

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/14/11

Referred: Finance

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

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; making conforming**
5 **amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure,**
6 **Rule 77, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure,**
7 **and Rule 9, Alaska Rules of Administration; and providing for an effective date."**

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

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

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

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

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

1 PERSON OR DISABLED] adult as required by AS 47.24.

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

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

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

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

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

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

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

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

18 **(3) issued under AS 13.26.207 - 13.26.209 and knowingly commits**
19 **or attempts to commit an act with reckless disregard that the act violates or**
20 **would violate a provision of the protective order.**

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

22 (c) In this section, "protective order" means an order issued or filed under
23 **AS 13.26.207 - 13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
 2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
 3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
 4 for temporary conservatorship must specify the facts that cause the petitioner to
 5 believe that a temporary conservatorship is necessary.

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

7 (c) This section does not apply to a petition or order for an ex parte protective
 8 order filed under AS 13.26.207 or a temporary protective order filed under
 9 AS 13.26.208.

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

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
 12 initial petition for conservatorship, it appears that the respondent is in need of a
 13 protective order to protect the respondent against waste or dissipation of funds or
 14 property, or to obtain funds that are needed for the immediate support, care, and
 15 welfare of the respondent or persons entitled to be supported by the respondent, and
 16 the respondent is not capable of protecting the respondent's funds or property or
 17 obtaining the funds that are needed to support the respondent or persons whom the
 18 respondent is required to support, the petitioner may request the appointment of a
 19 temporary conservator to authorize the protection or to obtain the necessary funds. The
 20 request must state the reasons and factual basis for the request. The petitioner shall
 21 immediately file the request with the court and serve copies on the respondent and the
 22 respondent's attorney and other persons as ordered by the court. The court shall
 23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
 24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
 3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
 4 ex parte protective order against a person other than the protected person. A petition
 5 filed on behalf of a protected person by a person other than the protected person must
 6 be accompanied by proof of service of the petition on the protected person or the
 7 person's attorney unless service would cause an immediate threat of harm to the best
 8 interests of the protected person and the petition includes a written explanation of the
 9 harm. If the court finds that the petition establishes probable cause that the respondent
 10 is financially defrauding the petitioner or a person for whose benefit the petitioner
 11 filed the petition and that, because of the fraud, there has been or is an immediate
 12 threat of a waste or dissipation of the proposed protected person's funds or other
 13 property, the court shall ex parte and without notice to the respondent issue a
 14 protective order. The petitioner shall certify to the court in writing any effort that the
 15 petitioner made to provide notice to the respondent.

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

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

18 (2) supersede an existing power of attorney;

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

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
 26 dissolved earlier by the court at the request of the petitioner or respondent and after
 27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
 28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
 30 filed with the court before the expiration of a 20-day ex parte protective order issued
 31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

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

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
 9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
 10 is a vulnerable adult, may request modification of a protective order issued under
 11 AS 13.26.207 - 13.26.209. Except as provided in (b) of this section, if a request is
 12 made for modification of

13 (1) an ex parte protective order issued under AS 13.26.207, the court
 14 shall schedule a hearing on three days' notice or on shorter notice as the court may
 15 prescribe; or

16 (2) a temporary protective order, after notice and hearing under
 17 AS 13.26.208, the court shall schedule a hearing within 20 days after the date the
 18 request is made, except that, if the court finds that the request is meritless on its face,
 19 the court may deny the request without a hearing.

20 (b) If a request for a modification is made under this section and the
 21 respondent raises an issue not raised by the petitioner, the court may allow the
 22 petitioner additional time to respond.

23 (c) If the court modifies a protective order, the court shall issue a modified
 24 order and shall make reasonable efforts to ensure that the order is understood by the
 25 petitioner, the respondent, and the protected person who are present at the hearing.

26 (d) The court shall cause a copy of a protective order, any related orders, and a
 27 scheduling order, if any, to be served on the respondent and the protected person and
 28 have a protective order and any related order delivered to the appropriate local law
 29 enforcement agency for expedited entry in the central registry under AS 18.65.540.

30 (e) A protective order issued under AS 13.26.207 - 13.26.209 is in addition to
 31 any other civil or criminal remedy.

1 (f) A third party that has received actual or legal notice of a protective order
 2 issued under AS 13.26.207 - 13.26.209 shall comply with the order. A third party who
 3 does not comply with a protective order granted under AS 13.26.207 - 13.26.209 may
 4 be liable in a civil action to the protected person or the protected person's heirs,
 5 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
 6 costs, and fees associated with the failure to comply with the protective order. A third
 7 party who does not comply with a protective order granted under AS 13.26.207 -
 8 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
 9 order. As used in this section, "actual or legal notice" means delivery by mail or
 10 facsimile at the most recently known place of residence or business of the third party.

11 (g) The Alaska Court System, after consulting with the Department of Health
 12 and Social Services, the office of public advocacy, the office of elder fraud and
 13 assistance, the long term care ombudsman, and other interested persons and
 14 organizations, shall prepare forms for petitions and protective orders and instructions
 15 for use of the forms by a person seeking a protective order under AS 13.26.207 -
 16 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
 17 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
 18 by legible handwriting. The office of the clerk of each superior and district court shall
 19 make available to the public the forms a person seeking a protective order may need
 20 and instructions for the use of the forms. The clerk shall provide assistance in
 21 completing and filing the forms.

22 (h) Filing fees may not be charged for a petition under AS 13.26.207, for an
 23 application under AS 13.26.208, or for a request for modification of a protective order
 24 under AS 13.26.209(a).

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

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

- 28 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
 29 (2) offenses against property under AS 11.46.100 - 11.46.740; or
 30 (3) exploitation of another person or another person's resources for
 31 personal profit or advantage if no significant benefit accrues to the person who is

1 exploited.

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

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

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

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

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

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

14 (a) The Department of Public Safety shall maintain a central registry of
15 protective orders issued by or filed with a court of this state under **AS 13.26.207 -**
16 **13.26.209**, AS 18.65.850 - 18.65.870, **or** AS 18.66.100 - 18.66.180. The registry must
17 include, for each protective order, the names of the petitioner and respondent, their
18 dates of birth, and the conditions and duration of the order. The registry shall retain a
19 record of the protective order after it has expired.

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

21 (b) A peace officer receiving a protective order from a court under
22 **AS 13.26.207, 13.26.208**, AS 18.65.850 - 18.65.855, **or** AS 18.66.100 - 18.66.180, a
23 modified order issued under **AS 13.26.209**, AS 18.65.860, **or** AS 18.66.120, or an
24 order dismissing a protective order **shall** [, MUST] take reasonable steps to ensure that
25 the order, modified order, or dismissal is entered into the central registry within 24
26 hours after being received.

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

28 (g) In this section,

29 (1) "fraud" means

30 (A) robbery, extortion, and coercion under AS 11.41.500 -

31 11.41.530;

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

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

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

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

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

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

17 (2) a mental health professional as defined in AS 47.30.915(11) and
 18 including a marital and family therapist licensed under AS 08.63;

19 (3) a pharmacist;

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

22 (5) a guardian or conservator;

23 (6) a police officer;

24 (7) a village public safety officer;

25 (8) a village health aide;

26 (9) a social worker;

27 (10) a member of the clergy;

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

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

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

3 (14) a caregiver of the vulnerable adult;

4 (15) a certified nurse aide;

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

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

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

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

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

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

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

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

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

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

1 **any other person from reporting a harm under this section.**

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

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

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

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

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

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

31 (j) A person who recklessly makes a false report under this section is civilly

1 liable for actual damages suffered by the person who is the subject of the report.

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

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

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

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

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

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

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

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

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

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

27 (d) If the long term care ombudsman receives directly a report regarding the
28 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
29 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
30 report, and the results of the ombudsman's actions or investigations regarding the
31 report, to the central information and referral service of the **office of the** department

1 **that handles adult protective services.** The department may investigate the report as
 2 described in AS 47.24.015 if the department determines that action is appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
27 in need of protective services, but the department cannot obtain the vulnerable adult's
28 consent to receive the services because the vulnerable adult is unable to consent or
29 lacks decision making capacity, and has no guardian, **conservator**, [OR] attorney-in-
30 fact, **trustee, or surrogate for health care decisions under AS 13.52.030** to serve as
31 the vulnerable adult's surrogate decision maker, the department may select from the

1 following list, in the order of priority listed, an individual who is willing to be the
 2 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
 3 consent to the vulnerable adult's receipt of protective services:

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

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

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

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

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

13 (4) a parent of the vulnerable adult;

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

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

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

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

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

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

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

26 (d) The department may not continue to provide protective services to a
 27 vulnerable adult based on the consent of a surrogate decision maker serving under this
 28 section or AS 13.52.030 if the department determines that the vulnerable adult has
 29 become able to consent or has regained decision making capacity since the surrogate's
 30 consent was given. The department may continue protective services to a vulnerable
 31 adult who has become able to consent or has regained decision making capacity only

1 if the vulnerable adult consents.

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

3 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
 4 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
 5 adult's guardian, conservator, [OR] attorney-in-fact, trustee, [OR] a surrogate
 6 decision maker selected under AS 47.24.016, or a surrogate for health care
 7 decisions under AS 13.52.030 consents to receipt of the protective services, and to
 8 the extent that resources are available, the department shall ensure that the protective
 9 services for the vulnerable adult are provided by the department, or its designee,
 10 within 10 working days after the department received the report under AS 47.24.010
 11 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
 12 neglect of the vulnerable adult. However, if circumstances beyond the control of the
 13 department or the department's designee make it impossible to provide the protective
 14 services within the 10 working days, the department shall ensure that the services are
 15 provided as soon as possible after that time.

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

17 (c) If a vulnerable adult who has consented to receive protective services, or
 18 on whose behalf consent to receive protective services has been given, is prevented by
 19 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
 20 SURROGATE DECISION MAKER] from receiving those services, the department
 21 may petition the superior court for an injunction restraining the person
 22 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
 23 DECISION MAKER] from interfering with the provision of protective services to the
 24 vulnerable adult.

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

26 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
 27 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
 28 neglect of a vulnerable adult filed under this chapter are confidential and are not
 29 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
 30 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
 31 chapter, investigation reports may be used by appropriate agencies or individuals

1 inside and outside the state, in connection with investigations or judicial proceedings
 2 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
 3 neglect of a vulnerable adult.

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

18 * **Sec. 36.** AS 47.24.130 is amended to read:

19 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
 20 construed to mean that a person is unduly influenced, abused, neglected, self-
 21 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
 22 emergency or protective services for the sole reason that the person relies on or is
 23 being furnished treatment by spiritual means through prayer alone under [IN
 24 ACCORDANCE WITH] the tenets and practices of a church or religious
 25 denomination of which the person is a member or adherent, if [PROVIDED THAT]
 26 the person consents to the treatment through spiritual means only and the treatment is
 27 administered by an accredited practitioner of the church or religious denomination. In
 28 this section, "church or religious denomination" has the meaning given to "religious
 29 organization" in AS 05.15.690.

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

31 (2) "abuse" means

1 (A) the [WILFUL,] intentional, **knowing**, or reckless
 2 nonaccidental [,] and nontherapeutic infliction of physical pain, injury, [OR]
 3 mental **or emotional** distress, **or fear, including coercion and intimidation**;
 4 or

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

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

7 (3) "caregiver" means

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

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

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

15 (4) "decision making capacity" means the ability to understand and
 16 appreciate the nature and consequences of a decision and the ability to reach and
 17 communicate an informed decision; **in this paragraph, "informed decision"**
 18 **includes a decision made by the vulnerable adult that is free from undue**
 19 **influence**;

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

21 (7) "exploitation"

22 (A) means unjust or improper use of another person or another
 23 person's resources for one's own profit or advantage, **with or without the**
 24 **person's consent; and**

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

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

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

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

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

13 **(A) protective placement;**

14 **(B) applying for or obtaining public benefits;**

15 **(C) obtaining health care services and supplies;**

16 **(D) staying financial transactions;**

17 **(E) petitioning for a protective order under AS 13.26.165 -**

18 **13.26.209;**

19 **(F) assisting with personal hygiene;**

20 **(G) obtaining food and clothing;**

21 **(H) protection from physical and emotional abuse;**

22 **(I) obtaining representative payee services; and**

23 **(J) coordinating protective services;**

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

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

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

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

31 (C) of dependency on the perpetrator of **undue influence,**

1 abandonment, exploitation, abuse, or neglect for services, care, or support; or

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

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

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

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

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

16 (18) "fiduciary duty" means the duty of a third party who stands in a
 17 position of trust or confidence with another person, including a vulnerable adult, to act
 18 with due regard for the benefit and interest of that person;

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

- 21 (A) a broker-dealer;
- 22 (B) a commercial bank;
- 23 (C) a savings bank;
- 24 (D) a credit union;
- 25 (E) a premium finance company;
- 26 (F) a small loan company;
- 27 (G) a bank holding company;
- 28 (H) a financial holding company;
- 29 (I) a trust company;
- 30 (J) a savings and loan association;
- 31 (K) a deferred deposit advance licensee;

1 (L) an investment bank;

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

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

4 (O) an investment adviser;

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

7 (A) is a relative by blood or marriage;

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

9 (C) has a legal or fiduciary relationship; or

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

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

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

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

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

29 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of

1 Criminal Procedure, is amended to read:

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

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

10 * **Sec. 48.** 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 13.26.207, 13.26.208, and
13 13.26.209(a) - (g), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska
14 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
15 allowing ex parte and temporary orders and modifications of orders to be issued related to
16 protecting the assets of a person otherwise subject to AS 13.26.165 from financial
17 exploitation.

18 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, has the effect of amending Rule
19 9, Alaska Rules of Administration, by requiring that filing fees may not be charged for a
20 petition for an ex parte protective order under AS 13.26.207 for an application for a temporary
21 order under AS 13.26.208, or for modification of a protective order under AS 13.26.209(a),
22 enacted by sec. 10 of this Act.

23 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
24 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
25 petition for the appointment of a temporary conservator.

26 (d) AS 13.26.208, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
27 Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary
28 protective order on 10 days' notice.

29 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, have the effect of
30 amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on a request
31 for modification of a protective order on 20 days' notice and for modification of an ex parte

1 protective order on three days' notice.

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

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

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

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

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

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

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

18 CONDITIONAL EFFECT. (a) AS 13.26.207 and 13.26.209(a) - (g), enacted by sec.
19 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each
20 house required by art. IV, sec. 15, Constitution of the State of Alaska.

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

24 (c) AS 13.26.206, enacted by sec. 10 of this Act, takes effect only if sec. 48(c) of this
25 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
26 State of Alaska.

27 (d) AS 13.26.208, enacted by sec. 10 of this Act, takes effect only if sec. 48(a) and (d)
28 of this Act receive the two-thirds vote of each house required by art. IV, sec. 15, Constitution
29 of the State of Alaska.

30 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, take effect only if sec.
31 48(e) of this Act receive the two-thirds vote of each house required by art. IV, sec. 15,

- 1 Constitution of the State of Alaska.
- 2 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.
- 3 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.