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**CS FOR SENATE BILL NO. 86(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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

"An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; making conforming amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure, Rule 77, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure, and Rule 9, Alaska Rules of Administration; and providing for an effective date."

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

\* **Section 1.** AS 08.29.200(b) is amended to read:

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable [AN ELDERLY

PERSON OR DISABLED] adult as required by AS 47.24.

\* **Sec. 2.** AS 08.63.200(b) is amended to read:

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable [AN ELDERLY PERSON OR DISABLED] adult as required by AS 47.24.

\* **Sec. 3.** AS 11.56.740(a) is amended to read:

(a) A person commits the crime of violating a protective order if the person is subject to a protective order

(1) issued or filed under AS 18.66 and containing a provision listed in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order; [OR]

(2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly commits or attempts to commit an act that violates or would violate a provision listed in AS 18.65.850(c)(1) - (3); or

(3) issued under AS 13.26.180 or 13.26.209 and knowingly commits or attempts to commit an act with reckless disregard that the act violates or would violate a provision of the protective order.

\* **Sec. 4.** AS 11.56.740(c) is amended to read:

(c) In this section, "protective order" means an order issued or filed under AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

\* **Sec. 5.** AS 12.55.155(c) is amended by adding a new paragraph to read:

(35) the defendant knowingly directed the conduct constituting the offense at a victim because that person was 65 years of age or older.

\* **Sec. 6.** AS 13.26.165 is amended to read:

**Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may appoint a conservator or issue another [MAKE OTHER] protective order for cause as follows:

(1) appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that

(A) a minor owns money or property that requires management or protection that [WHICH] cannot otherwise be provided;

(B) the minor [,] has or may have business affairs that [WHICH] may be jeopardized or prevented by the status of being a minor; [,]  
or

(C) [THAT] funds are needed for the minor's support and education and [THAT] protection is necessary or desirable to obtain or provide funds;

(2) appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that

(A) the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, detention by a foreign power, or disappearance; and

(B) the person has property that [WHICH] will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and [THAT] protection is necessary or desirable to obtain or provide funds.

\* Sec. 7. AS 13.26.180(a) is amended to read:

(a) The person to be protected, a person's attorney or other legal representative, any person who is interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, [OR] custodian, or caregiver, the Department of Health and Social Services, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected, may petition for the appointment of a conservator or for other appropriate protective order.

\* Sec. 8. AS 13.26.180 is amended by adding a new subsection to read:

(c) The petition may include a request for temporary conservatorship as provided in AS 13.26.207 if it appears that the respondent's property is likely to be wasted or dissipated during the pendency of the conservatorship proceeding. A request for temporary conservatorship must specify the facts that cause the petitioner to believe that a temporary conservatorship is necessary.

\* **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

(c) This section does not apply to a petition or order for an ex parte protective order filed under AS 13.26.209.

\* **Sec. 10.** AS 13.26 is amended by adding new sections to read:

**Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an initial petition for conservatorship, it appears that the respondent is in need of a protective order to protect the respondent against waste or dissipation of funds or property, or to obtain funds that are needed for the immediate support, care, and welfare of the respondent or persons entitled to be supported by the respondent, and the respondent is not capable of protecting the respondent's funds or property or obtaining the funds that are needed to support the respondent or persons whom the respondent is required to support, the petitioner may request the appointment of a temporary conservator to authorize the protection or to obtain the necessary funds. The request must state the reasons and factual basis for the request. The petitioner shall immediately file the request with the court and serve copies on the respondent and the respondent's attorney and other persons as ordered by the court. The court shall appoint an attorney for a respondent who is unrepresented to be at the hearing and conduct a hearing within 72 hours after the filing.

(b) If the court determines that a temporary conservator should be appointed, it shall make the appointment and grant to the temporary conservator only the authority that is least restrictive upon the liberty of the respondent and that enables the temporary conservator to provide the protection or authority necessary to protect the respondent from waste or dissipation of funds or property or to obtain the funds necessary for support.

(c) The temporary conservatorship expires at the time of the appointment of a full or partial conservator or on the dismissal of the petition for conservatorship.

**Sec. 13.26.209. Ex parte protective orders; modification; forms for petitions and orders; fees.** (a) A person who is allowed to file a petition for a protective order under AS 13.26.180(a) may file a petition for an ex parte protective order against another person. A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person's attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm. If the court finds that the petition establishes probable cause that the respondent is financially defrauding the petitioner or a person for whose benefit the petitioner filed the petition and that, because of the fraud, there has been or is an immediate threat of a waste or dissipation of the proposed protected person's funds or other property, the court shall ex parte and without notice to the respondent issue a protective order. The petitioner shall certify to the court in writing any effort that the petitioner made to provide notice to the respondent. The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person.

(b) An ex parte protective order under this section may

(1) grant any protection described in AS 13.26.200;

(2) supersede an existing power of attorney;

(3) prohibit the respondent from having any direct or indirect contact with the petitioner or other person for whose benefit the petitioner filed the petition; and

(4) prohibit the respondent from taking any act with respect to the funds or other property of the petitioner or other person for whose benefit the petitioner filed the petition.

(c) An ex parte protective order expires 20 days after it is issued, at the end of a six-month extension if granted by the court under (d) of this section, or on the appointment of a temporary or permanent conservator or dismissal of the petition for the ex parte order.

(d) On application filed with the court before the expiration of the 20-day ex parte protective order, the court shall schedule a hearing on whether to extend the

1 protective order for up to six months. The court shall provide to the protected person  
2 and the respondent at least 10 days' notice of the hearing and the respondent's right to  
3 appear and be heard. If the court finds by a preponderance of the evidence that the  
4 respondent has committed fraud against the petitioner or the person for whose benefit  
5 the petition was filed, regardless of whether the respondent appears at the hearing, the  
6 court may extend the ex parte protective order for up to six months.

7 (e) The petitioner, respondent, or protected person, if the protected person is a  
8 vulnerable adult, may request modification of a protective order issued under this  
9 section. If a request is made for modification of a protective order, the court shall  
10 schedule a hearing on three days' notice or on shorter notice as the court may  
11 prescribe. If the court modifies a protective order under this section, the court shall  
12 issue a modified order and shall make reasonable efforts to ensure that the order is  
13 understood by the petitioner, the respondent, and the protected person, if the protected  
14 person is a vulnerable adult, if present at the hearing.

15 (f) A protective order issued under this section is in addition to any other civil  
16 or criminal remedy.

17 (g) A third party that has received actual or legal notice of a protective order  
18 issued under this section shall comply with the order. A third party who does not  
19 comply with a protective order granted under this section may be liable in a civil  
20 action to the protected person or the protected person's heirs, assigns, or estate for a  
21 civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees associated  
22 with the failure to comply with the protective order. A third party who does not  
23 comply with a protective order granted under this section may also be criminally liable  
24 under AS 11.56.740 for violating a protective order. As used in this section, "actual or  
25 legal notice" means delivery by mail or facsimile at the most recently known place of  
26 residence or business of the third party.

27 (h) The Alaska Court System, after consulting with the Department of Health  
28 and Social Services, the office of public advocacy, the office of elder fraud and  
29 assistance, the long term care ombudsman, and other interested persons and  
30 organizations, shall prepare forms for petitions and protective orders and instructions  
31 for use of the forms by a person seeking a protective order under this section. The

forms must conform to the Alaska Rules of Probate Procedure and Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make available to the public the forms a person seeking a protective order under this section may need and instructions for the use of the forms. The clerk shall provide assistance in completing and filing the forms.

(i) Filing fees may not be charged for a petition under this section.

\* **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

**Sec. 13.26.324. Definitions.** In AS 13.26.165 - 13.26.324, unless the context requires otherwise, "fraud" means

(1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

(2) offenses against property under AS 11.46.100 - 11.46.740; or

(3) exploitation of another person or another person's resources for personal profit or advantage if no significant benefit accrues to the person who is exploited.

\* **Sec. 12.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740(a)(1) or (2) [AS 11.56.740];

(3) violated a condition of release imposed under AS 12.30.016(e) or (f) or 12.30.027.

\* **Sec. 13.** AS 18.65.540(a) is amended to read:

(a) The Department of Public Safety shall maintain a central registry of protective orders issued by or filed with a court of this state under AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must include, for each protective order, the names of the petitioner and respondent, their

1 dates of birth, and the conditions and duration of the order. The registry shall retain a  
2 record of the protective order after it has expired.

3 \* **Sec. 14.** AS 18.65.540(b) is amended to read:

4 (b) A peace officer receiving a protective order from a court under  
5 **AS 13.26.180, 13.26.209,** AS 18.65.850 - 18.65.855, **or** AS 18.66.100 - 18.66.180, a  
6 modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a  
7 protective order **shall** [, MUST] take reasonable steps to ensure that the order,  
8 modified order, or dismissal is entered into the central registry within 24 hours after  
9 being received.

10 \* **Sec. 15.** AS 44.21.415(g) is amended to read:

11 (g) In this section,

12 (1) "fraud" means

13 (A) robbery, extortion, and coercion under AS 11.41.500 -  
14 11.41.530;

15 (B) [THEFT AND RELATED] offenses **against property**  
16 under AS 11.46.100 - 11.46.740; or

17 (C) exploitation of another person or another person's resources  
18 for personal profit or advantage with no significant benefit accruing to the  
19 person who is exploited;

20 (2) "older Alaskan" means a person residing in the state who is 60  
21 years of age or older.

22 \* **Sec. 16.** AS 47.24.010(a) is amended to read:

23 (a) Except as provided in (e) and (f) of this section, the following persons  
24 who, in the performance of their professional duties, have reasonable cause to believe  
25 that a vulnerable adult suffers from **undue influence,** abandonment, exploitation,  
26 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for  
27 the belief, report the belief to the department's central information and referral service  
28 for vulnerable adults **in the office of the department that handles adult protective**  
29 **services:**

30 (1) a physician or other licensed health care provider;

31 (2) a mental health professional as defined in AS 47.30.915(11) and



including a marital and family therapist licensed under AS 08.63;

(3) a pharmacist;

(4) an administrator or employee of a nursing home, residential care, or health care facility;

(5) a guardian or conservator;

(6) a police officer;

(7) a village public safety officer;

(8) a village health aide;

(9) a social worker;

(10) a member of the clergy;

(11) a staff employee of a project funded by the Department of Administration for the provision of services to older Alaskans, the Department of Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

(12) an employee of a personal care or home health aide program;

(13) an emergency medical technician or a mobile intensive care paramedic;

(14) a caregiver of the vulnerable adult;

(15) a certified nurse aide;

**(16) an educator or administrative staff member of a public or private educational institution.**

\* **Sec. 17.** AS 47.24.010(b) is amended to read:

(b) A report made under this section may include the name and address of the reporting person and must include

(1) the name and contact information [ADDRESS] of the vulnerable adult;

(2) information relating to the nature and extent of the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect;

(3) other information that the reporting person believes might be helpful in an investigation of the case or in providing protection for the vulnerable adult.

\* **Sec. 18.** AS 47.24.010(c) is amended to read:

(c) The department or its designees shall report to the Department of Law any person required by (a) of this section to report who fails to comply with this section. A person listed in (a) of this section who, because of the circumstances, should have had reasonable cause to believe that a vulnerable adult suffers from undue influence, abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to comply with this section is guilty of a class B misdemeanor. If a person convicted under this section is a member of a profession or occupation that is licensed, certified, or regulated by the state, the court shall notify the appropriate licensing, certifying, or regulating entity of the conviction.

\* **Sec. 19.** AS 47.24.010(d) is amended to read:

(d) This section does not prohibit a person listed in (a) of this section, or any other person, from reporting cases of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's attention in the person's nonoccupational capacity. This section does not prohibit any other person from reporting a harm under this section.

\* **Sec. 20.** AS 47.24.010(e) is amended to read:

(e) If a person making a report under this section believes that immediate action is necessary to protect the vulnerable adult from imminent risk of serious physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or self-neglect and the reporting person cannot immediately contact the department's central information and referral service for vulnerable adults, the reporting person shall [MAY] make the report to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the vulnerable adult and shall [,] at the earliest opportunity within 24 hours after receiving the report of harm [,] notify the department. A person may not bring an action for damages against a police officer, a village public safety officer, the state, or a political subdivision of the state based on a decision under this subsection to take or not to take immediate action to protect a vulnerable adult. If a decision is made under this subsection to take immediate action to protect a vulnerable adult, a person may not bring an action for damages based on the protective actions taken unless the protective actions were performed with gross negligence or intentional misconduct;

1 damages awarded in the action may include only direct economic compensatory  
2 damages for personal injury.

3 \* **Sec. 21.** AS 47.24.010(f) is amended to read:

4 (f) A person listed in (a) of this section who reports to the long term care  
5 ombudsman under AS 47.62.015, or to the Department of Health and Social Services,  
6 that a vulnerable adult has been unduly influenced, abandoned, exploited, abused, or  
7 neglected in an out-of-home care facility is considered to have met the duty to report  
8 under (a) of this section.

9 \* **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

10 (i) A person required to report under this section who makes the report to the  
11 person's job supervisor or to another individual working for the entity that employs the  
12 person is not relieved of the obligation to make the report to the department as  
13 required under (a) of this section.

14 (j) A person who recklessly makes a false report under this section is civilly  
15 liable for actual damages suffered by the person who is the subject of the report.

16 \* **Sec. 23.** AS 47.24.013(a) is amended to read:

17 (a) If a report received under AS 47.24.010 pertains to [REGARDS] the  
18 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a  
19 vulnerable adult who is 60 years of age or older that is alleged to have been committed  
20 by or to have resulted from the negligence of the staff or a volunteer of an out-of-  
21 home care facility, including a facility licensed under AS 47.32, in which the  
22 vulnerable adult resides, the department shall transfer the report for investigation to  
23 the long term care ombudsman under AS 47.62.015.

24 \* **Sec. 24.** AS 47.24.013(b) is amended to read:

25 (b) The department shall investigate a report received under AS 47.24.010  
26 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-  
27 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have  
28 been committed by or to have resulted from the negligence of the staff or a volunteer  
29 of an out-of-home care facility in which the vulnerable adult resides.

30 \* **Sec. 25.** AS 47.24.013(c) is amended to read:

31 (c) Upon receipt of a report under (a) or (b) of this section, the long term care

ombudsman and the department shall

(1) conduct an investigation as appropriate under AS 47.62.015 or this title, respectively;

(2) coordinate and cooperate in their responses to and investigations of the report if their jurisdictions overlap;

(3) provide the results of their actions or investigations to the central information and referral service of the office of the department that handles adult protective services within 60 days after the receipt of the report.

\* **Sec. 26.** AS 47.24.013(d) is amended to read:

(d) If the long term care ombudsman receives directly a report regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the ombudsman shall provide the report, and the results of the ombudsman's actions or investigations regarding the report, to the central information and referral service of the office of the department that handles adult protective services. The department may investigate the report as described in AS 47.24.015 if the department determines that action is appropriate.

\* **Sec. 27.** AS 47.24.015(a) is amended to read:

(a) Upon the department's receipt of a report under AS 47.24.010 that is not transferred under AS 47.24.013, the department, or its designee, shall promptly initiate an investigation to determine whether the vulnerable adult who is the subject of the report suffers from undue influence, abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its designee, shall conduct a face-to-face interview with the subject of the report unless that person is unconscious or the department, or its designee, has determined that a face-to-face interview could further endanger the vulnerable adult.

\* **Sec. 28.** AS 47.24.015(c) is amended to read:

(c) The department [,] or its designee [,] shall immediately terminate an investigation under this section upon the request of the vulnerable adult who is the subject of the report made under AS 47.24.010. However, the department or its designee may not terminate the investigation if the investigation to that point has resulted in probable cause to believe that the vulnerable adult is in need of protective

1 services and the request is made personally by the vulnerable adult and the vulnerable  
2 adult is not competent to make the request on the adult's own behalf, or the request is  
3 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker  
4 and that person is the alleged perpetrator of the undue influence, abandonment,  
5 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under  
6 this chapter. If the department has probable cause to believe that the vulnerable adult  
7 is in need of protective services,

8 (1) the department may petition the court as set out in AS 47.24.019;

9 (2) the department or its designee may refer the report made to the  
10 department under AS 47.24.010 to a police officer for criminal investigation; or

11 (3) in cases involving fraud, the department or its designee may refer  
12 the report made to the department under AS 47.24.010 to the office of public advocacy  
13 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.324  
14 [AS 44.21.415].

15 \* **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

16 (h) In conducting an investigation under this section, the department may issue  
17 subpoenas, conduct interviews, and examine any health care or financial records  
18 related to a vulnerable adult. The department may seek a court order to enforce a  
19 subpoena.

20 (i) A person may not interfere with the department in the performance of its  
21 investigation under this section, including interfering with the department's access to  
22 the vulnerable adult.

23 (j) Notwithstanding any other provision of law, the office of the department  
24 that handles adult protective services shall have access to any information compiled or  
25 retained by other divisions in the department, regardless of the nature of the  
26 information or whether the information is considered confidential, to assist in  
27 administering the provisions of this chapter.

28 (k) The department may audiotape or videotape an interview of a vulnerable  
29 adult if the adult has the capacity to consent and gives that consent. The department  
30 shall document the consent in its investigative file. The department may not audiotape  
31 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

(l) The department shall provide for the training of investigators who investigate reports of harm under this section. Training must include instruction in federal, state, and local laws and policies of the department related to vulnerable adults, and in investigative techniques. The department may require other appropriate training.

(m) In this section, "financial records" include financial records related to the vulnerable adult that are maintained by any person.

\* **Sec. 30.** AS 47.24.016(a) is amended to read:

(a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services, but the department cannot obtain the vulnerable adult's consent to receive the services because the vulnerable adult is unable to consent or lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as the vulnerable adult's surrogate decision maker, the department may select from the following list, in the order of priority listed, an individual who is willing to be the vulnerable adult's surrogate decision maker for the purpose of deciding whether to consent to the vulnerable adult's receipt of protective services:

(1) the vulnerable adult's spouse, unless

[ (A) THE VULNERABLE ADULT AND THE SPOUSE  
HAVE SEPARATE DOMICILES; OR

(B)] the vulnerable adult or the spouse have initiated divorce,  
[OR] dissolution, or legal separation proceedings;

(2) an individual who lives with the vulnerable adult in a spousal relationship or as a domestic partner and who is 18 years of age or older;

(3) a son or daughter of the vulnerable adult who is 18 years of age or older;

(4) a parent of the vulnerable adult;

(5) a brother or sister of the vulnerable adult who is 18 years of age or older; or

(6) a close friend or relative of the vulnerable adult who is 18 years of age or older.

1 \* **Sec. 31.** AS 47.24.016(b) is amended to read:

2 (b) An individual from the list in (a) of this section may not be selected as a  
3 surrogate decision maker if

4 (1) the department determines that individual does not possess decision  
5 making capacity; or

6 (2) there are allegations that individual is a perpetrator of the **undue**  
7 **influence**, abandonment, exploitation, abuse, or neglect of the vulnerable adult.

8 \* **Sec. 32.** AS 47.24.016(d) is amended to read:

9 (d) The department may not continue to provide protective services to a  
10 vulnerable adult based on the consent of a surrogate decision maker serving under this  
11 section **or AS 13.52.030** if the department determines that the vulnerable adult has  
12 become able to consent or has regained decision making capacity since the surrogate's  
13 consent was given. The department may continue protective services to a vulnerable  
14 adult who has become able to consent or has regained decision making capacity only  
15 if the vulnerable adult consents.

16 \* **Sec. 33.** AS 47.24.017(a) is amended to read:

17 (a) If the department determines under AS 47.24.015 that a vulnerable adult is  
18 in need of protective services and [EITHER] the vulnerable adult, the vulnerable  
19 adult's guardian, **conservator**, [OR] attorney-in-fact, **trustee**, [OR] a surrogate  
20 decision maker selected under AS 47.24.016, **or a surrogate for health care**  
21 **decisions under AS 13.52.030** consents to receipt of the protective services, and to  
22 the extent that resources are available, the department shall ensure that the protective  
23 services for the vulnerable adult are provided by the department, or its designee,  
24 within 10 working days after the department received the report under AS 47.24.010  
25 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-  
26 neglect of the vulnerable adult. However, if circumstances beyond the control of the  
27 department or the department's designee make it impossible to provide the protective  
28 services within the 10 working days, the department shall ensure that the services are  
29 provided as soon as possible after that time.

30 \* **Sec. 34.** AS 47.24.019(c) is amended to read:

31 (c) If a vulnerable adult who has consented to receive protective services, or

on whose behalf consent to receive protective services has been given, is prevented by any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE DECISION MAKER] from receiving those services, the department may petition the superior court for an injunction restraining the person [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE DECISION MAKER] from interfering with the provision of protective services to the vulnerable adult.

\* **Sec. 35.** AS 47.24.050 is amended to read:

**Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult filed under this chapter are confidential and are not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, under [IN ACCORDANCE WITH] this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate agencies or individuals inside and outside the state, in connection with investigations or judicial proceedings involving the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult.

(b) The department shall disclose a report of the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the vulnerable adult who is the subject of the report or the vulnerable adult's guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker consents in writing. The department may not disclose a report of the undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the vulnerable adult's guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker if that person is an alleged perpetrator of the undue influence, abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being investigated under this chapter. The department shall, upon request, disclose the number of verified reports of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult that occurred at an institution that provides care for vulnerable adults or that were the result of actions or inactions of a public home care provider.



1 \* **Sec. 36.** AS 47.24.130 is amended to read:

2       **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be  
3 construed to mean that a person is unduly influenced, abused, neglected, self-  
4 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of  
5 emergency or protective services for the sole reason that the person relies on or is  
6 being furnished treatment by spiritual means through prayer alone under [IN  
7 ACCORDANCE WITH] the tenets and practices of a church or religious  
8 denomination of which the person is a member or adherent, if [PROVIDED THAT]  
9 the person consents to the treatment through spiritual means only and the treatment is  
10 administered by an accredited practitioner of the church or religious denomination. In  
11 this section, "church or religious denomination" has the meaning given to "religious  
12 organization" in AS 05.15.690.

13 \* **Sec. 37.** AS 47.24.900(2) is amended to read:

14               (2) "abuse" means

15                       (A) the [WILFUL,] intentional, knowing, or reckless  
16 nonaccidental [,] and nontherapeutic infliction of physical pain, injury, [OR]  
17 mental or emotional distress, or fear, including coercion and intimidation;  
18 or

19                       (B) sexual assault under AS 11.41.410 or 11.41.420;

20 \* **Sec. 38.** AS 47.24.900(3) is amended to read:

21               (3) "caregiver" means

22                       (A) a person who is providing care to a vulnerable adult as a  
23 result of a family relationship, or who has assumed some or all responsibility  
24 for the care of a vulnerable adult voluntarily, by contract, as an employee of a  
25 business that provides care in an adult's home, or by court order; or

26                       (B) an employee of an out-of-home care facility who provides  
27 care to one or more vulnerable adults;

28 \* **Sec. 39.** AS 47.24.900(4) is amended to read:

29               (4) "decision making capacity" means the ability to understand and  
30 appreciate the nature and consequences of a decision and the ability to reach and  
31 communicate an informed decision; in this paragraph, "informed decision"

1 includes a decision made by the vulnerable adult that is free from undue  
2 influence;

3 \* Sec. 40. AS 47.24.900(7) is amended to read:

4 (7) "exploitation"

5 (A) means unjust or improper use of another person or another  
6 person's resources for one's own profit or advantage, with or without the  
7 person's consent; and

8 (B) includes acts by a person who stands in a position of  
9 trust or confidence with a vulnerable adult or who knows or should know  
10 that the vulnerable adult lacks the capacity to consent that involve  
11 obtaining profit or advantage through undue influence, deception, fraud,  
12 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has  
13 the meaning given in AS 13.26.324(1) and (2);

14 \* Sec. 41. AS 47.24.900(9) is amended to read:

15 (9) "neglect" means the intentional, knowing, or reckless failure by a  
16 caregiver to provide essential care or services or access to essential care or services  
17 or to carry out a prescribed treatment plan necessary to maintain the physical and  
18 mental health of the vulnerable adult when the vulnerable adult is unable to provide  
19 or obtain the essential care or services or to carry out the prescribed treatment  
20 plan on the vulnerable adult's own behalf; in this paragraph, "essential care or  
21 services" includes food, clothing, shelter, medical care, and supervision;

22 \* Sec. 42. AS 47.24.900(11) is amended to read:

23 (11) "protective services" means services that are intended to prevent  
24 or alleviate harm resulting from undue influence, abandonment, exploitation, abuse,  
25 neglect, or self-neglect and that are provided to a vulnerable adult in need of  
26 protection; in this paragraph, "services" ["PROTECTIVE SERVICES"] includes

27 (A) protective placement;

28 (B) applying for or obtaining public benefits;

29 (C) obtaining health care services and supplies;

30 (D) staying financial transactions;

31 (E) petitioning for an ex parte protective order under

**AS 13.26.209;****(F) assisting with personal hygiene;****(G) obtaining food and clothing;****(H) protection from physical and emotional abuse;****(I) obtaining representative payee services; and****(J) coordinating protective services;**

\* **Sec. 43.** AS 47.24.900(15) is amended to read:

(15) "unable to consent" means refusal to, or inability to, accept services because

(A) the person is an incapacitated person or apparently is an incapacitated person;

(B) of coercion by or fear of reprisal from the perpetrator of **undue influence**, abandonment, exploitation, abuse, or neglect;

(C) of dependency on the perpetrator of **undue influence**, abandonment, exploitation, abuse, or neglect for services, care, or support; or

(D) of an inability to perceive that refusal to consent results in an imminent and substantial danger of **loss, waste, or dissipation of income or assets, eviction, physical or mental harm to self or others, or** death [OR IRREPARABLE HARM TO SELF OR OTHERS];

\* **Sec. 44.** AS 47.24.900(16) is amended to read:

(16) "vulnerable adult" means a person 18 years of age or older who, because of **incapacity, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance** [PHYSICAL OR MENTAL IMPAIRMENT], is unable to meet the person's own needs or to seek help without assistance.

\* **Sec. 45.** AS 47.24.900 is amended by adding new paragraphs to read:

(17) "deception" means creating, reinforcing, or failing to correct a false impression or preventing another person from acquiring information that would affect the person's judgment regarding a transaction;

(18) "fiduciary duty" means the duty of a third party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act

with due regard for the benefit and interest of that person;

(19) "financial institution" means an institution subject to state or federal banking or financial regulations, including

(A) a broker-dealer;

(B) a commercial bank;

(C) a savings bank;

(D) a credit union;

(E) a premium finance company;

(F) a small loan company;

(G) a bank holding company;

(H) a financial holding company;

(I) a trust company;

(J) a savings and loan association;

(K) a deferred deposit advance licensee;

(L) an investment bank;

(M) an insurance company subject to regulation by AS 21;

(N) a licensee subject to regulation by AS 21; and

(O) an investment adviser;

(20) "person who stands in a position of trust or confidence" means a person who

(A) is a relative by blood or marriage;

(B) is a joint tenant or tenant in common;

(C) has a legal or fiduciary relationship; or

(D) is a person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's assets or income;

(21) "undue influence" means the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care.

1     \* **Sec. 46.** The uncoded law of the State of Alaska is amended by adding a new section to  
2 read:

3             DIRECT COURT RULE AMENDMENT. Rule 12(h), Alaska Rules of  
4 Criminal Procedure, is amended to read:

5             (h) **Continuance of Trial.** A motion for continuance of a trial date will be  
6 granted by the court only for cause shown. **In deciding whether to grant the motion,**  
7 **the court shall consider the victim's circumstances and the effect the delay would**  
8 **have on the victim, particularly a victim of advanced age or extreme youth. The**  
9 **court shall place its findings on the record.** The presiding judge of a judicial district  
10 may require that a visiting or pro tem judge obtain approval from the presiding judge  
11 before granting any continuance of trial.

12     \* **Sec. 47.** The uncoded law of the State of Alaska is amended by adding a new section to  
13 read:

14             DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of  
15 Criminal Procedure, is amended to read:

16             (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for  
17 placing criminal proceedings upon appropriate calendars. Preference shall be given to  
18 criminal proceedings and the trial of defendants in custody shall be given preference  
19 over other criminal cases. **The court shall consider the circumstances of the victim,**  
20 **particularly a victim of advanced age or extreme youth, in setting the trial date.**

21 Trial dates in criminal cases in the superior court shall be set at the time of  
22 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set  
23 for a date certain.

24     \* **Sec. 48.** The uncoded law of the State of Alaska is amended by adding a new section to  
25 read:

26             INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (h), enacted by  
27 sec. 10 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,  
28 relating to conservatorships and protective proceedings, by allowing ex parte orders to be  
29 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from  
30 financial exploitation.

31             (b) AS 13.26.209(i), enacted by sec. 10 of this Act, has the effect of amending Rule 9,

Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition for an ex parte protective order under AS 13.26.209(a), enacted by sec. 10 of this Act.

(c) AS 13.26.207, enacted by sec. 10 of this Act, has the effect of amending Rule 77, Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a petition for the appointment of a temporary conservator.

\* **Sec. 49.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed on or after the effective date of this Act.

\* **Sec. 50.** The uncoded law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the catch line of

(1) AS 47.24.010 from "Reports of harm" to "Persons required to report; reports of harm";

(2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in out-of-home care facilities."

\* **Sec. 51.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. (a) AS 13.26.209(a) - (h), enacted by sec. 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

(b) AS 13.26.209(i), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

\* **Sec. 52.** Sections 16 - 28 of this Act take effect September 1, 2011.

\* **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.