

HOUSE BILL NO. 127

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/11

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

8 (3) "nonconsensual contact" means any contact with another person
9 that is initiated or continued without that person's consent, that is beyond the scope of
10 the consent provided by that person, or that is in disregard of that person's expressed
11 desire that the contact be avoided or discontinued; "nonconsensual contact" includes
12 (A) following or appearing within the sight of that person;
13 (B) approaching or confronting that person in a public place or

1 on private property;

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

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

5 (E) contacting that person by telephone;

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

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

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

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

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

16 (5) "device" includes software.

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

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

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

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

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

25 (c) Unlawful exploitation of a minor is a

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

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

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

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

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

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

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

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

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

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

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

21 **Sec. 11.61.116. Sending an explicit image of a minor.** (a) A person commits
 22 the crime of sending an explicit image of a minor if the person

23 (1) publishes or distributes an electronic or printed photograph,
 24 picture, or film that depicts the genitals, anus, or female breast of a minor under 16
 25 years of age; and

26 (2) makes the publication or distribution without the consent of the
 27 parent or legal guardian of the minor described in (1) of this subsection.

28 (b) The provisions of (a) of this section do not apply to a minor under 16 years
 29 of age who publishes or distributes an electronic or printed photograph, picture, or
 30 film that depicts the minor's own genitals, anus, or female breast.

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

1 (1) a class B misdemeanor if the person publishes or distributes the
2 depiction to one or two other people;

3 (2) a class A misdemeanor if the person publishes or distributes the
4 depiction to three or more other people;

5 (3) a class C felony if the person publishes or distributes the depiction
6 on the Internet.

7 (d) In this section, "Internet" has the meaning given in AS 11.46.710(d).

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

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

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

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

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

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

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

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

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

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

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

29 (A) sexual penetration;

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

31 breast;

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

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

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

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

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

16 confidential information with the intent to

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

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

21 civil relief from another person.

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

23 A misdemeanor.

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

25 **second degree.** (a) A person commits the crime if misconduct involving confidential

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

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

- 28 (b) In this section, "confidential information" includes
- 29 (1) information that has been classified confidential by law;
- 30 (2) information encoded on an access device, identification card issued
- 31 under AS 18.65.310, or driver's license.

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

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

5 * **Sec. 11.** AS 12.05 is amended by adding a new section to read:

6 **Sec. 12.05.030. Crimes involving minors committed outside state.** A person
7 may be prosecuted under the laws of this state for conduct occurring outside the state
8 for a violation of (1) AS 11.41.452, online enticement of a minor, if the other person
9 with whom the defendant communicated was in the state; or (2) AS 11.61.116,
10 sending an explicit image of a minor, if the minor whose image is published or
11 distributed was in the state. This jurisdiction is in addition to any other jurisdictional
12 basis expressed or implied in law.

13 * **Sec. 12.** 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) attempt, conspiracy, or solicitation to commit sexual assault in the
8 first degree, sexual abuse of a minor in the first degree, [OR] promoting prostitution in
9 the first degree under AS 11.66.110(a)(2), **unlawful exploitation of a minor, or**
10 **online enticement of a minor under AS 11.41.452(e)** may be sentenced to a definite
11 term of imprisonment of not more than 99 years and shall be sentenced to a definite
12 term within the following presumptive ranges, subject to adjustment as provided in
13 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, online enticement of a minor under AS 11.41.452(d) [UNLAWFUL
 3 EXPLOITATION OF A MINOR], or distribution of child pornography may be
 4 sentenced to a definite term of imprisonment of not more than 99 years and shall be
 5 sentenced to a definite term within the following presumptive ranges, subject to
 6 adjustment as 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, or attempt, conspiracy, or solicitation to
 18 commit sexual assault in the second degree, sexual abuse of a minor in the second
 19 degree, [UNLAWFUL EXPLOITATION OF A MINOR,] or distribution of child
 20 pornography, may be sentenced to a definite term of imprisonment of not more than
 21 99 years and shall be sentenced to a definite term within the following presumptive
 22 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

2 (a) The commissioner shall appoint and make available to the superior court,
3 when ordered under AS 12.55.015(a), a qualified probation officer for the active
4 supervision of a person placed on probation for a felony offense. The commissioner
5 may provide active supervision to a person placed on probation for a misdemeanor
6 offense.

7 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** (a) Sections 1 - 12 of this Act apply to offenses committed on or
10 after the effective date of this Act.

11 (b) Section 13 of this Act applies to offenses occurring before, on, or after the
12 effective date of this Act.

13 * **Sec. 15.** This Act takes effect July 1, 2011.