

**HOUSE BILL NO. 150**

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

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/9/11

Referred: Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

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

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

10 \* **Section 1.** AS 11.56.740(a) is amended to read:

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

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

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

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

11 \* **Sec. 2.** AS 11.56.740(c) is amended to read:

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

14 \* **Sec. 3.** AS 12.55.155(c) is amended by adding a new paragraph to read:

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

17 \* **Sec. 4.** AS 13.26.165 is amended to read:

18 **Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and  
 19 hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may  
 20 appoint a conservator or make other protective order for cause as follows:

21 (1) appointment of a conservator or other protective order may be  
 22 made in relation to the estate and affairs of a minor if the court determines that a minor  
 23 owns money or property that requires management or protection which cannot  
 24 otherwise be provided, has or may have business affairs which may be jeopardized or  
 25 prevented by the status of being a minor, or that funds are needed for the minor's  
 26 support and education and that protection is necessary or desirable to obtain or provide  
 27 funds;

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

30 (A) the person is unable to manage the person's property and  
 31 affairs effectively for reasons such as mental illness, mental deficiency,

1 physical illness or disability, advanced age, chronic use of drugs, chronic  
 2 intoxication, **fraud**, confinement, detention by a foreign power, or  
 3 disappearance; and

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

8 \* **Sec. 5.** AS 13.26.180(a) is amended to read:

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

16 \* **Sec. 6.** AS 13.26.180 is amended by adding a new subsection to read:

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

22 \* **Sec. 7.** AS 13.26 is amended by adding new sections to read:

23 **Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an  
 24 initial petition for conservatorship, it appears that the respondent is in need of a  
 25 protective order to protect the respondent against waste or dissipation of funds or  
 26 property, or to obtain funds that are needed for the immediate support, care, and  
 27 welfare of the respondent or persons entitled to be supported by the respondent, and  
 28 the respondent is not capable of protecting the respondent's funds or property or  
 29 obtaining the funds that are needed to support the respondent or persons whom the  
 30 respondent is required to support, the petitioner may request the appointment of a  
 31 temporary conservator to authorize the protection or to obtain the necessary funds. The

1 request shall state the reasons and factual basis for the request. The petitioner shall  
2 immediately file the request with the court and serve copies on the respondent and the  
3 respondent's attorney. The court shall conduct a hearing within 72 hours after the  
4 filing.

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

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

13 **Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders;**  
14 **fees.** (a) A person who is allowed to file a petition for a protective order under  
15 AS 13.26.180(a) may file a petition for an ex parte protective order against another  
16 person. If the court finds that the petition establishes probable cause that the  
17 respondent is financially defrauding the petitioner or a person for whose benefit the  
18 petitioner filed the petition, and that because of the fraud there has been, or is an  
19 immediate threat of, a waste or dissipation of the proposed protected person's funds or  
20 other property, the court shall ex parte and without notice to the respondent issue a  
21 protective order. The petitioner shall certify to the court in writing any effort that the  
22 petitioner made to provide notice to the respondent. The court shall cause a copy of  
23 the protective order to be served on the respondent.

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

25 (1) grant any protection described in AS 13.26.200;

26 (2) supersede an existing power of attorney;

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

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

1 petitioner filed the petition.

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

6 (d) Upon application filed with the court before the expiration of the 20-day  
7 ex parte protective order, the court shall schedule a hearing on whether to extend the  
8 protective order for up to six months. The court shall provide at least 10 days' notice to  
9 the respondent of the hearing and the respondent's right to appear and be heard. If the  
10 court finds by a preponderance of the evidence that the respondent has committed  
11 fraud against the petitioner or the person for whose benefit the petition was filed,  
12 regardless of whether the respondent appears at the hearing, the court may extend the  
13 ex parte protective order for up to six months.

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

16 (f) A third party shall comply with a protective order issued under this section.  
17 A third party who does not comply with a protective order granted under this section  
18 may be liable in a civil action to the protected person or the protected person's heirs,  
19 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,  
20 costs, and fees associated with the failure to comply with the protective order. A third  
21 person who does not comply with a protective order granted under this section may  
22 also be criminally liable under AS 11.56.740 for violating a protective order.

23 (g) The Alaska Court System, after consulting with the Department of Health  
24 and Social Services, the office of public advocacy, the office of elder fraud and  
25 assistance, the long-term care ombudsman, and other interested persons and  
26 organizations, shall prepare forms for petitions, protective orders, and instructions for  
27 their use by a person seeking a protective order under this section. The forms must  
28 conform to the Alaska Rules of Probate Procedure and Alaska Rules of Civil  
29 Procedure, except that information on the forms may be filled in by legible  
30 handwriting. The office of the clerk of each superior and district court shall make  
31 available to the public the forms a person seeking a protective order under this section

1 may need and instructions for the use of the forms. The clerk shall provide assistance  
2 in completing and filing the forms.

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

4 \* **Sec. 8.** AS 13.26 is amended by adding a new section to read:

5 **Sec. 13.26.325. Definitions.** In AS 13.26.165 - AS 13.26.325, unless the  
6 context requires otherwise, "fraud" means

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

8 (2) theft and related offenses under AS 11.46.100 - 11.46.740; or

9 (3) exploitation of another person or another person's resources for  
10 personal profit or advantage with no significant benefit accruing to the person who is  
11 exploited.

12 \* **Sec. 9.** AS 18.65.530(a) is amended to read:

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

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

19 (2) committed the crime of violating protective order in violation of  
20 **AS 11.56.740(a)(1) and (2)** [AS 11.56.740];

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

23 \* **Sec. 10.** AS 18.65.540(a) is amended to read:

24 (a) The Department of Public Safety shall maintain a central registry of  
25 protective orders issued by or filed with a court of this state under **AS 13.26.180,**  
26 **13.26.209;** AS 18.65.850 - 18.65.870; or AS 18.66.100 - 18.66.180. The registry must  
27 include for each protective order the names of the petitioner and respondent, their  
28 dates of birth, and the conditions and duration of the order. The registry shall retain a  
29 record of the protective order after it has expired.

30 \* **Sec. 11.** AS 18.65.540(b) is amended to read:

31 (b) A peace officer receiving a protective order from a court under

1        **AS 13.26.180, 13.26.209;** AS 18.65.850 - 18.65.855; **or** [,] AS 18.66.100 - 18.66.180,  
 2        a modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a  
 3        protective order, must take reasonable steps to ensure that the order, modified order, or  
 4        dismissal is entered into the central registry within 24 hours after being received.

5        \* **Sec. 12.** AS 47.24.010(a) is amended to read:

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

- 13                        (1) a physician or other licensed health care provider;
- 14                        (2) a mental health professional as defined in AS 47.30.915(11) and  
 15       including a marital and family therapist licensed under AS 08.63;
- 16                        (3) a pharmacist;
- 17                        (4) an administrator **or employee** of a nursing home, residential care or  
 18       health care facility;
- 19                        (5) a guardian or conservator;
- 20                        (6) a police officer;
- 21                        (7) a village public safety officer;
- 22                        (8) a village health aide;
- 23                        (9) a social worker;
- 24                        (10) a member of the clergy;
- 25                        (11) a staff employee of a project funded by the Department of  
 26       Administration for the provision of services to older Alaskans, the Department of  
 27       Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
- 28                        (12) an employee of a personal care or home health aide program;
- 29                        (13) an emergency medical technician or a mobile intensive care  
 30       paramedic;
- 31                        (14) a caregiver of the vulnerable adult;

1 (15) a certified nurse aide;

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

4 \* **Sec. 13.** AS 47.24.010(b) is amended to read:

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

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

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

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

14 \* **Sec. 14.** AS 47.24.010(c) is amended to read:

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

24 \* **Sec. 15.** AS 47.24.010(d) is amended to read:

25 (d) This section does not prohibit a person listed in (a) of this section, or any  
 26 other person, from reporting cases of **undue influence**, abandonment, exploitation,  
 27 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's  
 28 attention **in their nonoccupational capacity, nor does it prohibit any other person**  
 29 **from reporting a harm under this section.**

30 \* **Sec. 16.** AS 47.24.010(e) is amended to read:

31 (e) If a person making a report under this section believes that immediate



1 action is necessary to protect the vulnerable adult from imminent risk of serious  
 2 physical harm due to **undue influence**, abandonment, exploitation, abuse, neglect, or  
 3 self-neglect and the reporting person cannot immediately contact the department's  
 4 central information and referral service for vulnerable adults, the reporting person  
 5 **shall** [MAY] make the report to a police officer or a village public safety officer. The  
 6 police officer or village public safety officer shall take immediate action to protect the  
 7 vulnerable adult and shall [, AT THE EARLIEST OPPORTUNITY,] notify the  
 8 department **within 24 hours of receiving the report of harm**. A person may not  
 9 bring an action for damages against a police officer, village public safety officer, the  
 10 state, or a political subdivision of the state based on a decision under this subsection to  
 11 take or not to take immediate action to protect a vulnerable adult. If a decision is made  
 12 under this subsection to take immediate action to protect a vulnerable adult, a person  
 13 may not bring an action for damages based on the protective actions taken unless the  
 14 protective actions were performed with gross negligence or intentional misconduct;  
 15 damages awarded in the action may include only direct economic compensatory  
 16 damages for personal injury.

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

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

23 \* **Sec. 18.** AS 47.24.010 is amended by adding new subsections to read:

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

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

30 \* **Sec. 19.** AS 47.24.013(a) is amended to read:

31 (a) If a report received under AS 47.24.010 regards the **undue influence**,

1 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is  
2 60 years of age or older that is alleged to have been committed by or to have resulted  
3 from the negligence of the staff or a volunteer of an out-of-home care facility,  
4 including a facility licensed under AS 47.32, in which the vulnerable adult resides, the  
5 department shall transfer the report for investigation to the long term care ombudsman  
6 under AS 47.62.015.

7 \* **Sec. 20.** AS 47.24.013(b) is amended to read:

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

13 \* **Sec. 21.** AS 47.24.013(c) is amended to read:

14 (c) Upon receipt of a report under (a) or (b) of this section, the long term care  
15 ombudsman and the department shall

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

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

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

23 \* **Sec. 22.** AS 47.24.013(d) is amended to read:

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

31 \* **Sec. 23.** AS 47.24.015(a) is amended to read:

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

9 \* **Sec. 24.** AS 47.24.015(c) is amended to read:

10 (c) The department, or its designee, shall immediately terminate an  
 11 investigation under this section upon the request of the vulnerable adult who is the  
 12 subject of the report made under AS 47.24.010. However, the department, or its  
 13 designee, may not terminate the investigation if the investigation to that point has  
 14 resulted in probable cause to believe that the vulnerable adult is in need of protective  
 15 services and the request is made personally by the vulnerable adult and the vulnerable  
 16 adult is not competent to make the request on the adult's own behalf, or the request is  
 17 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker  
 18 and that person is the alleged perpetrator of the undue influence, abandonment,  
 19 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under  
 20 this chapter. If the department has probable cause to believe that the vulnerable adult  
 21 is in need of protective services,

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

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

25 (3) in cases involving fraud, the department, or its designee, may refer  
 26 the report made to the department under AS 47.24.010 to the office of public advocacy  
 27 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.325.

28 \* **Sec. 25.** AS 47.24.015 is amended by adding new subsections to read:

29 (h) An individual or entity shall cooperate with an investigation initiated by  
 30 the department under this section. The individual or entity shall permit representatives  
 31 of the department to obtain and review any financial or health care records related to a

1 vulnerable adult and to interview staff that have had contact with, treated, or observed  
2 the vulnerable adult.

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

6 (j) If an entity or other person denies the department access to a vulnerable  
7 adult, a vulnerable adult's residence, or the health care or financial records of a  
8 vulnerable adult, the department may file a petition with the court for an ex parte order  
9 granting access if the department has not filed a petition for guardianship or  
10 conservatorship of the vulnerable adult. The court may grant the ex parte order if the  
11 petition shows that the department has received a report of harm under AS 47.24.010  
12 and that the order is necessary for access to the adult or that the health care or financial  
13 records are relevant to the department's investigation under AS 47.24.015. Notice of  
14 the order shall be given to the party denying access as directed by the court.

15 (k) Notwithstanding any other provision of law, the office of the department  
16 that handles adult protective services shall have access to any information compiled or  
17 retained by other divisions within the department, regardless of the nature of the  
18 information or whether the information is considered confidential, in order to assist in  
19 administering the provisions of this chapter.

20 (l) The department may audiotape or videotape an interview of a vulnerable  
21 adult if the adult has the capacity to consent and gives that consent. The department  
22 shall document the consent in its investigative file. The department may not audiotape  
23 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

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

29 (n) In this section, "financial records" includes records related to the  
30 vulnerable adult maintained by the following:

- 31 (1) the vulnerable adult or fiduciary for the vulnerable adult;

- 1 (2) a financial institution;
- 2 (3) a caregiver of a vulnerable adult;
- 3 (4) a member of the vulnerable adult's family.

4 \* **Sec. 26.** AS 47.24.016(a) is amended to read:

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

14 (1) the vulnerable adult's spouse, unless

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

17 (B)] the vulnerable adult or the spouse have initiated divorce or  
 18 dissolution proceedings;

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

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

23 (4) a parent of the vulnerable adult;

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

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

28 \* **Sec. 27.** AS 47.24.016(b) is amended to read:

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

31 (1) the department determines that individual does not possess decision

1 making capacity; or

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

4 \* **Sec. 28.** AS 47.24.016(d) is amended to read:

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

12 \* **Sec. 29.** AS 47.24.017(a) is amended to read:

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

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

27 (c) If a vulnerable adult who has consented to receive protective services, or  
28 on whose behalf consent to receive protective services has been given, is prevented by  
29 a **family member**, caregiver, guardian, **conservator**, attorney-in-fact, **trustee**, or  
30 surrogate decision maker from receiving those services, the department may petition  
31 the superior court for an injunction restraining the **family member**, caregiver,

1 guardian, **conservator**, attorney-in-fact, **trustee**, or surrogate decision maker from  
 2 interfering with the provision of protective services to the vulnerable adult.

3 \* **Sec. 31.** AS 47.24.050 is amended to read:

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

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

26 \* **Sec. 32.** AS 47.24.130 is amended to read:

27 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be  
 28 construed to mean that a person is **unduly influenced**, abused, neglected, self-  
 29 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of  
 30 emergency or protective services for the sole reason that the person relies on or is  
 31 being furnished treatment by spiritual means through prayer alone **under** [IN

1 ACCORDANCE WITH] the tenets and practices of a church or religious  
 2 denomination of which the person is a member or adherent, **if** [PROVIDED THAT]  
 3 the person consents to the treatment through spiritual means only and the treatment is  
 4 administered by an accredited practitioner of the church or religious denomination. In  
 5 this section, "church or religious denomination" has the meaning given to "religious  
 6 organization" in AS 05.15.690.

7 \* **Sec. 33.** AS 47.24.900(2) is amended to read:

8 (2) "abuse" means

9 (A) the [WILFUL,] intentional, or reckless nonaccidental, and  
 10 nontherapeutic infliction of physical pain, injury, [OR] mental **or emotional**  
 11 **distress, or fear, including coercion and intimidation;** or

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

13 \* **Sec. 34.** AS 47.24.900(3) is amended to read:

14 (3) "caregiver" means

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

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

21 \* **Sec. 35.** AS 47.24.900(4) is amended to read:

22 (4) "decision making capacity" means the ability to understand and  
 23 appreciate the nature and consequences of a decision and the ability to reach and  
 24 communicate an informed decision; **in this paragraph, "informed decision" means**  
 25 **a decision made by the vulnerable adult that is free from undue influence;**

26 \* **Sec. 36.** AS 47.24.900(7) is amended to read:

27 (7) "exploitation"

28 (A) means unjust or improper use of another person or another  
 29 person's resources for one's own profit or advantage, **with or without the**  
 30 **person's consent;**

31 (B) **includes acts by a person who stands in a position of**



1           trust or confidence with a vulnerable adult, or who knows or should know  
 2           that the vulnerable adult lacks the capacity to consent, that involve  
 3           obtaining profit or advantage through undue influence, deception,  
 4           intimidation, or breach of fiduciary duty;

5           \* **Sec. 37.** AS 47.24.900(9) is amended to read:

6                         (9) "neglect" means the intentional, or reckless failure by a caregiver  
 7           to provide essential care or services or access to essential care or services, or to  
 8           carry out a prescribed treatment plan, necessary to maintain the physical and  
 9           mental health of the vulnerable adult when the vulnerable adult is unable to provide  
 10           or obtain the services on the vulnerable adult's own; in this paragraph, "essential  
 11           care or services" means food, clothing, shelter, medical care, and supervision;

12           \* **Sec. 38.** AS 47.24.900(11) is amended to read:

13                         (11) "protective services"

14                                 (A) means services that are intended to prevent or alleviate  
 15           harm resulting from undue influence, abandonment, exploitation, abuse,  
 16           neglect, or self-neglect and that are provided to a vulnerable adult in need of  
 17           protection; ["PROTECTIVE SERVICES"]

18                                 (B) includes

19                                         (i) protective placement;

20                                         (ii) applying for or obtaining public benefits;

21                                         (iii) obtaining health care services and supplies;

22                                         (iv) freezing an account at a financial institution;

23                                         (v) petitioning for an ex parte protective order

24                                         under AS 13.26.209;

25                                         (vi) assisting with personal hygiene;

26                                         (vii) obtaining food and clothing;

27                                         (viii) protection from physical and emotional abuse;

28                                         (ix) obtaining representative payee services; and

29                                         (x) coordinating protective services;

30           \* **Sec. 39.** AS 47.24.900(15) is amended to read:

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

1 services because

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

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

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

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

12 \* **Sec. 40.** AS 47.24.900(16) is amended to read:

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

18 \* **Sec. 41.** AS 47.24.900 is amended by adding new paragraphs to read:

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

22 (18) "fiduciary duty" means the duty of a guardian, conservator,  
23 trustee, representative payee, or holder of a power of attorney of a vulnerable adult to  
24 act for the benefit of the vulnerable adult;

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

27 (A) a broker-dealer;

28 (B) a commercial bank;

29 (C) a savings bank;

30 (D) a credit union;

31 (E) a premium finance company;

- 1 (F) a small loan company;  
 2 (G) a bank holding company;  
 3 (H) a financial holding company;  
 4 (I) a trust company;  
 5 (J) a savings and loan association;  
 6 (K) a deferred deposit advance licensee;  
 7 (L) an investment bank;  
 8 (M) an insurance company subject to regulation by AS 21;  
 9 (N) a licensee subject to regulation by AS 21; and  
 10 (O) an investment adviser;

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

- 13 (A) is a relative by blood or marriage;  
 14 (B) is a joint tenant or tenant in common;  
 15 (C) has a legal or fiduciary relationship; or  
 16 (D) is a person who has been entrusted with or has assumed

17 responsibility for the use or management of the vulnerable adult's assets or  
 18 income;

19 (21) "undue influence" means a person of trust and confidence uses the  
 20 person's role, relationship, or authority to exploit the trust, dependency, or fear of a  
 21 vulnerable adult deceptively to gain control over the decision making of the vulnerable  
 22 adult, including decision making related to finances, property, residence, and health  
 23 care;

24 \* **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to  
 25 read:

26 DIRECT COURT RULE AMENDMENTS. (a) Rule 12(h), Alaska Rules of  
 27 Criminal Procedure, is amended to read:

28 (h) **Continuance of Trial.** A motion for continuance of a trial date will be  
 29 granted by the court only for cause shown. **In determining cause, the court shall**  
 30 **consider whether the victim is vulnerable due to advanced age, and the effect the**  
 31 **delay will have on that person; the court shall place its findings on the record.**

1 The presiding judge of a judicial district may require that a visiting or pro tem judge  
2 obtain approval from the presiding judge before granting any continuance of trial.

3 (b) Rule 45(a), Alaska rules of Criminal Procedure, is amended to read:

4 (a) The court shall provide for placing criminal proceedings upon appropriate  
5 calendars. Preference shall be given to criminal proceedings, [AND] the trial of  
6 defendants in custody, **and the trial of cases in which the victim is vulnerable due**  
7 **to advanced age**, shall be given preference over other criminal cases. Trial dates in  
8 criminal cases in the superior court shall be set at the time of arraignment, and if a trial  
9 date is thereafter vacated, the trial shall be immediately set for a date certain.

10 \* **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (g), enacted by  
13 sec. 7 of this Act, has the effect of amending Rule 17, Alaska Rules of Probate Procedure,  
14 relating to conservatorships and protective proceedings, by allowing ex parte orders to be  
15 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from  
16 financial exploitation.

17 (b) AS 13.26.209(h), enacted by sec. 7 of this Act, has the effect of amending Rule 9,  
18 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition  
19 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 7 of this Act.

20 (c) AS 47.24.015(j), enacted by sec. 25 of this Act, has the effect of amending Rule  
21 65, Alaska Rules of Civil Procedure, relating to injunctions, by allowing ex parte orders to be  
22 issued related to injunctive relief for certain access to persons or records in order to  
23 investigate a report of harm under AS 47.24.010 for a vulnerable adult.

24 \* **Sec. 44.** The uncodified law of the state of Alaska is amended by adding a new section to  
25 read:

26 APPLICABILITY. Sections 1, 2, 3, and 42 of this Act apply to offenses committed on  
27 or after the effective date of this Act.

28 \* **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 CONDITIONAL EFFECT. (a) AS 13.26.209(a) - (g), enacted by sec. 7 of this Act,  
31 takes effect only if sec. 43(a) of this Act receives the two-thirds vote of each house required

1 by art. IV, sec. 15, Constitution of the State of Alaska.

2 (b) AS 13.26.209(h), enacted by sec. 7 of this Act, takes effect only if sec. 43(b) of  
3 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of  
4 the State of Alaska.

5 (c) AS 47.24.015(j), enacted by sec. 25 of this Act, takes effect only if sec. 43(c) of  
6 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of  
7 the State of Alaska.

8 \* **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the  
11 catchline of

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

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

18 \* **Sec. 47.** This Act takes effect immediately under AS 01.10.070(c).