of that
11 access,

12 **(A)** [(1)] obtains information concerning a person;

13 **(B)** [(2)] introduces false information into a computer,
14 computer system, computer program, or computer network with the intent to

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damage or enhance the data record or the financial reputation of a person;

(C) [(3)] introduces false information into a computer, computer system, computer program, or computer network and, with criminal negligence, damages or enhances the data record or the financial reputation of a person;

(D) [(4)] obtains proprietary information of another person;

(E) [(5)] obtains information that is only available to the public for a fee;

(F) [(6)] introduces instructions, a computer program, or other information that tampers with, disrupts, disables, or destroys a computer, computer system, computer program, computer network, or any part of a computer system or network; or

(G) [(7)] encrypts or decrypts data; or

(2) installs, enables, or uses a keystroke logger or other device or program that has the ability to record another person's keystrokes or entries on a computer; or

(3) uses a keystroke logger or other device or program to intercept or record another person's keystrokes or entries on a computer when those entries are transmitted wirelessly or by other non-wired means.

Annie

27-GS1840A.1
Gardner
3/24/11

AMENDMENT

OFFERED IN THE SENATE
TO: SB 72

BY SENATOR FRENCH

1 Page 1, line 1, following "stalking,":

2 Insert "sexual assault in the third degree, sexual assault in the fourth degree,"

3

4 Page 2, following line 16:

5 Insert new bill sections to read:

6 **** Sec. 3.** AS 11.41.425(a) is amended to read:

7 (a) An offender commits the crime of sexual assault in the third degree if the
8 offender

9 (1) engages in sexual contact with a person who the offender knows is

10 (A) mentally incapable;

11 (B) incapacitated; or

12 (C) unaware that a sexual act is being committed;

13 (2) while employed in a state correctional facility or other placement
14 designated by the commissioner of corrections for the custody and care of prisoners,
15 engages in sexual penetration with a person who the offender knows is committed to
16 the custody of the Department of Corrections to serve a term of imprisonment or
17 period of temporary commitment; [OR]

18 (3) engages in sexual penetration with a person 18 or 19 years of age
19 who the offender knows is committed to the custody of the Department of Health and
20 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
21 the person; or

22 (4) while employed in the state by a law enforcement agency as a
23 peace officer, or while acting as a peace officer in the state, engages in sexual

I see no reason
for this language but
I don't think it
does any harm.

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penetration with a person with reckless disregard that the person is committed to the custody of the offender, or is committed to the custody of a law enforcement agency.

* **Sec. 4.** AS 11.41.425 is amended by adding a new subsection to read:

(c) In this section, "peace officer" has the meaning given in AS 01.10.060.

* **Sec. 5.** AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; [OR]

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; or

(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual contact with a person with reckless disregard that the person is committed to the custody of the offender, or is committed to the custody of a law enforcement agency.

* **Sec. 6.** AS 11.41.427 is amended by adding a new subsection to read:

(c) In this section, "peace officer" has the meaning given in AS 01.10.060."

Renumber the following bill sections accordingly.

Page 6, following line 12:

Insert a new bill section to read:

** **Sec. 16.** AS 12.10.010(a) is amended to read:

(a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

- 1 (2) attempt, solicitation, or conspiracy to commit murder or hindering
- 2 the prosecution of murder;
- 3 (3) felony sexual abuse of a minor;
- 4 (4) sexual assault that is an unclassified, class A, or class B felony or a
- 5 violation of AS 11.41.425(a)(2) - (4) [AS 11.41.425(a)(2) OR (3)];
- 6 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
- 7 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
- 8 who, at the time of the offense, was under 18 years of age;
- 9 (6) kidnapping."

10

11 Renumber the following bill sections accordingly.

12

13 Page 9, line 9:

14 Delete "Sections 1 - 12"

15 Insert "Sections 1 - 17"

16

17 Page 9, line 11:

18 Delete "Section 13"

19 Insert "Section 18"

AMENDMENT

OFFERED IN THE SENATE
JUDICIARY COMMITTEE
TO: SB 72

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"

A M E N D M E N T

OFFERED IN THE SENATE
JUDICIARY COMMITTEE
TO: SB 72

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"

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghil

Senate Judiciary Committee

MEMORANDUM

Changes to SCS for CS for HB127 (JUD) \E:

Reinsert section 3 from hb127\I, along with necessary conforming amendments.

Adopt amendments A.1 and A.2., attached.

Amend section 24, o page 13 with the language attached.

I need this CS by 5 p.m. tonight.



A conceptual amendment to insert the language from section 3 of CSHB 127 (FIN) version "I", along with any necessary conforming amendments.



#1

AMENDMENT

#4



OFFERED IN THE SENATE

TO:

1 Page ____, line ____:

2 Insert "and relating to conditions of probation in criminal cases involving sex
3 offenses;"

4

5 Page ____, line ____:

6 Insert a new bill section to read:

7 "* Sec. ____. AS 12.55.100(e) is amended to read:

8 (e) In addition to other conditions imposed on the defendant, while on
9 probation and as a condition of probation

10 (1) for a sex offense, as described in AS 12.63.100, the defendant

11 (A) shall be required to submit to regular periodic polygraph
12 examinations;

13 (B) may be required to provide each electronic mail address,
14 instant messaging address, and other Internet communication identifier that the
15 defendant uses to the defendant's probation officer; the probation officer shall
16 forward those addresses and identifiers to the Alaska state troopers and to the
17 local law enforcement agency;

18 (2) if the defendant was convicted of a violation of AS 11.41.434 -
19 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the
20 defendant may be required to refrain from

21 (A) using or creating an Internet site;

22 (B) communicating with children under 16 years of age; [OR]

23 (C) possessing or using a computer; **or**

24 **(D) residing within 500 feet of school grounds; in this**

1 **subparagraph, "school grounds" has the meaning given in AS 11.71.900."**

2

3 Renumber the following bill sections accordingly.

AMENDMENT

~~#3~~
McGivie

OFFERED IN THE SENATE

TO: SCS FOR CS FOR HB 127(JUD) \E version

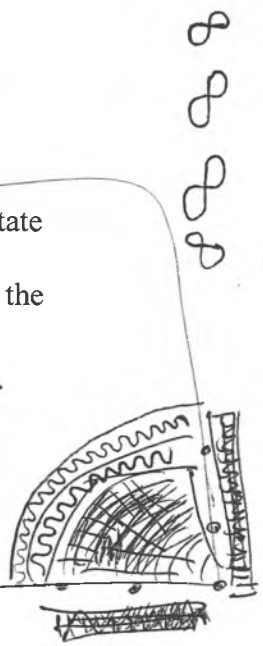
~~Page 11, line 9: following "general"
Insert "or the deputy attorney general for the criminal division"~~

no

Page 13, line 3: following "arrest."

Insert "The report shall include this information for cases prosecuted by the State of Alaska. The Department of Corrections and the Court System shall cooperate with the Department of Law in preparing this report."

Completed #2



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French

AMENDMENT #5

OFFERED IN THE SENATE

TO: A version of HB 127

1 Page ____, line ____, following "information;":

2 Insert "making the installation, enabling, or use of keystroke loggers or other
3 devices criminal use of a computer;"

4
5 Page ____, following line ____:

6 Insert a new bill section to read:

7 "* Sec. ____. AS 11.46.740(a) is amended to read:

8 (a) A person commits the offense of criminal use of a computer if, having no
9 right to do so or any reasonable ground to believe the person has such a right, the
10 person knowingly

11 (1) accesses, causes to be accessed, or exceeds the person's authorized
12 access to a computer, computer system, computer program, computer network, or any
13 part of a computer system or network, and, as a result of or in the course of that
14 access,

15 (A) [(1)] obtains information concerning a person;

16 (B) [(2)] introduces false information into a computer,
17 computer system, computer program, or computer network with the intent to
18 damage or enhance the data record or the financial reputation of a person;

19 (C) [(3)] introduces false information into a computer,
20 computer system, computer program, or computer network and, with criminal
21 negligence, damages or enhances the data record or the financial reputation of
22 a person;

23 (D) [(4)] obtains proprietary information of another person;

1 **(E)** [(5)] obtains information that is only available to the public
2 for a fee;

3 **(F)** [(6)] introduces instructions, a computer program, or other
4 information that tampers with, disrupts, disables, or destroys a computer,
5 computer system, computer program, computer network, or any part of a
6 computer system or network; or

7 **(G)** [(7)] encrypts or decrypts data; or

8 **(2) installs, enables, or uses a keystroke logger or other device or**
9 **program that has the ability to record another person's keystrokes or entries on a**
10 **computer; or**

11 **(3) uses a keystroke logger or other device or program to intercept**
12 **or record another person's keystrokes or entries on a computer when those**
13 **entries are transmitted wirelessly or by other non-wired means."**

14

15 Renumber the following bill sections accordingly.

16

17 Adjust internal bill section references accordingly.

27-LS0172\E
Luckhaupt
3/24/11

CS FOR HOUSE BILL NO. 23()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PETERSEN AND HOLMES, Gruenberg

A BILL
FOR AN ACT ENTITLED

1 **"An Act making the installation, enabling, or use of keystroke loggers or other devices**
2 **criminal use of a computer."**

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

4 *** Section 1.** AS 11.46.740(a) is amended to read:

5 (a) A person commits the offense of criminal use of a computer if, having no
6 right to do so or any reasonable ground to believe the person has such a right, the
7 person knowingly

8 (1) accesses, causes to be accessed, or exceeds the person's authorized
9 access to a computer, computer system, computer program, computer network, or any
10 part of a computer system or network, and, as a result of or in the course of that
11 access,

12 (A) [(1)] obtains information concerning a person;

13 (B) [(2)] introduces false information into a computer,
14 computer system, computer program, or computer network with the intent to

1 damage or enhance the data record or the financial reputation of a person;

2 (C) [(3)] introduces false information into a computer,
3 computer system, computer program, or computer network and, with criminal
4 negligence, damages or enhances the data record or the financial reputation of
5 a person;

6 (D) [(4)] obtains proprietary information of another person;

7 (E) [(5)] obtains information that is only available to the public
8 for a fee;

9 (F) [(6)] introduces instructions, a computer program, or other
10 information that tampers with, disrupts, disables, or destroys a computer,
11 computer system, computer program, computer network, or any part of a
12 computer system or network; or

13 (G) [(7)] encrypts or decrypts data; or

14 (2) installs, enables, or uses a keystroke logger or other device or
15 program that has the ability to record another person's keystrokes or entries on a
16 computer; or

17 (3) uses a keystroke logger or other device or program to intercept
18 or record another person's keystrokes or entries on a computer when those
19 entries are transmitted wirelessly or by other non-wired means.

Alaska State Legislature

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Representative Pete Petersen
Serving Northeast Anchorage and Muldoon

Sponsor Statement

HB 23: Computer Privacy

The State of Alaska has a long tradition of protecting our citizens' privacy rights, and this bill would protect the privacy rights of Alaskan computer users by closing a loophole in existing law. Current law addresses what is commonly known as "hacking", that is surreptitiously accessing a computer or network, but does not address intercepting data as it is being entered. A keystroke logger is a device that is used to record keystrokes as they are being entered into a computer. Emerging technology can even record keystrokes remotely from up to 100 yards away. This bill would ban the installation or use of keystroke loggers or other devices that intercept data being entered on a computer without the consent of the computer's owner.

Keystroke logger manufacturers specifically advertise that their products cannot be detected or disabled by anti-virus or anti-spyware software or firewalls, and the devices are designed so computer users would not notice them unless they carefully inspected their computers every time they use their computers.

While some specific information like social security numbers or credit card information are protected by federal or other law, it is often difficult to prove that someone used or stole such information. Under this bill, all that would need to be proved is that someone installed a keystroke logger or enabled the ability to log keystrokes wirelessly or by other nonwired means on a computer they had no right to access.

This bill would not affect people using keystroke loggers on their own computers, parents monitoring their children's computer use, or law enforcement operating with a search warrant.

It should not matter whether information is stolen out of a computer, or as it is being typed into it. The victims' privacy is just as violated, and the law should recognize their rights.

27-GH1840E
Luckhaupt/Gardner
4/13/11

SENATE CS FOR CS FOR HOUSE BILL NO. 127(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE 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, sexual assault in the third degree, sexual**
2 **assault in the fourth degree, unlawful exploitation of a minor, distribution of child**
3 **pornography, online enticement of a minor, endangering the welfare of a child, sending**
4 **an explicit image of a minor, harassment, and misconduct involving confidential**
5 **information; relating to probation; relating to the subpoena power of the attorney**
6 **general in cases involving use of an Internet service account; relating to an appearance**
7 **before a judicial officer after arrest; relating to penalties for operating a vehicle without**
8 **possessing proof of motor vehicle liability insurance or a driver's license; relating to**
9 **penalties for certain arson offenses; amending Rule 5(a)(1), Alaska Rules of Criminal**
10 **Procedure, and Rule 43.10, Alaska Rules of Administration; and providing for an**
11 **effective date."**

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

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

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

6 (A) following or appearing within the sight of that person;

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

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

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

12 (E) contacting that person by telephone;

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

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

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

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

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

23 (5) "device" includes software.

24 * Sec. 3. AS 11.41.425(a) is amended to read:

25 (a) An offender commits the crime of sexual assault in the third degree if the
26 offender

27 (1) engages in sexual contact with a person who the offender knows is

28 (A) mentally incapable;

29 (B) incapacitated; or

30 (C) unaware that a sexual act is being committed;

31 (2) while employed in a state correctional facility or other placement

< from
3.
#4

1 designated by the commissioner of corrections for the custody and care of prisoners,
2 engages in sexual penetration with a person who the offender knows is committed to
3 the custody of the Department of Corrections to serve a term of imprisonment or
4 period of temporary commitment; [OR]

5 (3) engages in sexual penetration with a person 18 or 19 years of age
6 who the offender knows is committed to the custody of the Department of Health and
7 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
8 the person; or

9 (4) while employed in the state by a law enforcement agency as a
10 peace officer, or while acting as a peace officer in the state, engages in sexual
11 penetration with a person with reckless disregard that the person is in the
12 custody or the apparent custody of the offender, or is committed to the custody of
13 a law enforcement agency.

14 * **Sec. 4.** AS 11.41.425 is amended by adding a new subsection to read:

15 (c) In this section, "peace officer" has the meaning given in AS 01.10.060.

16 * **Sec. 5.** AS 11.41.427(a) is amended to read:

17 (a) An offender commits the crime of sexual assault in the fourth degree if

18 (1) while employed in a state correctional facility or other placement
19 designated by the commissioner of corrections for the custody and care of prisoners,
20 the offender engages in sexual contact with a person who the offender knows is
21 committed to the custody of the Department of Corrections to serve a term of
22 imprisonment or period of temporary commitment; [OR]

23 (2) the offender engages in sexual contact with a person 18 or 19 years
24 of age who the offender knows is committed to the custody of the Department of
25 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
26 guardian of the person; or

27 (3) while employed in the state by a law enforcement agency as a
28 peace officer, or while acting as a peace officer in the state, engages in sexual
29 contact with a person with reckless disregard that the person in the custody or
30 the apparent custody of the offender, or is committed to the custody of a law
31 enforcement agency.

1 * **Sec. 6.** AS 11.41.427 is amended by adding a new subsection to read:

2 (c) In this section, "peace officer" has the meaning given in AS 01.10.060.

3 * **Sec. 7.** AS 11.41.452(e) is amended to read:

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

7 * **Sec. 8.** AS 11.51.100(a) is amended to read:

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

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

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

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

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

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

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

27 * **Sec. 9.** AS 11.61 is amended by adding a new section to read:

28 **Sec. 11.61.116. Sending an explicit image of a minor.** (a) A person commits
29 the offense of sending an explicit image of a minor if the person, with intent to annoy
30 or humiliate another person, distributes an electronic photograph or video that depicts
31 the genitals, anus, or female breast of that other person taken when that person was a

1 minor under 16 years of age.

2 (b) In this section,

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

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

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

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

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

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

12 * **Sec. 10.** AS 11.61.120(a) is amended to read:

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

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

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

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

20 (4) makes an anonymous or obscene telephone call, an obscene
21 electronic communication, or a telephone call or electronic communication that
22 threatens physical injury or sexual contact;

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

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

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

28 **Sec. 11.76.113. Misconduct involving confidential information in the first**
29 **degree.** (a) A person commits the crime of misconduct involving confidential
30 information in the first degree if the person violates AS 11.76.115 and obtains the
31 confidential information with the intent to

- 1 (1) use the confidential information to commit a crime; or
2 (2) obtain a benefit to which the person is not entitled, to injure another
3 person, or to deprive another person of a benefit.

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

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

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

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

- 13 (1) information that has been classified confidential by law;
14 (2) information encoded on an access device, identification card issued
15 under AS 18.65.310, or driver's license.

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

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

20 * **Sec. 12.** AS 12.05 is amended by adding a new section to read:

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

27 * **Sec. 13.** AS 12.10.010(a) is amended to read:

28 (a) Prosecution for the following offenses may be commenced at any time:

- 29 (1) murder;
30 (2) attempt, solicitation, or conspiracy to commit murder or hindering
31 the prosecution of murder;

1 (3) felony sexual abuse of a minor;

2 (4) sexual assault that is an unclassified, class A, or class B felony or a *thy*
3 violation of AS 11.41.425(a)(2) - (4) [AS 11.41.425(a)(2) OR (3)];

4 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
5 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
6 who, at the time of the offense, was under 18 years of age;

7 (6) kidnapping.

8 * **Sec. 14.** AS 12.25.150(a) is amended to read:

9 (a) A person arrested shall be taken before a judge or magistrate without
10 unnecessary delay, and in any event within **48** [24] hours after arrest, including
11 Sundays and holidays. This requirement applies to municipal police officers to the
12 same extent as it does to state troopers.

13 * **Sec. 15.** AS 12.55.125(i) is amended to read:

14 (i) A defendant convicted of

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

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

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

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

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

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

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

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

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

7 (2) unlawful exploitation of a minor under AS 11.41.455(c)(2),
8 online enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or
9 solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the
10 first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2)
11 may be sentenced to a definite term of imprisonment of not more than 99 years and
12 shall be sentenced to a definite term within the following presumptive ranges, subject
13 to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

24 (D) if the offense is a second felony conviction and the
25 defendant has a prior conviction for a sexual felony, 30 to 40 years;

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

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

1 (3) sexual assault in the second degree, sexual abuse of a minor in the
2 second degree, unlawful exploitation of a minor under AS 11.41.455(c)(1), or
3 distribution of child pornography under AS 11.61.125(e)(2) may be sentenced to a
4 definite term of imprisonment of not more than 99 years and shall be sentenced to a
5 definite term within the following presumptive ranges, subject to adjustment as
6 provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

16 (4) sexual assault in the third degree, incest, indecent exposure in the
17 first degree, possession of child pornography, distribution of child pornography
18 under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual
19 assault in the second degree, sexual abuse of a minor in the second degree, unlawful
20 exploitation of a minor, or distribution of child pornography, may be sentenced to a
21 definite term of imprisonment of not more than 99 years and shall be sentenced to a
22 definite term within the following presumptive ranges, subject to adjustment as
23 provided in AS 12.55.155 - 12.55.175:

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

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

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

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

31 (E) if the offense is a third felony conviction and the defendant

1 has two prior convictions for sexual felonies, 99 years.

2 * **Sec. 16.** AS 12.70.130 is amended to read:

3 **Sec. 12.70.130. Arrest without warrant.** The arrest of a person may also be
4 lawfully made by a peace officer or a private person without a warrant upon
5 reasonable information that the accused stands charged in the courts of another state
6 with a crime punishable by death or imprisonment for a term exceeding one year, but
7 when arrested the accused must be taken before a judge or magistrate without
8 unnecessary delay and, in any event, within **48** [24] hours after arrest, including
9 Sundays and holidays, and complaint shall be made against the accused under oath
10 setting out the ground for the arrest as in AS 12.70.120. Thereafter the answer of the
11 accused shall be heard as if the accused had been arrested on a warrant.

12 * **Sec. 17.** AS 28.15.131 is amended by adding a new subsection to read:

13 (b) Violation of this section is an infraction.

14 * **Sec. 18.** AS 28.22.019(c) is amended to read:

15 (c) A person convicted under this section is guilty of **an infraction** [A CLASS
16 B MISDEMEANOR] and **shall be sentenced to pay a mandatory fine of \$500**
17 [MAY BE PUNISHED AS PROVIDED IN AS 12.55, EXCEPT THAT A FINE OF
18 AT LEAST \$500 MUST BE IMPOSED].

19 * **Sec. 19.** AS 33.05.020(a) is repealed and reenacted to read:

20 (a) The commissioner shall appoint and make available to the superior court,
21 when ordered under AS 12.55.015(a), a qualified probation officer for the active
22 supervision of a person placed on probation for a felony offense. The commissioner
23 may provide active supervision to a person placed on probation for a misdemeanor
24 offense.

25 * **Sec. 20.** AS 41.23.220 is amended to read:

26 **Sec. 41.23.220. Penalty.** (a) **Except for conduct that is a violation of**
27 **AS 11.46.420, a** [A] person who violates a provision of AS 41.23.180 - 41.23.230 or a
28 regulation adopted under AS 41.23.180 - 41.23.230 is guilty of a violation as defined
29 in AS 11.81.900.

30 (b) **Except for conduct that is a violation of AS 11.46.420, the** [THE]
31 supreme court shall establish by order or rule a schedule of bail amounts for violations

1 under (a) of this section that allow the disposition of a citation without a court
2 appearance.

3 * **Sec. 21.** AS 44.23.080 is repealed and reenacted to read:

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

12 (b) If an application meets the requirements of (a) of this section, the attorney
13 general may issue an administrative subpoena to the Internet service provider
14 requiring the production of the following records:

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

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

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

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

31 (f) An Internet service provider who knowingly fails to produce the

1 information required to be produced by the subpoena or court order is guilty of
2 contempt under AS 09.50.010.

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

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

10 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of
13 Criminal Procedure, is amended to read:

14 (1) Except when the person arrested is issued a citation for a
15 misdemeanor or a violation and immediately thereafter released, the arrested person
16 shall be taken before the nearest available judge or magistrate without unnecessary
17 delay and in any event within 48 hours after arrest, including Sundays and
18 holidays. This appearance may be accomplished by the use of telephonic or television
19 equipment pursuant to Criminal Rules 38.1 and 38.2. [NECESSARY DELAY
20 WITHIN THE MEANING OF THIS PARAGRAPH (a) IS DEFINED AS A PERIOD
21 NOT TO EXCEED FORTY-EIGHT HOURS AFTER ARREST, INCLUDING
22 SUNDAYS AND HOLIDAYS.]

23 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 INDIRECT COURT RULE AMENDMENT. The amendments to AS 41.23.220, made
26 in sec. 20 of this Act, have the effect of changing Rule 43.10, Alaska Rules of Administration,
27 by prohibiting the disposition of a violation of AS 11.46.420 without court appearance and
28 forfeiture of bail amounts.

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

31 REPORT TO THE LEGISLATURE. On or before April 1, 2012, the Department of

1 Law shall submit a report to the legislature concerning the total number of arraignments that
2 were heard within 24 hours after a person's arrest and the total number of arraignments that
3 were heard after 24 hours, but within 48 hours after a person's arrest.

4 * **Sec. 25.** The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. (a) Sections 14, 16, and 22 of this Act apply to arrests for offenses
7 committed before, on, or after the effective date of this Act.

8 (b) Sections 1 - 13, 15, 17, 18, 20, and 23 of this Act apply to offenses committed on
9 or after the effective date of this Act.

10 (c) Sections 19 and 21 of this Act apply to offenses occurring before, on, or after the
11 effective date of this Act.

12 * **Sec. 26.** The uncoded law of the State of Alaska is amended by adding a new section to
13 read:

14 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
15 of it to any person or circumstance, is held invalid, the remainder of this Act and the
16 application to other persons or circumstances is not affected.

17 * **Sec. 27.** This Act takes effect July 1, 2011.

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

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CSHB 127(FIN) -- STALKING AND EXPLOITATION OF A MINOR BAIL CLEANUP

Themes:

HB 127: Strengthen and refine laws prohibiting stalking, online enticement of a child, unlawful exploitation of a child, and other conduct that hurts vulnerable people

HB 175: Correct inconsistencies between statutes and court rules

Highlights:

- Expands stalking law to prohibit new means of following and frightening victims
- Raises the crime and penalty for online enticement of a minor – classic grooming behavior that leads to child victimization
- Raises the penalty for unlawful exploitation of a minor (creating child pornography) to a class A felony for all offenders
- Prohibits “sexting” – that is sending an explicit image of a child under 16 with intent to annoy or humiliate the person
- Prohibits obtaining confidential information about another person; this would be a class B misdemeanor if a person obtains the information that is confidential by law without the consent of the person, and a class A misdemeanor if a person obtains the information with the intent to use it to commit a crime or obtain a benefit
- Makes conforming amendments in four areas where statutes conflict with court rules
 - Bail hearings – changes the statute to agree with the court rule adopted last year – which changes the deadline for bringing a person before a judge from 24 to 48 hours
 - Failure to carry and present a driver’s license
 - Failure to carry and present proof of automobile insurance
 - Burning a vehicle on public property
- Clarifies law authorizing administrative subpoenas in child sexual exploitation investigations adopted last year

STATE OF ALASKA

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CSHB 127(FIN) 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.

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 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 7 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 8 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 7** is not included in the crime of harassment in the second degree.

Section 9 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 10 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 11 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 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 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 14 changes 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 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 at the same time disposable under the bail schedule for a \$50 bail amount. The bill removes this inconsistency.

Section 15 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 16 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 17 resolves a similar 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 18 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 probable 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 allows a designee of the attorney general, still within the Department of Law, to issue the administrative subpoenas. It 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 they already have 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 19 provides that the crime of unlawful exploitation of a minor is not included in the crimes that require an automatic waiver from juvenile to adult court for a person who is 16 or 17 years of age and who is charged with commission of the offense.

Section 20 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 21 notes that the changes included in **Section 17** 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 22 provides the applicability provisions.

Section 23 provides a severability section.

Section 24 adopts a July 1, 2011 effective date.

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	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	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 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								
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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 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 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							
---------------------------	--	--	--	--	--	--	--

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 #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

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: RIs 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	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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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 (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.

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								
-----------------------------	--	--	--	--	--	--	--	--

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 (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

FISCAL NOTE #6

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 127(FIN)

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.