

SB

210

<TARGET><BILL>SB 210</BILL><SUBJECT>SB
210</SUBJECT><COMM>HJUD27</COMM></TARGET>

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 12, 2012

SUBJECT: Crimes against children. (HCS CSSB 210(JUD);
Work Order No. 27-LS1362U)

TO: Representative Steve Thompson
Vice-Chair of the House Judiciary Committee
Attn: Melanie Lesh

FROM: Dan Wayne 
Legislative Counsel

Enclosed is the draft blank committee substitute bill you requested. Please note that sec. 2 of the bill creates an offense, "nonsexual abuse of a minor," that overlaps with the bill's proposed new definition of "serious physical injury," and has elements very similar to those of existing crimes, including felony assault under AS 11.41.220(a). When two offenses have elements that are very similar the offenses can merge at trial or sentencing in some cases, causing prosecution or sentencing of the defendant to be limited to the lesser offense.

DCW:plm
12-227.plm

Enclosure

HJUD 4/12/12

LAA
4/12
P557

27-LS1362\U
Wayne
4/12/12

HOUSE CS FOR CS FOR SENATE BILL NO. 210(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**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

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

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

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

- 11 (a) A person commits the crime of assault in the third degree if that person
- 12 (1) recklessly

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(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.

Amdt. #1

m

* **Sec. 2.** AS 11.41 is amended by adding a new section to read:

Definitions in AS 11.41.200 -
Sec. 11.41.255. ~~Nonsexual abuse of a minor.~~ (a) A person commits the crime

11.41.250, we added "serious physical injury", in addition to the definition in AS 11.81.900(6)(b)(c)

L

~~includes~~ if the victim is under 12 years of age ~~includes~~ ~~the following:~~ ~~includes~~

of nonsexual abuse of a minor if, being 18 years of age or older, the person knowingly engages in conduct prohibited under AS 11.41.200 - 11.41.250 that causes extensive bruising or other physical injury to a child under 12 years of age that results in serious

(1) ^{serious} (disfigurement;

(2) ^{serious} (impairment of health that would cause a reasonable person who is

~~18 years of age or older and legally charged with the care of the child to seek medical attention for the child from a health care professional in the form of diagnosis or treatment; or~~

(3) ^{Serious} impediment of blood circulation or breathing.

~~(b) Nonsexual abuse of a minor under (a) of this section is a class C felony.~~

* Sec. 3. 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 an adequate quantity of food or

Amend #1

(Gruenberg 'protracted?')

1 **liquids to a child, causing protracted impairment of the child's health.**

2 * **Sec. 4.** AS 11.51.100(f) is amended to read:

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

5 * **Sec. 5.** AS 11.81.900(56) is amended to read:

Amend. 1

6 (56) "serious physical injury" means

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

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

13 (C) physical injury to a person under 12 years of age that
14 causes

15 (i) serious disfigurement;

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

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

21 (iv) serious impediment of blood circulation or
22 breathing;

23 * **Sec. 6.** AS 12.47.040(b) is amended to read:

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

29 * **Sec. 7.** AS 12.47.060(a) is amended to read:

30 (a) In a prosecution for a crime when the affirmative defense of insanity is not
31 raised and when evidence of mental disease or defect of the defendant is not admitted

1 at trial under AS 12.47.020, [AND THE DEFENDANT IS CONVICTED OF A
2 CRIME,] the defendant or [,] the prosecuting attorney [, OR THE COURT ON ITS
3 OWN MOTION] may raise the issue of whether the defendant is guilty but mentally
4 ill. A party that seeks a post-conviction determination of guilty but mentally ill
5 must give notice 10 days before trial of intent to do so; however, this deadline is
6 waived if the opposing party presents evidence or argument at trial tending to
7 show that the defendant may be guilty but mentally ill. A hearing must be held on
8 this issue [AT OR] before the same fact finder that returned the verdict of guilty
9 under procedures set by the court. In cases decided by a jury, at the request of
10 the defendant and with the concurrence of the prosecuting attorney, the court
11 may decide the issue. A waiver of consideration by a jury must be in writing and
12 in person before the court [SENTENCING HEARING]. At the hearing, the fact
13 finder [COURT] shall determine whether the defendant has been shown to be guilty
14 but mentally ill beyond a reasonable doubt, considering [BY A
15 PREPONDERANCE OF THE] evidence presented at the hearing and any evidence
16 relevant to the issue that was presented at trial.

17 * **Sec. 8.** AS 12.47.060(b) is amended to read:

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

21 * **Sec. 9.** AS 12.55.025(i) is amended to read:

22 (i) Except as otherwise provided in this chapter [BY AS 12.55.125(a)(3),
23 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
24 standard of proof applies to sentencing proceedings.

25 * **Sec. 10.** AS 12.55.090(b) is amended to read:

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

29 * **Sec. 11.** AS 12.55.090 is amended by adding a new subsection to read:

30 (f) Unless the defendant and the prosecuting authority agree at the probation
31 revocation proceeding or other proceeding, the court may not reduce the specific

1 period of probation, or the specific term of suspended incarceration except by the
2 amount of incarceration imposed for a probation violation, if

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

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

7 * **Sec. 12.** AS 12.55.125(a) is amended to read:

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

12 (1) the defendant is convicted of the murder of a uniformed or
13 otherwise clearly identified peace officer, firefighter, or correctional employee who
14 was engaged in the performance of official duties at the time of the murder;

15 (2) the defendant has been previously convicted of

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

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

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

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

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

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

1 * **Sec. 13.** AS 12.55.125 is amended by adding a new subsection to read:

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

13 * **Sec. 14.** AS 12.55.155 is amended by adding a new subsection to read:

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

20 * **Sec. 15.** AS 33.05.050 is amended to read:

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

27 * **Sec. 16.** AS 33.05.070(b) is amended to read:

28 (b) As speedily as possible after arrest, the probationer shall be taken before
29 the court for the district having jurisdiction over the probationer. Except as provided
30 in AS 12.55.090(f), [THEREUPON] the court may revoke the probation and require
31 the probationer to serve the sentence imposed [,] or any lesser sentence [,] and, if

1 imposition of sentence was suspended, may impose any sentence **that** [WHICH]
2 might originally have been imposed, subject to the limitation specified in
3 AS 12.55.086(c).

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

6 INDIRECT COURT RULE AMENDMENT. AS 12.55.125(p), enacted by sec. 13 of
7 this Act, and AS 12.55.155(i), enacted by sec. 14 of this Act, have the effect of changing Rule
8 32.1, Alaska Rules of Criminal Procedure, by amending procedures for sentencing persons
9 convicted of certain crimes.

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

12 APPLICABILITY. (a) AS 12.47.040(b), as amended by sec. 6 of this Act,
13 AS 12.47.060(a), as amended by sec. 7 of this Act, AS 12.47.060(b), as amended by sec. 8 of
14 this Act, AS 12.55.025(i), as amended by sec. 9 of this Act, and AS 12.55.125(a), as amended
15 by sec. 12 of this Act, apply to proceedings occurring on or after the effective date of this Act
16 for offenses occurring before, on, or after the effective date of this Act.

17 (b) AS 12.55.090, as amended by secs. 10 and 11 of this Act, applies to offenses
18 occurring on or after the effective date of this Act.

19 (c) AS 12.55.125(p), enacted by sec. 13 of this Act, applies to sentencing proceedings
20 occurring on or after the effective date of this Act for offenses occurring before, on, or after
21 the effective date of this Act.

22 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 HUMAN TRAFFICKING/TASK FORCE. (a) The Human Trafficking Task Force is
25 established in the Department of Law. The attorney general, or the attorney general's
26 designee, shall serve as the chair of the task force. The task force consists of representatives
27 of the Department of Law, the Department of Public Safety, the Department of Health and
28 Social Services, and two members, appointed by the governor, representing nongovernmental
29 health and social services organizations that provide services to victims of human trafficking.
30 The task force shall examine the prevalence of the crimes of human trafficking in the state
31 and the services that are available to victims of the crimes of human trafficking under

OK
Amend #
2
PROMOTING PROSTITUTION; SEX TRAFFICKING

1 AS 11.41.360 and 11.41.365.

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

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

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

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

11 (4) the services currently available in the state to victims of human trafficking,
12 including services provided by state agencies, federal agencies, or nongovernmental agencies
13 relating to

14 (A) medical or psychological counseling;

15 (B) emergency shelter;

16 (C) translation;

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

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

25 (d) The state agency members of the task force shall be employees of their respective
26 agencies, designated by the attorney general, the commissioner of public safety, or the
27 commissioner of health and social services. Expenses, other than the personnel expenses, of
28 the state agency members of the task force shall be shared by the Department of Law, the
29 Department of Public Safety, and the Department of Health and Social Services. The
30 nongovernmental health and social service organizations whose members are appointed by the
31 governor shall be responsible for their members' costs in participating on the task force.

1 * **Sec. 20.** Section 19 of this Act is repealed June 1, 2013.

2 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **CONDITIONAL EFFECT.** Sections 13 and 14 of this Act take effect only if sec. 17 of
5 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
6 Constitution of the State of Alaska.

7 * **Sec. 22.** This Act takes effect July 1, 2012.

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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

faxed 4/11/12
8:00 p.m.
ML

WORK DRAFT

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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

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

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

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

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

12 (1) recklessly

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

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

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

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

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

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

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

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

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

23 (A) AS 11.41.100 - 11.41.170;

24 (B) AS 11.41.200 - 11.41.220, 11.41.230(a)(1) or (2),
25 11.41.280, or 11.41.282;

26 (C) AS 11.41.260 or 11.41.270;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (56) "serious physical injury" means

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

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

*now
Sec. 4
in '11'*

New Section AS 11.41.255 (or whatever) New Crime of Assault Against Children under 12 years of Age

WORK DRAFT

Under AS 11.41.200-250,

27-LS1362\O

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

causes

serious (i) serious disfigurement;

(ii) impairment of health, by *extensive* ~~serious~~ bruising or

other injury, that would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment;

~~(iii) loss or impairment of the function of a body~~

~~member or organ; or~~

(delete iii)

(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

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

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

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

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

10 (i) Except as **otherwise provided in this chapter** [BY AS 12.55.125(a)(3),
11 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
12 standard of proof applies to sentencing proceedings.

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

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

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

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

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

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

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

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

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

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

3 (2) the defendant has been previously convicted of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 HUMAN TRAFFICKING TASK FORCE. (a) The Human Trafficking Task Force is
28 established in the Department of Law. The attorney general, or the attorney general's
29 designee, shall serve as the chair of the task force. The task force consists of representatives
30 of the Department of Law, the Department of Public Safety, the Department of Health and
31 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 uncodified 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.

Session:
State Capitol 125
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592

Alaska State Legislature



Hand
5:30 4/11/12

Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

★ meet
on Sec.
10
4/12/12

- Annie
- James
- Amy
- Max

Senator Lesil McGuire

Sponsor Statement for 210

- Nancy Meade
- Karen (Coghill)
- James
- Amy S. (Sponsor)

"An Act relating to crimes against children."

+ 1/5 Quinlan S.
- Annie C.
- Rep. Gruens
- Jane

On February 8, 2012 the Children's Justice Task Force (CJA) a federally-mandated, state-wide multidisciplinary group presented their findings to the Joint Senate Judiciary and HESS Committees with their system recommendations for improvement through criminal legislation. I became aware through this presentation, research, and other important conversations that we have shortcomings in the current criminal laws regarding the prosecution of harm to children.

Those that suffer from these short comings are Alaska's children and the numbers are staggering. In 2008, approximately 12,400 children were likely victims of at least one incident of maltreatment, which breaks down to 34 children per day. In the instance of a child death, 1 out of every 5 was related to maltreatment.

SB 210 works with the recommendations from CJA to create tougher penalties on crimes committed against a child. The bill will create increased criminal liability for assaults to children by modifying the current definition of "serious physical injury" and increases penalties when a parent intentionally withholds adequate food or liquids.

Together, the Legislature can assist our future generations by providing them with laws that protect their rights and create safer communities for their growth and development. I urge your support for this legislation.

★ + need Corrections + OPA etc.
good time / GBMI
Interim Anne

CSSB210(FIN) 27-LS1362\R – ***“An Act relating to crimes against children; and providing for an effective date.”*** (Senator MCGuire)

CSSB 212(JUD) 27-LS1370\M – ***“An Act 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.”*** (Senator McGuire)

SB186 27-LS0811\I - ***“An Act 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; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date.”***

Section 1. (HB 212) Uncodified law – Human Trafficking Task Force established in the Department of Law. Shall examine the prevalence of the crime, and services available to victims of the crime. Repealed June 13, 2013, after report is due on January 15, 2013.

Sections 2- Section 5 (SB210) – CRIMES AGAINST CHILDREN

Sections 6 – 17 (SB186) – SENTENCING/PROBATION/MENTALLY ILL



BOARD RESOLUTION OF THE CHILDREN'S PLACE

ADOPTED ON MARCH 14, 2012

The undersigned, being the Board Chair and Executive Director of The Children's Place "The Children's Place", a 501(c)(3) private, not for profit agency providing support and coordination of services related to the evaluation, investigation, and treatment of child abuse to the communities in the Matanuska-Susitna Valley, with the approval, direction, and concurrence of the Board of Directors of The Children's Place "The Board of Directors", hereby sign the following resolution in support of SB 210, "An Act Relating to Crimes Against Children":

WHEREAS:

1. The Children's Place and the Board of Directors has become aware through presentation, research, and other important conversations brought by the Children's Justice Act Task Force that the State of Alaska has shortcomings in the current criminal laws regarding the prosecution of harm to children, and;
2. The Children's Place and the Board of Directors are aware that SB 210 works with the recommendations from the Children's Justice Act Task Force to create tougher penalties on crimes committed against children, and;
3. The Children's Place and the Board of Directors knows that in 2008, over 12,000 children were likely victims of at least one type of child maltreatment – approximately 34 children each day; that 1 out of every 5 infant deaths in Alaska is related to maltreatment; that Alaska has one of the highest rates of maltreatment-related infant mortality in the nation; and that child abuse has life-long implications including adverse effects on adult physical and mental health, and;
4. The Children's Place and the Board of Directors believes that young children may be unable to describe what has happened to them (due to age, developmental status or knowledge base) in a way that fits Alaska's current assault or strangulation statutes, and;
5. The Children's Place and the Board of Directors is aware that in some situations, current Alaska state laws do not allow perpetrators of serious child physical abuse and neglect to be held appropriately accountable, and;
6. The Children's Place and the Board of Directors believes that criminal penalties for harming children should be higher than those penalties for harming adults who are much more likely to be able to defend themselves, and;
7. The Children's Place and the Board of Directors requests the Legislature assist our future generations by providing them with laws that protect their rights and create safer communities for their growth and development.

IT IS RESOLVED THAT:

The Children's Place and the Board of Directors urge your support for this legislation.

Kibe Lucas, Board Chair
The Children's Place

Jennifer Burkmire, Executive Director
The Children's Place



Home

Mom Arrested for Emotional, Physical Abuse of Adopted Children

Anya James, 50, was arrested Tuesday and is charged with ten counts of kidnapping and six counts of first-degree assault.
By Colleen Kelly



An Anchorage mom has been arrested for subjecting her six adopted children to years of emotional and physical abuse, according to Anchorage police.

Following an eight-month investigation, 50-year-old Anya James now faces criminal offenses for the gross mistreatment of her children. James was arrested Tuesday and is charged with ten counts of kidnapping and six counts of first-degree assault.

APD Detective Chris Thomas began the investigation in early October 2010 after receiving a claim of child abuse against four of James' children living in her Hillside home. That same month, several of James' children were removed from the home and hospitalized due to severe malnourishment.

The investigation further revealed that due to malnourishment, James' adopted children endured stunted growth, which prevented some of them from going through puberty during their teenage years.

According to police, the children were confined to small rooms with alarms rigged up to the doors and windows to alert James if the children tried to escape. The mother also used audio and video monitors to oversee the children's activity and conversations.

Despite three functioning bathrooms inside the home, the children were forced to use a bucket filled with kitty litter instead of a toilet placed inside the small rooms.

James is currently booked at the Anchorage Jail; her bail is set at \$100,000 cash plus third-party custodian. She will not have contact with any of her adopted children or minors under 16 years old, according to police. She will be arraigned in Superior Court Wednesday afternoon at the Nesbitt Courthouse in downtown Anchorage.

Between 2000 and 2010, James fostered and adopted six children and collected more than \$750,000 in adoption subsidies from the State of Alaska.

If you have information about children living under James' care before 2000, contact Anchorage Police Detective Chris Thomas at 786-2628.

Related Content

- ['Hot Sauce Mom' Trial Begins: Opening Arguments Heard](#)

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Mom pleads guilty to putting needles in boy's stomach

Anchorage Daily News
 Published: February 25th, 2011 10:42 PM
 Last Modified: February 28th, 2011 04:45 PM

A 29-year-old Anchorage woman pleaded guilty Friday to first-degree assault and two counts of second-degree assault for abuse of her 5-year-old son that included putting needles in his stomach, according to the Anchorage District Attorney's office.

More Crime stories »

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Lily Doss-Puder entered her plea before state Superior Court Judge Michael Wolverton, who scheduled sentencing for May, the office said.

The case against her arose last June, when her son was admitted to the hospital for emergency surgery and doctors found three sewing needles in his stomach. Anchorage Police Detective Chris Thomas investigated and, in a review of the child's medical records, found a pattern of injuries to the boy dating to June 2009, the District Attorney's office said.

When Thomas interviewed Doss-Puder, she admitted inserting the needles into her son's stomach, intentionally cutting the webbing of his hand with a knife and intentionally hitting him on the head with a 2-pound weight, the office said.

In exchange for her pleas, Doss-Puder will be sentenced to 18 years in prison with six years suspended, and she won't be allowed to contact her son until he is 18, the District Attorney's office said.

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Senate panel tackles oil tax revision	Scrutiny pushed Palin to exasperation, emails reveal	2012 Fur Ronly day by day guide	Moose sightings
Woman's Ponzi scheme dupes investors out of \$7.4 million	2012 Fur Ronly day by day guide	Moose visit to Anchorage hospital goes viral	2011 Bear sightings
Scrutiny pushed Palin to exasperation, emails reveal	Woman charged with murder in stabbing death of Bethel man	Former East High football star killed by police in California	Anchorage's owls

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSSB 210(FIN)
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) SB210CSSB(FIN)-LAW-CRIM-04-10-12 Dept. Affected Law
Title An Act relating to crimes against children; and Appropriation Criminal
providing for an effective date. Allocation Criminal Justice Litigation
Sponsor Senator MCGUIRE
Requester (H) Judiciary OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		***	***	***	***	***	***	***

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

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

Update for CS.

Prepared by Sheila Bugbee, Administrative Officer
Division Administrative Services
Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-3675
Date/Time 4/10/12 2:15 PM
Date 4/10/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. CSSB 210(FIN)

Analysis

SB 210 adopts a new crime prohibiting recklessly withholding food or liquids from a child and causing protracted impairment of the child's health. It also amends the definition of "serious physical injury" by the addition of physical injury to a child under 12 that causes serious disfigurement, impairment of health by serious bruising or other injury that reasonably requires evaluation or treatment by a health care professional, loss or impairment of a body member or organ, or serious impediment of blood circulation or breathing.

The fiscal impact to Department of Law is indeterminate.

CSSB210(FIN) 27-LS1362\R – ***“An Act relating to crimes against children; and providing for an effective date.”*** (Senator MCGuire)

CSSB 212(JUD) 27-LS1370\M – ***“An Act 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.”*** (Senator McGuire)

SB186 27-LS0811\I - ***“An Act 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; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date.”***

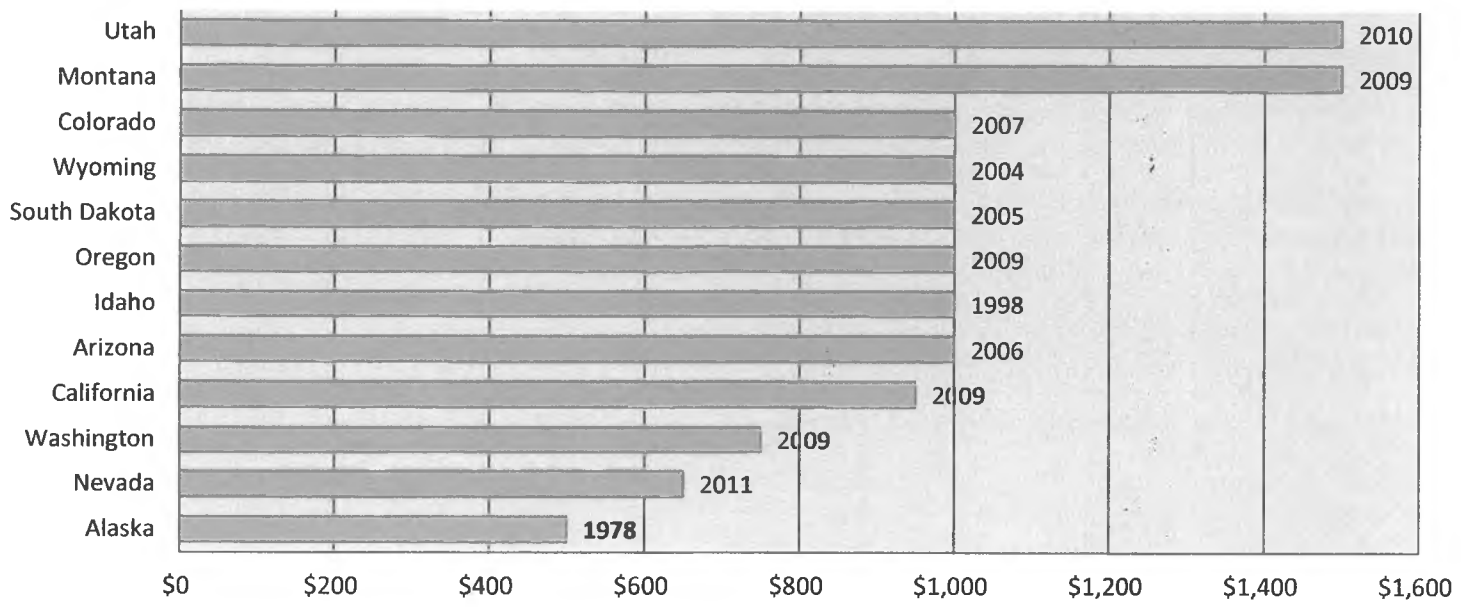
Section 1- Section 4 (SB210) – CRIMES AGAINST CHILDREN

Section 5 – 17, Section 20 (SB186) – SENTENCING/PROBATION/MENTALLY ILL

Section 18-19. (HB 212) Uncodified law – Human Trafficking Task Force established in the Department of Law. Shall examine the prevalence of the crime, and services available to victims of the crime. Repealed June 13, 2013, after report is due on January 15, 2013.

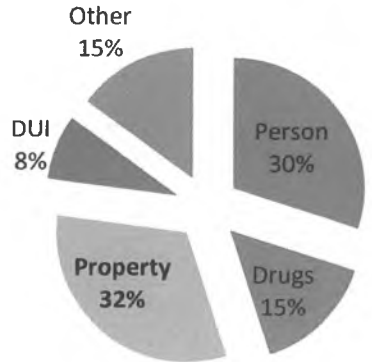
HJUD 4/11/12
5:30

Theft Felony Thresholds in Western U.S. and Year of Adoption



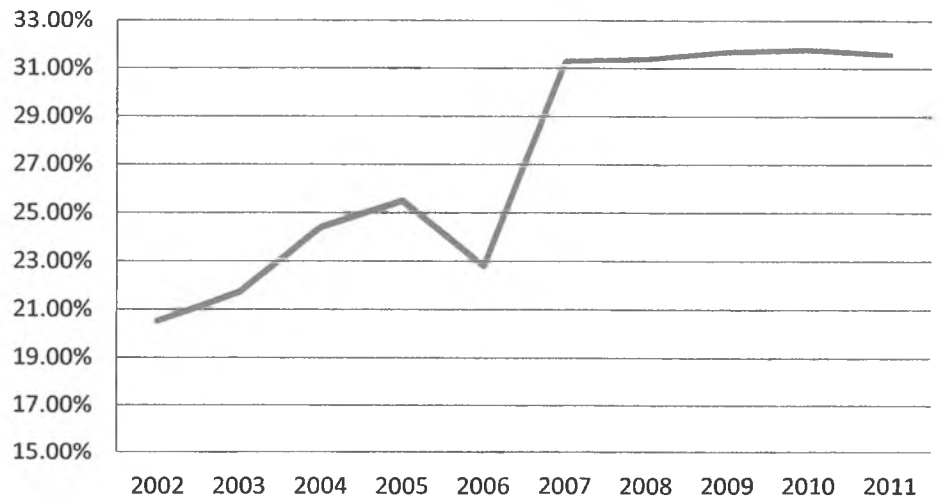
Alaska	\$500
Nevada	\$650
Washington	\$750
California	\$950
Arizona	\$1,000
Idaho	\$1,000
Oregon	\$1,000
South Dakota	\$1,000
Wyoming	\$1,000
Colorado	\$1,000
Montana	\$1,500
Utah	\$1,500

AK Felonies by Case Type FY11



U.S. Dollar Inflation	
1978	2011
\$50	\$173.06
\$500	\$1730.61

Property Crimes as a Percentage of All Felonies



Prepared by Jordan Shilling in Senator Coghill's office

WORK DRAFT

WORK DRAFT

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4/11/12 530 pm

for draft
JUDCS

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

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

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

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

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

12 (1) recklessly

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(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,

duplic. for pg. 4

~~(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

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use this on pg. 4. In.

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1 first degree if, being a parent, guardian, or other person legally charged with the care
 2 of a child under 16 years of age, the person
 3 (1) intentionally deserts the child in a place under circumstances
 4 creating a substantial risk of physical injury to the child;
 5 (2) leaves the child with another person who is not a parent, guardian,
 6 or lawful custodian of the child knowing that the person is
 7 (A) registered or required to register as a sex offender or child
 8 kidnapper under AS 12.63 or a law or ordinance in another jurisdiction with
 9 similar requirements;
 10 (B) charged by complaint, information, or indictment with a
 11 violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another
 12 jurisdiction with similar elements; or
 13 (C) charged by complaint, information, or indictment with an
 14 attempt, solicitation, or conspiracy to commit a crime described in (B) of this
 15 paragraph; [OR]
 16 (3) leaves the child with another person knowing that the person has
 17 previously physically mistreated or had sexual contact with any child, and the other
 18 person causes physical injury or engages in sexual contact with the child; or
 19 (4) recklessly fails to provide adequate food or liquids to a child,
 20 causing protracted impairment of the child's health. quantities of

(1)
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* Sec. 3. AS 11.51.100(f) is amended to read:

(4)

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(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.

For purposes of this Section

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

(4)

(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

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

causes

(i) serious disfigurement;

serious

extensive

(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

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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

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see pg 2 ln. 7-9

OK for now.

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

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

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

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

10 (i) Except as **otherwise** provided **in this chapter** [BY AS 12.55.125(a)(3),
 11 12.55.145(d), 12.55.155(f), AND 12.55.165], the preponderance of the evidence
 12 standard of proof applies to sentencing proceedings.

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

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

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

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

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

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

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

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

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

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

- 3 (2) the defendant has been previously convicted of
 - 4 (A) murder in the first degree under AS 11.41.100 or former
5 AS 11.15.010 or 11.15.020;
 - 6 (B) murder in the second degree under AS 11.41.110 or former
7 AS 11.15.030; or
 - 8 (C) homicide under the laws of another jurisdiction when the
9 offense of which the defendant was convicted contains elements similar to first
10 degree murder under AS 11.41.100 or second degree murder under
11 AS 11.41.110;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 HUMAN TRAFFICKING TASK FORCE. (a) The Human Trafficking Task Force is
28 established in the Department of Law. The attorney general, or the attorney general's
29 designee, shall serve as the chair of the task force. The task force consists of representatives
30 of the Department of Law, the Department of Public Safety, the Department of Health and
31 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 uncodified 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.

To:
Leg legal

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AMENDMENT

OFFERED IN THE ~~SENATE~~ ^{HOUSE} ~~BY SENATOR COGHILL~~ ^{Blank}
TO: ~~SB 186~~ HCS SB 210 (JND) or
whatever)

1 Page 1, line 1, following "Act":
2 Insert "relating to property crimes;"

3
4 Page 1, following line 6:
5 Insert new bill sections to read:

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since 1978.

6 ** Section 1. AS 11.46.130(a) is amended to read:

7 (a) A person commits the crime of theft in the second degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$1,500 [\$500] or more but
10 less than \$25,000;

11 (2) the property is a firearm or explosive;

12 (3) the property is taken from the person of another;

13 (4) the property is taken from a vessel and is vessel safety or survival
14 equipment;

15 (5) the property is taken from an aircraft and the property is aircraft
16 safety or survival equipment;

17 (6) the value of the property is \$250 [\$50] or more but less than \$1,500
18 [\$500] and, within the preceding five years, the person has been convicted and
19 sentenced on two or more separate occasions in this or another jurisdiction of

20 (A) an offense under AS 11.46.120, or an offense under
21 another law or ordinance with similar elements;

22 (B) a crime set out in this subsection or an offense under
23 another law or ordinance with similar elements;

1 (C) an offense under AS 11.46.140(a)(1), or an offense under
2 another law or ordinance with similar elements; or

3 (D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an
4 offense under another law or ordinance with similar elements; or

5 (7) the property is an access device.

6 * Sec. 2. AS 11.46.140(a) is amended to read:

7 (a) A person commits the crime of theft in the third degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$250 [\$50] or more but less
10 than \$1,500 [\$500]; or

11 (2) [REPEALED

12 (3)] the value of the property is less than \$250 [\$50] and, within the
13 past five years, the person has been convicted and sentenced on two or more separate
14 occasions in this or another jurisdiction of theft or concealment of merchandise, or an
15 offense under another law or ordinance with similar elements.

16 * Sec. 3. AS 11.46.150(a) is amended to read:

17 (a) A person commits the crime of theft in the fourth degree if the person
18 commits theft as defined in AS 11.46.100 and the value of the property or services is
19 less than \$250 [\$50].

20 * Sec. 4. AS 11.46.220(c) is amended to read:

21 (c) Concealment of merchandise is

22 (1) a class C felony if

23 (A) the merchandise is a firearm;

24 (B) the value of the merchandise is \$1,500 [\$500] or more; or

25 (C) the value of the merchandise is \$250 [\$50] or more but less
26 than \$1,500 [\$500] and, within the preceding five years, the person has been
27 convicted and sentenced on two or more separate occasions in this or another
28 jurisdiction of

29 (i) the offense of concealment of merchandise under
30 this paragraph or (2)(A) of this subsection, or an offense under another
31 law or ordinance with similar elements; or

1 (ii) an offense under AS 11.46.120, 11.46.130, or
2 11.46.140(a)(1), or an offense under another law or ordinance with
3 similar elements;

4 (2) a class A misdemeanor if

5 (A) the value of the merchandise is \$250 [\$50] or more but less
6 than \$1,500 [\$500]; or

7 (B) the value of the merchandise is less than \$250 [\$50] and,
8 within the preceding five years, the person has been convicted and sentenced
9 on two or more separate occasions of the offense of concealment of
10 merchandise or theft in any degree, or an offense under another law or
11 ordinance with similar elements;

12 (3) a class B misdemeanor if the value of the merchandise is less than
13 \$250 [\$50].

14 * Sec. 5. AS 11.46.260(b) is amended to read:

15 (b) Removal of identification marks is

16 (1) a class C felony if the value of the property on which the serial
17 number or identification mark appeared is \$1,500 [\$500] or more;

18 (2) a class A misdemeanor if the value of the property on which the
19 serial number or identification mark appeared is \$250 [\$50] or more but less than
20 \$1,500 [\$500];

21 (3) a class B misdemeanor if the value of the property on which the
22 serial number or identification mark appeared is less than \$250 [\$50].

23 * Sec. 6. AS 11.46.270(b) is amended to read:

24 (b) Unlawful possession is

25 (1) a class C felony if the value of the property on which the serial
26 number or identification mark appeared is \$1,500 [\$500] or more;

27 (2) a class A misdemeanor if the value of the property on which the
28 serial number or identification mark appeared is \$250 [\$50] or more but less than
29 \$1,500 [\$500];

30 (3) a class B misdemeanor if the value of the property on which the
31 serial number or identification mark appeared is less than \$250 [\$50].

1 * **Sec. 7.** AS 11.46.280(d) is amended to read:

2 (d) Issuing a bad check is

3 (1) a class B felony if the face amount of the check is \$25,000 or more;

4 (2) a class C felony if the face amount of the check is \$1,500 [\$500] or
5 more but less than \$25,000;

6 (3) a class A misdemeanor if the face amount of the check is \$250
7 [\$50] or more but less than \$1,500 [\$500];

8 (4) a class B misdemeanor if the face amount of the check is less than
9 \$250 [\$50].

10 * **Sec. 8.** AS 11.46.285(b) is amended to read:

11 (b) Fraudulent use of an access device is

12 (1) a class B felony if the value of the property or services obtained is
13 \$25,000 or more;

14 (2) a class C felony if the value of the property or services obtained is
15 \$1,500 [\$50] or more but less than \$25,000;

16 (3) a class A misdemeanor if the value of the property or services
17 obtained is less than \$1,500 [\$50].

18 * **Sec. 9.** AS 11.46.295 is amended to read:

19 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
20 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
21 11.46.140(a)(2) [11.46.140(a)(3)], or in prosecuting the crime of concealment of
22 merchandise under AS 11.46.220(c), a conviction for an offense under another law or
23 ordinance with similar elements is a conviction of an offense having elements similar
24 to those of an offense defined as such under Alaska law at the time the offense was
25 committed. The court shall consider the date of a prior conviction as occurring on the
26 date that sentence is imposed for the prior offense.

27 * **Sec. 10.** AS 11.46.360(a) is amended to read:

28 (a) A person commits the crime of vehicle theft in the first degree if, having
29 no right to do so or any reasonable ground to believe the person has such a right, the
30 person drives, tows away, or takes

31 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft

1 of another;

2 (2) the propelled vehicle of another and

3 (A) the vehicle or any other property of another is damaged in a
4 total amount of \$1,500 [\$500] or more;

5 (B) the owner incurs reasonable expenses as a result of the loss
6 of use of the vehicle, in a total amount of \$1,500 [\$500] or more; or

7 (C) the owner is deprived of the use of the vehicle for seven
8 days or more;

9 (3) the propelled vehicle of another and the vehicle is marked as a
10 police or emergency vehicle; or

11 (4) the propelled vehicle of another and, within the preceding seven
12 years, the person was convicted under

13 (A) this section or AS 11.46.365;

14 (B) former AS 11.46.482(a)(4) or (5);

15 (C) former AS 11.46.484(a)(2);

16 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
17 of a propelled vehicle; or

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

21 * **Sec. 11.** AS 11.46.482(a) is amended to read:

22 (a) A person commits the crime of criminal mischief in the third degree if,
23 having no right to do so or any reasonable ground to believe the person has such a
24 right,

25 (1) with intent to damage property of another, the person damages
26 property of another in an amount of \$1,500 [\$500] or more;

27 (2) the person recklessly creates a risk of damage in an amount
28 exceeding \$100,000 to property of another by the use of widely dangerous means; or

29 (3) the person knowingly

30 (A) defaces, damages, or desecrates a cemetery or the contents
31 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,

1 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
2 memorial appears to be abandoned, lost, or neglected;

3 (B) removes human remains or associated burial artifacts from
4 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
5 tomb, grave, or memorial appears to be abandoned, lost, or neglected.

6 * **Sec. 12.** AS 11.46.484(a) is amended to read:

7 (a) A person commits the crime of criminal mischief in the fourth degree if,
8 having no right to do so or any reasonable ground to believe the person has such a
9 right

10 (1) with intent to damage property of another, the person damages
11 property of another in an amount of \$250 [\$50] or more but less than \$1,500 [\$500];

12 (2) the person tampers with a fire protection device in a building that is
13 a public place;

14 (3) the person knowingly accesses a computer, computer system,
15 computer program, computer network, or part of a computer system or network;

16 (4) the person uses a device to descramble an electronic signal that has
17 been scrambled to prevent unauthorized receipt or viewing of the signal unless the
18 device is used only to descramble signals received directly from a satellite or unless
19 the person owned the device before September 18, 1984; or

20 (5) the person knowingly removes, relocates, defaces, alters, obscures,
21 shoots at, destroys, or otherwise tampers with an official traffic control device or
22 damages the work upon a highway under construction.

23 * **Sec. 13.** AS 11.46.486(a) is amended to read:

24 (a) A person commits the crime of criminal mischief in the fifth degree if,
25 having no right to do so or any reasonable ground to believe the person has such a
26 right,

27 (1) with reckless disregard for the risk of harm to or loss of the
28 property or with intent to cause substantial inconvenience to another, the person
29 tampers with property of another;

30 (2) with intent to damage property of another, the person damages
31 property of another in an amount less than \$250 [\$50]; or

1 (3) the person rides in a propelled vehicle knowing it has been stolen
2 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

3 * Sec. 14. AS 11.46.530(b) is amended to read:

4 (b) Criminal simulation is

5 (1) a class C felony if the value of what the object purports to represent
6 is \$1,500 [\$500] or more;

7 (2) a class A misdemeanor if the value of what the object purports to
8 represent is \$250 [\$50] or more but less than \$1,500 [\$500];

9 (3) a class B misdemeanor if the value of what the object purports to
10 represent is less than \$250 [\$50].

11 * Sec. 15. AS 11.46.620(d) is amended to read:

12 (d) Misapplication of property is

13 (1) a class C felony if the value of the property misapplied is \$1,500
14 [\$500] or more;

15 (2) a class A misdemeanor if the value of the property misapplied is
16 less than \$1,500 [\$500].

17 * Sec. 16. AS 11.46.730(c) is amended to read:

18 (c) Defrauding creditors is a class A misdemeanor unless that secured party,
19 judgment creditor, or creditor incurs a pecuniary loss of \$1,500 [\$500] or more as a
20 result to the defendant's conduct, in which case defrauding secured creditors is

21 (1) a class B felony if the loss is \$25,000 or more;

22 (2) a class C felony if the loss is \$1,500 [\$500] or more but less than
23 \$25,000."

24

25 Page 1, line 7:

26 Delete "Section 1"

27 Insert "Sec. 17"

28

29 Renumber the following bill sections accordingly.

30

31 Page 5, line 23:

- 1 Delete "sec. 8"
- 2 Insert "sec. 24"
- 3
- 4 Page 5, line 24:
- 5 Delete "sec. 9"
- 6 Insert "sec. 25"
- 7
- 8 Page 5, line 29:
- 9 Delete "sec. 1"
- 10 Insert "sec. 17"
- 11
- 12 Page 5, line 30:
- 13 Delete "sec. 2"
- 14 Insert "sec. 18"
- 15 Delete "sec. 3"
- 16 Insert "sec. 19"
- 17
- 18 Page 5, line 31:
- 19 Delete "sec. 4"
- 20 Insert "sec. 20"
- 21
- 22 Page 6, line 1:
- 23 Delete "sec. 7"
- 24 Insert "sec. 23"
- 25
- 26 Page 6, line 3, following "(b)":
- 27 Insert "AS 11.46.130(a), as amended by sec. 1 of this Act, AS 11.46.140(a), as
- 28 amended by sec. 2 of this Act, AS 11.46.150(a), as amended by sec. 3 of this Act,
- 29 AS 11.46.220(c), as amended by sec. 4 of this Act, AS 11.46.260(b), as amended by sec. 5 of
- 30 this Act, AS 11.46.270(b), as amended by sec. 6 of this Act, AS 11.46.280(d), as amended by
- 31 sec. 7 of this Act, AS 11.46.285(b), as amended by sec. 8 of this Act. AS 11.46.295, as

1 amended by sec. 9 of this Act, AS 11.46.360(a), as amended by sec. 10 of this Act,
2 AS 11.46.482(a), as amended by sec. 11 of this Act, AS 11.46.484(a), as amended by sec. 12
3 of this Act, AS 11.46.486(a), as amended by sec. 13 of this Act, AS 11.46.530(b), as amended
4 by sec. 14 of this Act, AS 11.46.620(d), as amended by sec. 15 of this Act, AS 11.46.730(c),
5 as amended by sec. 16 of this Act, and"

6

7 Page 6, line 3:

8 Delete "sec. 6"

9 Insert "sec. 22"

10 Delete "applies"

11 Insert "apply"

12

13 Page 6, line 5:

14 Delete "sec. 8"

15 Insert "sec. 24"

16

17 Page 6, line 10:

18 Delete "Sections 8 and 9"

19 Insert "Sections 24 and 25"

20 Delete "sec. 12"

21 Insert "sec. 28"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLER

TO: CSSB 210(FIN)

1 Page 1, line 1, following "**children**";

2 Insert "**relating to the definition of 'serious physical injury'**;"

3

4 Page 3, lines 15 - 31:

5 Delete all material and insert:

6 "(56) "serious physical injury" means

7 (A) physical injury caused by an act performed under
8 circumstances that create a substantial risk of death; or

9 (B) physical injury that

10 **(1) causes serious and protracted disfigurement;**

11 **(2) causes [,] protracted impairment of health by serious bruising or**

12 **other injury that reasonably requires medical evaluation or treatment by a**

13 **health care professional;**

14 **(3) causes serious impediment of blood circulation or breathing;**

15 **(4) causes [,] protracted loss or impairment of the function of a body**

16 **member or organ; or**

17 **(5) [, OR THAT] unlawfully terminates a pregnancy;"**

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: SB 186

1 Page 1, line 1, following "Act":

2 Insert "**relating to property crimes;**"

3

4 Page 1, following line 6:

5 Insert new bill sections to read:

6 **** Section 1.** AS 11.46.130(a) is amended to read:

7 (a) A person commits the crime of theft in the second degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$1,500 [\$500] or more but
10 less than \$25,000;

11 (2) the property is a firearm or explosive;

12 (3) the property is taken from the person of another;

13 (4) the property is taken from a vessel and is vessel safety or survival
14 equipment;

15 (5) the property is taken from an aircraft and the property is aircraft
16 safety or survival equipment;

17 (6) the value of the property is \$250 [\$50] or more but less than \$1,500
18 [\$500] and, within the preceding five years, the person has been convicted and
19 sentenced on two or more separate occasions in this or another jurisdiction of

20 (A) an offense under AS 11.46.120, or an offense under
21 another law or ordinance with similar elements;

22 (B) a crime set out in this subsection or an offense under
23 another law or ordinance with similar elements;

1 (C) an offense under AS 11.46.140(a)(1), or an offense under
2 another law or ordinance with similar elements; or

3 (D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an
4 offense under another law or ordinance with similar elements; or

5 (7) the property is an access device.

6 * **Sec. 2.** AS 11.46.140(a) is amended to read:

7 (a) A person commits the crime of theft in the third degree if the person
8 commits theft as defined in AS 11.46.100 and

9 (1) the value of the property or services is \$250 [\$50] or more but less
10 than \$1,500 [\$500]; **or**

11 (2) [REPEALED

12 (3)] the value of the property is less than \$250 [\$50] and, within the
13 past five years, the person has been convicted and sentenced on two or more separate
14 occasions in this or another jurisdiction of theft or concealment of merchandise, or an
15 offense under another law or ordinance with similar elements.

16 * **Sec. 3.** AS 11.46.150(a) is amended to read:

17 (a) A person commits the crime of theft in the fourth degree if the person
18 commits theft as defined in AS 11.46.100 and the value of the property or services is
19 less than \$250 [\$50].

20 * **Sec. 4.** AS 11.46.220(c) is amended to read:

21 (c) Concealment of merchandise is

22 (1) a class C felony if

23 (A) the merchandise is a firearm;

24 (B) the value of the merchandise is \$1,500 [\$500] or more; or

25 (C) the value of the merchandise is \$250 [\$50] or more but less
26 than \$1,500 [\$500] and, within the preceding five years, the person has been
27 convicted and sentenced on two or more separate occasions in this or another
28 jurisdiction of

29 (i) the offense of concealment of merchandise under
30 this paragraph or (2)(A) of this subsection, or an offense under another
31 law or ordinance with similar elements; or

1 (ii) an offense under AS 11.46.120, 11.46.130, or
2 11.46.140(a)(1), or an offense under another law or ordinance with
3 similar elements;

4 (2) a class A misdemeanor if

5 (A) the value of the merchandise is \$250 [\$50] or more but less
6 than \$1,500 [\$500]; or

7 (B) the value of the merchandise is less than \$250 [\$50] and,
8 within the preceding five years, the person has been convicted and sentenced
9 on two or more separate occasions of the offense of concealment of
10 merchandise or theft in any degree, or an offense under another law or
11 ordinance with similar elements;

12 (3) a class B misdemeanor if the value of the merchandise is less than
13 \$250 [\$50].

14 * Sec. 5. AS 11.46.260(b) is amended to read:

15 (b) Removal of identification marks is

16 (1) a class C felony if the value of the property on which the serial
17 number or identification mark appeared is \$1,500 [\$500] or more;

18 (2) a class A misdemeanor if the value of the property on which the
19 serial number or identification mark appeared is \$250 [\$50] or more but less than
20 \$1,500 [\$500];

21 (3) a class B misdemeanor if the value of the property on which the
22 serial number or identification mark appeared is less than \$250 [\$50].

23 * Sec. 6. AS 11.46.270(b) is amended to read:

24 (b) Unlawful possession is

25 (1) a class C felony if the value of the property on which the serial
26 number or identification mark appeared is \$1,500 [\$500] or more;

27 (2) a class A misdemeanor if the value of the property on which the
28 serial number or identification mark appeared is \$250 [\$50] or more but less than
29 \$1,500 [\$500];

30 (3) a class B misdemeanor if the value of the property on which the
31 serial number or identification mark appeared is less than \$250 [\$50].

1 * **Sec. 7.** AS 11.46.280(d) is amended to read:

2 (d) Issuing a bad check is

3 (1) a class B felony if the face amount of the check is \$25,000 or more;

4 (2) a class C felony if the face amount of the check is \$1,500 [\$500] or
5 more but less than \$25,000;

6 (3) a class A misdemeanor if the face amount of the check is \$250
7 [\$50] or more but less than \$1,500 [\$500];

8 (4) a class B misdemeanor if the face amount of the check is less than
9 \$250 [\$50].

10 * **Sec. 8.** AS 11.46.285(b) is amended to read:

11 (b) Fraudulent use of an access device is

12 (1) a class B felony if the value of the property or services obtained is
13 \$25,000 or more;

14 (2) a class C felony if the value of the property or services obtained is
15 \$1,500 [\$50] or more but less than \$25,000;

16 (3) a class A misdemeanor if the value of the property or services
17 obtained is less than \$1,500 [\$50].

18 * **Sec. 9.** AS 11.46.295 is amended to read:

19 **Sec. 11.46.295. Prior convictions.** For purposes of considering prior
20 convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or
21 11.46.140(a)(2) [11.46.140(a)(3)], or in prosecuting the crime of concealment of
22 merchandise under AS 11.46.220(c), a conviction for an offense under another law or
23 ordinance with similar elements is a conviction of an offense having elements similar
24 to those of an offense defined as such under Alaska law at the time the offense was
25 committed. The court shall consider the date of a prior conviction as occurring on the
26 date that sentence is imposed for the prior offense.

27 * **Sec. 10.** AS 11.46.360(a) is amended to read:

28 (a) A person commits the crime of vehicle theft in the first degree if, having
29 no right to do so or any reasonable ground to believe the person has such a right, the
30 person drives, tows away, or takes

31 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft

1 of another;

2 (2) the propelled vehicle of another and

3 (A) the vehicle or any other property of another is damaged in a
4 total amount of \$1,500 [\$500] or more;

5 (B) the owner incurs reasonable expenses as a result of the loss
6 of use of the vehicle, in a total amount of \$1,500 [\$500] or more; or

7 (C) the owner is deprived of the use of the vehicle for seven
8 days or more;

9 (3) the propelled vehicle of another and the vehicle is marked as a
10 police or emergency vehicle; or

11 (4) the propelled vehicle of another and, within the preceding seven
12 years, the person was convicted under

13 (A) this section or AS 11.46.365;

14 (B) former AS 11.46.482(a)(4) or (5);

15 (C) former AS 11.46.484(a)(2);

16 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
17 of a propelled vehicle; or

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

21 * Sec. 11. AS 11.46.482(a) is amended to read:

22 (a) A person commits the crime of criminal mischief in the third degree if,
23 having no right to do so or any reasonable ground to believe the person has such a
24 right,

25 (1) with intent to damage property of another, the person damages
26 property of another in an amount of \$1,500 [\$500] or more;

27 (2) the person recklessly creates a risk of damage in an amount
28 exceeding \$100,000 to property of another by the use of widely dangerous means; or

29 (3) the person knowingly

30 (A) defaces, damages, or desecrates a cemetery or the contents
31 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,

1 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
2 memorial appears to be abandoned, lost, or neglected;

3 (B) removes human remains or associated burial artifacts from
4 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
5 tomb, grave, or memorial appears to be abandoned, lost, or neglected.

6 * **Sec. 12.** AS 11.46.484(a) is amended to read:

7 (a) A person commits the crime of criminal mischief in the fourth degree if,
8 having no right to do so or any reasonable ground to believe the person has such a
9 right

10 (1) with intent to damage property of another, the person damages
11 property of another in an amount of \$250 [\$50] or more but less than \$1,500 [\$500];

12 (2) the person tampers with a fire protection device in a building that is
13 a public place;

14 (3) the person knowingly accesses a computer, computer system,
15 computer program, computer network, or part of a computer system or network;

16 (4) the person uses a device to descramble an electronic signal that has
17 been scrambled to prevent unauthorized receipt or viewing of the signal unless the
18 device is used only to descramble signals received directly from a satellite or unless
19 the person owned the device before September 18, 1984; or

20 (5) the person knowingly removes, relocates, defaces, alters, obscures,
21 shoots at, destroys, or otherwise tampers with an official traffic control device or
22 damages the work upon a highway under construction.

23 * **Sec. 13.** AS 11.46.486(a) is amended to read:

24 (a) A person commits the crime of criminal mischief in the fifth degree if,
25 having no right to do so or any reasonable ground to believe the person has such a
26 right,

27 (1) with reckless disregard for the risk of harm to or loss of the
28 property or with intent to cause substantial inconvenience to another, the person
29 tampers with property of another;

30 (2) with intent to damage property of another, the person damages
31 property of another in an amount less than \$250 [\$50]; or

1 (3) the person rides in a propelled vehicle knowing it has been stolen
2 or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

3 * Sec. 14. AS 11.46.530(b) is amended to read:

4 (b) Criminal simulation is

5 (1) a class C felony if the value of what the object purports to represent
6 is \$1,500 [\$500] or more;

7 (2) a class A misdemeanor if the value of what the object purports to
8 represent is \$250 [\$50] or more but less than \$1,500 [\$500];

9 (3) a class B misdemeanor if the value of what the object purports to
10 represent is less than \$250 [\$50].

11 * Sec. 15. AS 11.46.620(d) is amended to read:

12 (d) Misapplication of property is

13 (1) a class C felony if the value of the property misapplied is \$1,500
14 [\$500] or more;

15 (2) a class A misdemeanor if the value of the property misapplied is
16 less than \$1,500 [\$500].

17 * Sec. 16. AS 11.46.730(c) is amended to read:

18 (c) Defrauding creditors is a class A misdemeanor unless that secured party,
19 judgment creditor, or creditor incurs a pecuniary loss of \$1,500 [\$500] or more as a
20 result to the defendant's conduct, in which case defrauding secured creditors is

21 (1) a class B felony if the loss is \$25,000 or more;

22 (2) a class C felony if the loss is \$1,500 [\$500] or more but less than
23 \$25,000."
24

25 Page 1, line 7:

26 Delete "Section 1"

27 Insert "Sec. 17"

28

29 Renumber the following bill sections accordingly.

30

31 Page 5, line 23:

- 1 Delete "sec. 8"
2 Insert "sec. 24"
3
4 Page 5, line 24:
5 Delete "sec. 9"
6 Insert "sec. 25"
7
8 Page 5, line 29:
9 Delete "sec. 1"
10 Insert "sec. 17"
11
12 Page 5, line 30:
13 Delete "sec. 2"
14 Insert "sec. 18"
15 Delete "sec. 3"
16 Insert "sec. 19"
17
18 Page 5, line 31:
19 Delete "sec. 4"
20 Insert "sec. 20"
21
22 Page 6, line 1:
23 Delete "sec. 7"
24 Insert "sec. 23"
25
26 Page 6, line 3, following "(b)":
27 Insert "AS 11.46.130(a), as amended by sec. 1 of this Act, AS 11.46.140(a), as
28 amended by sec. 2 of this Act, AS 11.46.150(a), as amended by sec. 3 of this Act,
29 AS 11.46.220(c), as amended by sec. 4 of this Act, AS 11.46.260(b), as amended by sec. 5 of
30 this Act, AS 11.46.270(b), as amended by sec. 6 of this Act, AS 11.46.280(d), as amended by
31 sec. 7 of this Act, AS 11.46.285(b), as amended by sec. 8 of this Act, AS 11.46.295, as

1 amended by sec. 9 of this Act, AS 11.46.360(a), as amended by sec. 10 of this Act,
2 AS 11.46.482(a), as amended by sec. 11 of this Act, AS 11.46.484(a), as amended by sec. 12
3 of this Act, AS 11.46.486(a), as amended by sec. 13 of this Act, AS 11.46.530(b), as amended
4 by sec. 14 of this Act, AS 11.46.620(d), as amended by sec. 15 of this Act, AS 11.46.730(c),
5 as amended by sec. 16 of this Act, and"

6

7 Page 6, line 3:

8 Delete "sec. 6"

9 Insert "sec. 22"

10 Delete "applies"

11 Insert "apply"

12

13 Page 6, line 5:

14 Delete "sec. 8"

15 Insert "sec. 24"

16

17 Page 6, line 10:

18 Delete "Sections 8 and 9"

19 Insert "Sections 24 and 25"

20 Delete "sec. 12"

21 Insert "sec. 28"



April 11, 2012

**AMERICAN CIVIL
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STUDENT ADVISOR

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,



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)
Representative Bob Lynn, [Representative Bob Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)
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Senator Lesil McGuire, [Senator Lesil McGuire@legis.state.ak.us](mailto:Senator_Lesil_McGuire@legis.state.ak.us)

CSSB 210 (FIN)
SECTIONAL ANALYSIS

Section 1 changes the age of the victim from under 10 to under 12 years in the elements of the crime of Assault in the 3rd degree. AS 11.41.220(a) in part currently prohibits a person (18 years old or over) from recklessly causing physical injury to a child under 10 years of age that would cause a reasonable person to seek medical care, or causes physical injury on two or more occasions. The bill would raise the victim's age to under 12 years old.

Section 2 amends the crime of endangering the welfare of a child in the first degree by adding the prohibition of recklessly failing to provide adequate food or liquids to a child, causing protracted impairment to a child's health. This change will increase criminal liability for offenders that harm children by withholding food and water.

Section 4 amends the definition of "serious physical injury" in Title 11. It expands the definition of serious physical injury for victims under 12 years old. It does so by adding the following

Physical injury to a person under 12 years of age that causes:

Serious disfigurement;

Impairment of health, by serious bruising or other injury that reasonably requires medical evaluation or treatment by a health care professional;

Loss or impairment of the function of a body member or organ;

Serious impediment of blood circulation or breathing.

This broadened definition will allow for increased criminal liability for crimes committed on children under the age of 12. This broadened definition is important for children because of their quick ability to heal from injuries that would be sustained much longer in adults. In addition it would increase possible penalties for signs of strangulation and severe causes of bruising that lead to anemia.

Sections 5 – 7 amend the law (AS 12.47.040 and 12.47.060) addressing procedures for persons found to be guilty of a crime but mentally ill, by clarifying that the decision that the person is guilty but mentally ill must be made by the jury, by proof beyond a reasonable doubt, unless the defendant waives this requirement. Under AS 12.47.050(d), a person incarcerated and found guilty but mentally ill and still receiving treatment for a mental illness, is not eligible for parole release or furlough. For this reason, *Blakely v. Washington*, 542 U.S. 296 (2004) (*Blakely*) requires the decision relating to whether a person is guilty but mentally ill to be made by the jury by proof beyond a reasonable doubt.

Section 8 amends AS 12.55.025(i), addressing sentencing procedures, to clarify that while the burden of proof in sentencing proceedings is generally by a preponderance of evidence, under AS 12.55 there are various statutes that specify a different burden of proof.

Section 9 and 10 clarify the law when a defendant enters into a plea agreement that calls for a specific term of probation or a specific term of incarceration, by providing that the court, in a probation revocation proceeding, cannot unilaterally terminate or reduce those terms, except by the amount of incarceration time imposed for the offense that is the basis of the probation violation. When a court imposes sentence for a probation revocation in these cases, the court is not obligated to impose the full amount of remaining suspended time, but rather must consider the nature of the probation violation in light of applicable sentencing law and impose an appropriate sentence, subject to the caveat that its authority to impose an appropriate sentence does not include the authority to terminate or reduce the term of probation or the suspended term.

Sections 11 and 12 amend AS 12.55.125 (sentences of imprisonment for felony convictions) to clarify that factual findings (1) that result in a mandatory term of imprisonment of 99 years for conviction of murder in the first degree; (2) result in a term that would preclude a defendant from being awarded good time under AS 33.20.010(a) – for example, a person sentenced under the “three strikes” law; or (3) would increase the presumptive sentencing range – for example, a person convicted of a class A felony who possessed a firearm – must be made by a jury by proof beyond a reasonable doubt, unless the defendant waives this requirement.

Section 13 adopts a procedure for finding aggravating factor AS 12.55.155(c)(10) – the defendant’s conduct was the most serious under the definition of the offense – that is consistent with the decisions of Alaska courts. That is, that the jury must decide the factual issues, but the court must make the legal decision whether it is the most serious in relation to other conduct defined in the offense.

Section 13 also provides that if one aggravating factor has been established, either by the court or the jury as required by law, additional aggravating factors may then be determined by the court by clear and convincing evidence rather than by the jury. The reason is that the finding of one aggravating factor authorizes the court to sentence an individual up to the maximum term provided by law. An additional aggravating factor cannot increase the maximum term; thus the *Blakely* decision does not require that additional factors to be decided by a jury by proof beyond a reasonable doubt.

Sections 14 and 15 make conforming amendments to the changes described in **Sections 9 and 10**.

Sections 16 and 17 describe the indirect court rule changes and the applicability provisions.

Section 18 would adopt a task force to study the crime of human trafficking. It would require that the task force prepare a report describing the number of human trafficking cases reported to law enforcement in the state since 2007, the number of cases prosecuted under Alaska law, the number of cases investigated by local and federal law enforcement agencies, and the services available to victims of human trafficking.

Alaska State Legislature

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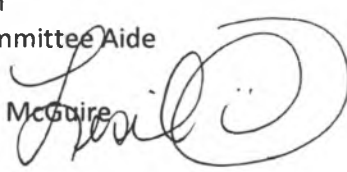
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Senator Lesil McGuire

MEMORANDUM

To: Representative Gatto
House Judiciary Chair

Cc: Melanie Lesh
Judiciary Committee Aide

From: Senator Lesil McGuire 

Date: April 9, 2012

Re: Hearing request for SB 210, "An Act relating to crimes against children."

Please schedule Senate Bill 210, relating to crimes against children and increasing criminal liability for offenders, at your earliest convenience.

Attached to this memo please find:

- A sponsor statement
- CS SB210 Version R
- SB210, the original bill, Version A
- Fiscal notes
- Resolution of support

The contact for SB 210 is Amy Saltzman, 465-2995

Thank you.