

# LEGAL SERVICES

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## MEMORANDUM

April 11, 2012

**SUBJECT:** Draft blank committee substitute bill; title change resolution may be required (HCS CSSB210( ); Work Order No. 27-LS1362\O)

**TO:** Representative Steve Thompson  
Attn: Jane Pierson

**FROM:** Dan Wayne  
Legislative Counsel 

Enclosed is the draft committee substitute for the above-numbered bill.

The Constitution of the State of Alaska, article II, section 13, requires that the subject of each bill shall be expressed in the title. If the committee substitute is adopted, the title of the bill will need to be changed. Because the title change would be to a Senate bill in the House, a concurrent resolution would be required to suspend Uniform Rules 24(c), 35, 41(b) and 42(e), which prohibit changes to a bill's title in the second house. If the committee substitute is adopted by a committee, the committee may ask this office to draft a concurrent resolution at the time a committee substitute is prepared.

DCW:ljw  
12-278.ljw

Enclosure

27-LS1362\O

Wayne

4/10/12

**HOUSE CS FOR CS FOR SENATE BILL NO. 210( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY****Offered:****Referred:**

**Sponsor(s): SENATORS MCGUIRE, French, Dyson, Ellis, Wielechowski, Davis, Olson, Giessel, Huggins, Meyer, Menard, Egan, Thomas, Stedman, Hoffman, Wagoner, Stevens**

**A BILL****FOR AN ACT ENTITLED**

**"An Act relating to crimes against children; relating to persons found guilty but mentally ill; relating to sentencing procedures for factors that may increase the presumptive range or affect mandatory parole eligibility; relating to the granting of probation; relating to procedures for finding aggravating factors at sentencing; relating to crimes of human trafficking; establishing the Human Trafficking Task Force to evaluate services available to victims of human trafficking; and relating to the recommendations and report of the task force; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."**

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

**\* Section 1.** AS 11.41.220(a) is amended to read:

(a) A person commits the crime of assault in the third degree if that person

(1) recklessly

(A) places another person in fear of imminent serious physical injury by means of a dangerous instrument;

(B) causes physical injury to another person by means of a dangerous instrument; or

(C) while being 18 years of age or older,

(i) causes physical injury to a child under 12 [10] years of age and the injury would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment;

(ii) causes physical injury to a child under 12 [10] years of age on more than one occasion;

(2) with intent to place another person in fear of death or serious physical injury to the person or the person's family member, makes repeated threats to cause death or serious physical injury to another person;

(3) while being 18 years of age or older, knowingly causes physical injury to a child under 16 years of age but at least 12 [10] years of age and the injury reasonably requires medical treatment;

(4) with criminal negligence, causes serious physical injury under AS 11.81.900(b)(56)(B) to another person by means of a dangerous instrument; or

(5) commits a crime that is a violation of AS 11.41.230(a)(1) or (2) and, within the preceding 10 years, the person was convicted on two or more separate occasions of crimes under

(A) AS 11.41.100 - 11.41.170;

(B) AS 11.41.200 - 11.41.220, 11.41.230(a)(1) or (2), 11.41.280, or 11.41.282;

(C) AS 11.41.260 or 11.41.270;

(D) AS 11.41.410, 11.41.420, or 11.41.425(a)(1); or

(E) a law or ordinance of this or another jurisdiction with elements similar to those of an offense described in (A) - (D) of this paragraph.

\* **Sec. 2.** AS 11.51.100(a) is amended to read:

(a) A person commits the crime of endangering the welfare of a child in the

first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

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

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

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

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

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

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

**(4) recklessly fails to provide adequate food or liquids to a child, causing protracted impairment of the child's health.**

\* Sec. 3. AS 11.51.100(f) is amended to read:

(f) Endangering the welfare of a child in the first degree under (a)(1), (2), or (4) [OR (2)] of this section is a class C felony.

\* Sec. 4. AS 11.81.900(56) is amended to read:

(56) "serious physical injury" means

(A) physical injury to a person of any age caused by an act performed under circumstances that create a substantial risk of death; [OR]

(B) physical injury to a person of any age that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy; or

**(C) physical injury to a person under 12 years of age that**

**causes**

**(i) serious disfigurement;**

**(ii) impairment of health, by serious bruising or other injury, that reasonably requires medical evaluation or treatment by a health care professional;**

**(iii) loss or impairment of the function of a body member or organ; or**

**(iv) serious impediment of blood circulation or breathing;**

\* **Sec. 5.** AS 12.47.040(b) is amended to read:

(b) To return a verdict under (a)(4) of this section, the **fact finder** [JURY] must find beyond a reasonable doubt that the defendant committed the crime and [FIND BY A PREPONDERANCE OF THE EVIDENCE] that, when the defendant committed the crime, the defendant was guilty but mentally ill as defined in AS 12.47.030.

\* **Sec. 6.** AS 12.47.060(a) is amended to read:

(a) In a prosecution for a crime when the affirmative defense of insanity is not raised and when evidence of mental disease or defect of the defendant is not admitted at trial under AS 12.47.020, [AND THE DEFENDANT IS CONVICTED OF A CRIME,] the defendant **or** [,] the prosecuting attorney [, OR THE COURT ON ITS OWN MOTION] may raise the issue of whether the defendant is guilty but mentally ill. **A party that seeks a post-conviction determination of guilty but mentally ill must give notice 10 days before trial of intent to do so; however, this deadline is waived if the opposing party presents evidence or argument at trial tending to show that the defendant may be guilty but mentally ill.** A hearing must be held on this issue [AT OR] before the **same fact finder that returned the verdict of guilty under procedures set by the court. In cases decided by a jury, at the request of the defendant and with the concurrence of the prosecuting attorney, the court may decide the issue. A waiver of consideration by a jury must be in writing and in person before the court** [SENTENCING HEARING]. At the hearing, the **fact**

**finder** [COURT] shall determine whether the defendant has been shown to be guilty but mentally ill **beyond a reasonable doubt, considering** [BY A PREPONDERANCE OF THE] evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

\* **Sec. 7.** AS 12.47.060(b) is amended to read:

(b) If the **fact finder** [COURT] finds that a defendant is guilty but mentally ill, **the court** [IT] shall sentence the defendant as provided by law and shall enter the finding of guilty but mentally ill as part of the judgment.

\* **Sec. 8.** AS 12.55.025(i) is amended to read:

(i) Except as **otherwise** provided **in this chapter** [BY AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence standard of proof applies to sentencing proceedings.

\* **Sec. 9.** AS 12.55.090(b) is amended to read:

(b) **Except as otherwise provided in (f) of this section, the** [THE] court may revoke or modify any condition of probation [,] or may change the period of probation.

\* **Sec. 10.** AS 12.55.090 is amended by adding a new subsection to read:

(f) Unless the defendant and the prosecuting authority agree at the probation revocation proceeding or other proceeding, the court may not reduce the specific period of probation, or the specific term of suspended incarceration except by the amount of incarceration imposed for a probation violation, if

(1) the sentence was imposed in accordance with a plea agreement under Rule 11, Alaska Rules of Criminal Procedure; and

(2) the agreement required a specific period of probation or a specific term of suspended incarceration.

\* **Sec. 11.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or

otherwise clearly identified peace officer, firefighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) [THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT] the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) [THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT] the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

\* **Sec. 12.** AS 12.55.125 is amended by adding a new subsection to read:

(p) If the state seeks either (1) the imposition of a sentence under (a) of this section that would preclude the defendant from being awarded a good time deduction under AS 33.20.010(a) based on a fact other than a prior conviction; or (2) to establish a fact that would increase the presumptive sentencing range under (c)(2), (d)(2), (e)(4), (i)(1)(A) or (B), or (i)(2)(A) or (B) of this section, the factual question required to be decided shall be presented to a trial jury and proven beyond a reasonable doubt under procedures set by the court, unless the defendant waives trial by jury and either stipulates to the existence of the fact or consents to have the fact proven to the court sitting without a jury. Written notice of the intent to establish a fact under this subsection must be served on the defendant and filed with the court as provided for notice under AS 12.55.155(f)(2).

1 \* **Sec. 13.** AS 12.55.155 is amended by adding new subsections to read:

2 (i) If the state seeks to establish a factor in aggravation at sentencing under  
3 (c)(10) of this section,

4 (1) the assessment of the facts underlying the state's allegation that the  
5 defendant's conduct was among the most serious included in the definition of the  
6 offense shall be made by the trial jury under procedures set by the court and as  
7 provided in (f)(2) of this section, unless the defendant waives trial by jury, stipulates  
8 to the existence of the aggravating factor or to the facts alleged by the state, or  
9 consents to have the assessment proved under procedures set out in (f)(1) of this  
10 section; factual assertions underlying the state's allegation that the defendant's conduct  
11 was among the most serious included in the definition of the offense must be proved  
12 beyond a reasonable doubt;

13 (2) the legal decision concerning whether the defendant's conduct  
14 determined under (1) of this subsection was among the most serious included in the  
15 definition of the offense shall be made by the court under procedures set out in (f)(1)  
16 of this section.

17 (j) If one of the aggravating factors in (c) of this section is established as  
18 provided in (f)(1) and (2) of this section, the court may increase the term of  
19 imprisonment up to the maximum term of imprisonment. Any additional aggravating  
20 factor may then be established by clear and convincing evidence by the court sitting  
21 without a jury, including an aggravating factor that the jury has found not to have been  
22 established beyond a reasonable doubt.

23 \* **Sec. 14.** AS 33.05.050 is amended to read:

24 **Sec. 33.05.050. Report of probation officer.** When directed by the court, the  
25 probation officer shall report to the court [,] with a statement of the conduct of the  
26 probationer while on probation. Except as otherwise provided by law, the [THE]  
27 court may then discharge the probationer from further supervision and may terminate  
28 the proceedings against the probationer, or may extend the probation, as shall seem  
29 advisable.

30 \* **Sec. 15.** AS 33.05.070(b) is amended to read:

31 (b) As speedily as possible after arrest, the probationer shall be taken before



the court for the district having jurisdiction over the probationer. **Except as provided in AS 12.55.090(f)**, [THEREUPON] the court may revoke the probation and require the probationer to serve the sentence imposed [,] or any lesser sentence [,] and, if imposition of sentence was suspended, may impose any sentence **that** [WHICH] might originally have been imposed, subject to the limitation specified in AS 12.55.086(c).

\* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.55.125(p), enacted by sec. 12 of this Act, and AS 12.55.155(i) and (j), enacted by sec. 13 of this Act, have the effect of changing Rule 32.1, Alaska Rules of Criminal Procedure, by amending procedures for sentencing persons convicted of certain crimes.

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

APPLICABILITY. (a) AS 12.47.040(b), as amended by sec. 5 of this Act, AS 12.47.060(a), as amended by sec. 6 of this Act, AS 12.47.060(b), as amended by sec. 7 of this Act, AS 12.55.025(i), as amended by sec. 8 of this Act, and AS 12.55.125(a), as amended by sec. 11 of this Act, apply to proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(b) AS 12.55.090, as amended by secs. 9 and 10 of this Act, applies to offenses occurring on or after the effective date of this Act.

(c) AS 12.55.125(p), enacted by sec. 12 of this Act, applies to sentencing proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

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

HUMAN TRAFFICKING TASK FORCE. (a) The Human Trafficking Task Force is established in the Department of Law. The attorney general, or the attorney general's designee, shall serve as the chair of the task force. The task force consists of representatives of the Department of Law, the Department of Public Safety, the Department of Health and Social Services, and two members, appointed by the governor, representing nongovernmental

1 health and social services organizations that provide services to victims of human trafficking.  
2 The task force shall examine the prevalence of the crimes of human trafficking in the state  
3 and the services that are available to victims of the crimes of human trafficking under  
4 AS 11.41.360 and 11.41.365.

5 (b) The task force established in (a) of this section shall submit a report to the  
6 legislature by January 15, 2013. The report must include a current assessment of services  
7 currently available to victims of human trafficking, recommendations for improving services  
8 to victims of human trafficking, and the following information:

9 (1) the number of human trafficking cases reported to state and local law  
10 enforcement agencies in the state since 2007;

11 (2) the number of human trafficking cases prosecuted under Alaska law;

12 (3) the number of human trafficking cases state and local law enforcement  
13 agencies have investigated in cooperation with federal law enforcement agencies;

14 (4) the services currently available in the state to victims of human trafficking,  
15 including services provided by state agencies, federal agencies, or nongovernmental agencies  
16 relating to

17 (A) medical or psychological counseling;

18 (B) emergency shelter;

19 (C) translation;

20 (D) other assistance related to safe housing and legal services.

21 (c) The task force established in (a) of this section shall solicit information and input  
22 from local, state, and federal agencies, nongovernmental organizations, and other interested  
23 persons. The task force shall hold at least one public meeting and shall provide reasonable  
24 public notice, teleconference capability, and an opportunity for interested organizations,  
25 groups, or individuals to provide written or oral comments. Minutes of meetings and written  
26 comments provided to the task force shall be included in the report provided under (b) of this  
27 section.

28 (d) The state agency members of the task force shall be employees of their respective  
29 agencies, designated by the attorney general, the commissioner of public safety, or the  
30 commissioner of health and social services. Expenses, other than the personnel expenses, of  
31 the state agency members of the task force shall be shared by the Department of Law, the

1 Department of Public Safety, and the Department of Health and Social Services. The  
2 nongovernmental health and social service organizations whose members are appointed by the  
3 governor shall be responsible for their members' costs in participating on the task force.

4 \* **Sec. 19.** Section 18 of this Act is repealed June 1, 2013.

5 \* **Sec. 20.** The uncoded law of the State of Alaska is amended by adding a new section to  
6 read:

7       CONDITIONAL EFFECT. Sections 12 and 13 of this Act take effect only if sec. 16 of  
8 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
9 Constitution of the State of Alaska.

10 \* **Sec. 21.** This Act takes effect July 1, 2012.