



April 11, 2012

**AMERICAN CIVIL
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The Honorable Steve Thompson
House Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

via email: Representative_Steve_Thompson@legis.state.ak.us

**Re: CS for SB 210 (FIN): Crimes Against Children
ACLU Review of Legal Issues**

Dear Representative Thompson:

Thank you for the opportunity to provide written testimony with respect to the Committee Substitute for Senate Bill 210 (Finance), which addresses crimes against children.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, we bring one provision to the attention of the Committee.

Section 4: Redefining “Serious Physical Injury”

The Committee Substitute for Senate Bill 210 (Finance) redefines the term “serious physical injury” to include some special categories of injury to children.

Of concern is the inclusion in (C) (ii) of “impairment of health, by serious bruising or other injury, that reasonably requires medical evaluation or treatment by a health care professional” under the

definition of “serious physical injury” with regard to children under 12, (emphasis added).

“Serious physical injury” is a common statutory term used throughout the criminal statutes. Assault in the first degree, a Class A felony, can be committed by “recklessly caus[ing] serious physical injury . . . by means of a dangerous instrument” or by intentionally causing serious physical injury. AS 11.41.200. Assault in the second degree, a Class B felony, can be accomplished by recklessly causing serious physical injury. AS 11.41.210. Murder in the second degree occurs when a person acts with the intent to cause serious physical injury and actually causes death to another person. AS 11.41.110. A person may justifiably use deadly force to avoid the imposition of serious physical injury on one’s self or another. AS 11.81.335 and AS 11.81.340. A first-degree robbery occurs when a person takes an item of value from another by causing or attempting to cause serious physical injury. AS 11.41.500. A person commits an act of reckless endangerment when a person recklessly acts in a way that presents a “substantial risk” of serious physical injury to another. AS 11.41.250. Failure to report an assault leading to serious physical injury to a child is itself a crime. AS 11.56.765. A “bacteriological, biological, chemical, or radiological substance” is one capable of causing serious physical injury. AS 11.56.807.

Changing the definition of “serious physical injury” to include “serious bruising or other injury” to a child under 12 could have wide-ranging effects in the law, far outside the intent of the drafters. For instance, an ordinary fistfight between two students at a school could become a B felony if one student ended up with a black eye and visited the school nurse. The nurse could be guilty of a class A misdemeanor if she failed to report the fistfight to the police. A 14-year-old who took an 11-year-old’s lunch money by punching him could end up in juvenile court facing an A felony, just as if he had pointed a gun at the other child. A careless driver who knocked a child off his bicycle could be charged with an A felony or a B felony if the child was bruised and taken to the doctor. A person could legally use deadly force against another in order to prevent a child from being seriously bruised. A device capable of bruising a child would be treated like a gun.

Recommended Alternative

We presume that these effects were not intended by the drafters. **To the extent the drafters intended to address the very real problem of serious assaults on children by parents and caregivers, we would suggest that the “serious bruising” provision of CS for SB 210 (FIN) be removed, and another course be chosen.**

The Legislature could propose a new offense narrowly aimed at intentional assaults on children by adults, or propose enhancing sentencing aggravators for adults who assault children. However, **altering the fundamental definition of “serious physical injury” for every criminal statute (and many non-criminal statutes) could have far-reaching effects, most of them likely not intended by the Legislature.**

Conclusion

We agree that crimes against children are very serious and the subject of child abuse is very important. We hope that the Judiciary Committee will reconsider the provision we identified and work with the Drafter find a different legislative means to address its concerns.

Thank you again for letting us share our concerns. Please feel free to contact the undersigned should you have any questions or seek additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. Mittman', with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

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