

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 18, 2011

1:08 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Wes Keller
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

Attorney General

John J. Burns - Fairbanks

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 150

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

- MOVED CSHB 150(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 150

SHORT TITLE: PROTECTION OF VULNERABLE ADULTS/MINORS
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/09/11	(H)	READ THE FIRST TIME - REFERRALS
02/09/11	(H)	JUD, FIN
02/23/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/23/11	(H)	Heard & Held
02/23/11	(H)	MINUTE(JUD)
02/25/11	(H)	JUD AT 1:00 PM CAPITOL 120
02/25/11	(H)	Heard & Held; Assigned to Subcommittee
02/25/11	(H)	MINUTE(JUD)
03/02/11	(H)	JUD AT 1:00 PM CAPITOL 120
03/02/11	(H)	Work Session on CS for above Bill
03/04/11	(H)	JUD AT 9:00 AM CAPITOL 120
03/04/11	(H)	Work Session on CS for above Bill
03/04/11	(H)	JUD AT 1:30 PM CAPITOL 120
03/04/11	(H)	Work Session on CS for above Bill
03/10/11	(H)	JUD AT 3:00 PM CAPITOL 120
03/10/11	(H)	Work Session on CS for above Bill
03/17/11	(H)	JUD AT 11:00 AM CAPITOL 120
03/17/11	(H)	Work Session on CS for above Bill
03/18/11	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOHN J. BURNS, Appointee
Attorney General
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the position of Attorney General.

SARAH MUNSON, Staff
Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 150, presented the proposed committee substitute (CS), Version I, and responded to questions.

DOUG WOOLIVER, Administrative Attorney
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 150.

SCOTT STERLING, Supervising Attorney
Elder Fraud and Assistance
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 150.

KELLY HENRIKSEN, Assistant Attorney General
Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 150.

ACTION NARRATIVE

[1:08:19 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Gatto, Gruenberg, Holmes, Lynn, Pruitt, and Thompson were present at the call to order.

Confirmation Hearing(s):

Attorney General

[1:08:31 PM](#)

CHAIR GATTO announced that the first order of business would be consideration of the nomination of John J. Burns as appointee to the position of Attorney General.

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JOHN J. BURNS, Appointee, Attorney General, after providing some personal information and outlining his educational and employment background, said that his responsibility and obligation as attorney general are first, foremost, and always to uphold the constitution and enforce the laws of Alaska with dignity and integrity and consistent with his ethical obligations as an attorney. Upon being appointed to the position of attorney general, he relayed, he spent time in Anchorage, Fairbanks, and Juneau, meeting and working with department personnel, and traveled to Bethel, Nome, and Barrow

to meet with rural leaders, judges, and law enforcement officials, and to visit women's shelters and youth facilities, with the intention of better understanding the needs of rural communities and identifying how the Department of Law (DOL) could better meet those needs. With regard to why he accepted the appointment to the position of attorney general, he explained that it was a combination of three factors: his belief that each Alaskan has a moral obligation to contribute back to his/her community and the state when his/her services are requested or needed; his belief in his own ability to perform the duties and responsibilities of attorney general; and his confidence in the governor's integrity, passion, and commitment to Alaska and Alaskans. He assured the committee that as attorney general, his efforts would always be focused on ensuring that both he and the Department of Law uphold the constitution and enforce the laws of the state and do so with dignity and integrity at all times.

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MR. BURNS relayed that as an Alaskan, he dreams that the plague of domestic violence (DV) and sexual assault/abuse that scourges Alaska will be eradicated and that Alaskans from all walks of life will learn to truly understand what respect means - what it means to respect oneself and one another; dreams that Alaska's educational system - including parents and communities - will focus on helping students truly learn, that students, when they graduate, will have an enthusiasm for learning and will possess the academic and vocational skills that will enable them to pursue higher learning and careers, that Alaska's students will learn to be critical thinkers - not followers - and that the dropout rate can be permanently reversed; dreams that the principle that made Alaska great in the first place - the spirit of individualism and community, self reliance, adventurism, personal responsibility, and accountability - will replace the culture of entitlement, and that government - both state and federal - will become facilitators, not enablers; dreams that the rights and privileges promised Alaska under the Alaska Statehood Act will be realized, and that the increasingly-oppressive yoke of federal regulations will be lifted so that Alaska, once again, may be permitted to responsibly develop its resources; dreams that the spirit of true dialog will once again be embraced and that Alaskans may all come to realize that it is by listening to different points of view that one's decisions are often improved, and that Alaskans learn to realize that simply because someone disagrees with one's belief does not make that person a racist or undeserving of respect and

consideration; and dreams that his tenure as attorney general - however long it may be - is marked by integrity and a respect and reverence for the law, and that the decisions which both he and the Department of Law make are always made for the right reasons, so that when he is done serving the state, he will know, always, that he has done his very best.

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MR. BURNS, in conclusion, stated that he is honored and privileged to have accepted the appointment of attorney general. In response to questions, he offered his belief that the statewide "Choose Respect" initiative is already having a significant impact on Alaska's problems of domestic violence and sexual assault/abuse, since one of the first steps in solving these problems is to foster awareness; and that some of the principal challenges and opportunities the DOL faces include the recruitment, training, and retention of personnel in order to maintain the high-quality workforce currently in place. In response to another question, he explained that although he is the governor's attorney - an at-will employee - his obligations as attorney general are set forth in statute, and he is also, in all aspects of his job, governed by his responsibility to uphold the constitution and the laws of Alaska, and bound by his ethical obligations as an attorney. Therefore, regardless of his role with the governor, those responsibilities and obligations usurp everything else, and so should he ever be faced with a conflict, he relayed, he would be bound above all else to uphold the constitution and the laws of the State of Alaska regardless that doing so results in a short tenure as attorney general.

REPRESENTATIVE THOMPSON asked Mr. Burns to speak about his philosophy regarding bringing suit against the federal government over resource development issues.

MR. BURNS opined that Alaska should be afforded the opportunity to develop its resources responsibly, but that litigation should be a last resort. It's important to dialog, to see if some consensus can be reached, and to take a collaborative approach with Alaska's peers, since many western states are affected by many of the same issues facing Alaska. But at the same time, it must be realized that one of the tools that Alaska has and must be willing to use is litigation; litigation, when necessary and when appropriate, should never be shied away from.

REPRESENTATIVE HOLMES asked Mr. Burns whether he was consulted by the governor when the governor made his decision to not accept the \$1 million in grant funding for a health insurance exchange under the federal government's Patient Protection and Affordable Care Act (PPACA).

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MR. BURNS said that he was involved in analyzing the federal district court judge's decision in Florida et al v. United States Department of Health and Human Services and the impact of that decision on implementation relative to Alaska, and in his opinion, and in the opinion of the DOL at that time, because Alaska was a party, the judge's decision - effectively serving as an injunction [though he did not issue one] - was that an aspect of the PPACA - the "individual mandate" - was unconstitutional and that it could not be severed from the PPACA in its entirety and thus the PPACA itself was therefore also unconstitutional, and so Alaska - again, as a party to the litigation - was bound by that decision. The judge subsequently stayed his decision, though, and the effect of his doing so was that the PPACA became enforceable, and so Alaska has been moving forward with implementation and the evaluation of that implementation. However, there is a significant difference between implementation and funding; implementation is a legal issue that he, as acting attorney general, is involved in, whereas funding is a policy issue that he is not involved in. In response to further questions, he provided additional information regarding the PPACA and the Florida case.

MR. BURNS, in response to additional questions, offered his hope that he would always uphold his ethical obligations, and relayed that should he ever be faced with an ethical conundrum, he would seek guidance from his own ethical advisers before taking action.

REPRESENTATIVE GRUENBERG opined that the legislature and the public needs to know whether there might be a conflicting duty of confidentiality that would prevent Mr. Burns from telling the legislature and the public what it should know. Representative Gruenberg then asked Mr. Burns whether he thinks that oil companies should have to produce on leased lands.

MR. BURNS said that it would depend on the contractual obligations set forth in the lease. However, in general, he opined, when deciding whether to lease land to an oil company, one of the factors the State ought to consider is the question

of whether the oil company should also be required to develop that leased land. In response to comments and another question, he relayed that his responsibility would be to evaluate an oil/gas lease and then give solid legal advice pertinent to that particular lease, and not necessarily to simply defend the State's position in any ensuing litigation. In response to other comments and a further question, he assured the committee that the DOL has an aggressive internship program, and has been seeking to recruit, and has succeeding in recruiting, the best and brightest law school graduates from across the nation.

REPRESENTATIVE GRUENBERG and REPRESENTATIVE PRUITT indicated that they would be voting in favor of Mr. Burns's appointment to the position of attorney general.

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REPRESENTATIVE THOMPSON made a motion to advance from committee the nomination of John J. Burns to the position of Attorney General. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

The committee took an at-ease from 1:52 p.m. to 1:56 p.m.

HB 150 - PROTECTION OF VULNERABLE ADULTS/MINORS

[1:56:01 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 150, "An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

CHAIR GATTO noted that the subcommittee on HB 150 has produced a final report [detailing the differences between the original bill and a proposed committee substitute included in members' packets].

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REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 150, Version 27-GH1722\I, Mischel, 3/17/11, as the working document.

REPRESENTATIVE HOLMES objected for the purpose of discussion.

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SARAH MUNSON, Staff, Representative Carl Gatto, Alaska State Legislature, referring to the aforementioned final report, explained that Version I contains a new Section 1 and a new Section 2 that propose to change the phrase, "an elderly person or disabled adult" to the phrase, "a vulnerable adult" in AS 08.29.200(b)(2) and AS 08.63.200(b)(2) respectively; these new sections were added at the request of the Department of Law (DOL) and the revisor of statutes because the phrase, "a vulnerable adult" is what's now being used by the DOL to mean someone [18 years of age or older] who meets certain vulnerability criteria. Under Version I, proposed AS 13.26.207(a) now contains the words, "and other persons as ordered by the court" in the second to last sentence after the words, "respondent's attorney"; this change to Alaska's temporary conservatorship statutes would allow the court to notify those who would most need to know about the conservatorship, such as various financial institutions.

MS. MUNSON explained that Proposed AS 13.26.209(a) underwent two changes: first, it now contains the additional sentence, "A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person's attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm."; and, second, the last sentence now reads, "The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person." These changes regarding notification address a concern raised in the subcommittee meeting that an ex parte protective order could be used by someone to victimize a vulnerable adult; under these two changes, a vulnerable adult would be notified of the ex parte protective order unless such notification would be harmful to him/her.

REPRESENTATIVE GRUENBERG, in response to a question regarding Sections 1 and 2 of Version I, noted that the term, "vulnerable adult" is defined in AS 47.24.900 as:

(16) "vulnerable adult" means a person 18 years of age or older who, because of physical or mental impairment, is unable to meet the person's own needs or to seek help without assistance.

MS. MUNSON added that Section 43 of Version I is proposing to amend that definition thus:

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

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MS. MUNSON then explained that proposed AS 13.26.209(d) now stipulates that notice shall additionally be provided to the protected person; this is a conforming change regarding notification of a hearing to extend an ex parte protective order. In Version I's proposed AS 13.26.209(f), the first sentence now reads, "A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order."; the sentence that began with the words, "A third person" now begins with the words, "A third party"; and there is now an additional sentence that says, "As used in this section, 'actual or legal notice' means delivery by mail or facsimile at the most recently known place of residence or business of the third party or registering with the Department of Public Safety." These changes to proposed AS 13.26.209(f) were suggested by the administration, and reflect how notice would be provided to third parties such as banks.

MS. MUNSON explained that what was formerly proposed AS 13.26.325 - pertaining to the definition of the word, "fraud" - was changed in Version I to proposed AS 13.26.324; this change reflects the fact that a section 325 has already been used in AS 13.26. Furthermore, proposed AS 13.26.324(2) now more accurately defines the word, "fraud" in part as, "offenses against property under AS 11.46.100 - 11.46.740"; and a

conforming change to a similar definition in AS 44.21.415(g) is being proposed via a new Section 14. Version I's proposed AS 18.65.530(a)(2) fixes a drafting error - noticed by Legislative Legal and Research Services - via use of the word, "or" instead of the word, "and". Proposed AS 47.24.010(e) now retains the existing phrase, "at the earliest opportunity"; this change ensures that law enforcement officers won't unnecessarily delay notification.

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MS. MUNSON referred to the new subsections being added to AS 47.24.015, and explained that in Version I, proposed subsection (h) has been rewritten such that in order to conduct an investigation, the department must seek a subpoena - this change addresses a concern that as originally written, subsection (h) raised Fourth Amendment issues; that when subsection (h) was rewritten, the language in the original bill's proposed subsection (j) became obsolete, and so Version I no longer contains that language and the remainder of AS 47.24.015's proposed subsections have been relettered accordingly; that that deletion has also resulted [in the deletion of language in the bill reflecting an indirect court rule change to Rule 65 of the Alaska Rules of Civil Procedure]; and that Version I's proposed subsection (m) now uses the phrase, "maintained by any person" rather than unnecessarily providing for a specific list of people/entities that maintain financial records, since if the department wants access to financial records, it doesn't matter who is holding them.

MS. MUNSON explained that to reflect the statutory creation of [temporary conservatorships via proposed AS 13.26.207], Version I's proposed AS 47.24.016(a) now also references conservators; this conforming change was also made to proposed AS 47.24.017(a) [and to the first sentence in proposed AS 47.24.050(b)]. Furthermore, proposed AS 47.24.016(a)(1) now also references legal separation proceedings, thereby precluding a spouse who has initiated such a proceeding from being selected by the department as a vulnerable adult's [surrogate decision maker]. Proposed AS 47.24.19(c), in two places, now references "person" instead of providing for a list of specific people against whom the department may seek an injunction preventing interference in the provision of protective services; this change reflects the fact that anyone who is interfering in a vulnerable adult's receiving of protective services should be stopped.

REPRESENTATIVE GRUENBERG, in response to a question, explained that the term, "attorney-in-fact" as used in AS 47.24 refers to a person operating under power of attorney or some other delegation of authority.

MS. MUNSON noted that the aforementioned conforming change regarding conservators should also be made to the second sentence in proposed AS 47.24.050(b) via an amendment that would add the term, "conservator," to page 16, line 14, after the term, "guardian,".

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MS. MUNSON went on to explain that proposed AS 47.24.900(2)(A) - which defines the word, "abuse" in terms of an action taken with a specific culpable mental state - now also includes the culpable mental state of "knowing". Proposed AS 47.24.900(4) now uses the term, "includes", rather than the term, "means", in its definition of the term, "informed decision"; this change ensures that being free from undue influence would be considered a component of, rather than a strict definition of, an informed decision.

REPRESENTATIVE LYNN questioned whether the bill - for purposes of ensuring that vulnerable adults are making an informed decision - addresses the issue of interpreters for those not fluent in English.

MS. MUNSON offered her understanding that the bill does not specifically address that issue, but ventured that arranging for an interpreter would be part of the protective services that the department provides to a vulnerable adult. She surmised that no one would consider a vulnerable adult to have consented to something that he/she didn't understand.

MS. MUNSON went on to explain that proposed AS 47.24.900(7)(B) now also includes the term, "fraud," in its definition of the term, "exploitation", as well as a reference to proposed AS 13.26.324(1) and (2)'s specific definition of the term, "fraud". She noted that in order to avoid using circular logic, proposed AS 13.24.324(3)'s aspect of the term, "fraud" was specifically not included in the definition of that term as it's being used in proposed AS 47.24.900(7)(B) to partly define the term, "exploitation". Proposed 47.24.900(9) - which defines the term "neglect" - now also includes the culpable mental state of "knowing"; and now uses the term, "includes", rather than the term, "means", in its definition of the phrase, "essential care

or services". This latter change addresses the possibility that essential care and essential services aren't only food, clothing, shelter, medical care, and supervision.

[2:26:02 PM](#)

MS. MUNSON explained that proposed AS 47.24.900(11) - which defines the term, "protective services" - has undergone some formatting and wording changes but not changes to meaning. One example of a wording change is that what is now proposed subparagraph (D) says, "**staying financial transactions**" instead of, "**freezing an account at a financial institution**". Proposed AS 47.24.900(15)(D) - which contains an aspect of the definition of the phrase, "unable to consent" - now also includes the concepts of waste or dissipation of income or assets. Proposed AS 47.24.900(18) has been rewritten such that it now defines the term, "fiduciary duty" to mean "the duty of a third party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act with due regard for the benefit and interest of that person"; this definition, she relayed, comes from [a 1969 Alaska Supreme Court case, Paskvan v. Mesich].

MS. MUNSON explained that proposed AS 47.24.900(21) has been rewritten such that it now defines the term, "undue influence" to mean, "the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care". This definition, in addition to partially conforming to language used in other parts of the bill regarding persons who stand in a position of trust or confidence, replaces the concept of "deceptively" with the concept of "wrongfully" in order to avoid using circular logic.

REPRESENTATIVE GRUENBERG noted that one could act wrongfully in exerting undue influence coercively, for example, but still not be acting deceptively, [thereby indicating that "wrongfully" is the more inclusive term].

MS. MUNSON went on to explain that Version I's proposed direct court rule change to Rule 12(h) of the Alaska Rules of Criminal Procedure - regarding continuance of trial - now involves the addition of the following language after that rule's existing first sentence: "**In deciding whether to grant the motion, the court shall consider the victim's circumstances and the effect**

the delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record.". Similarly, Version I's proposed direct court rule change to Rule 45(a) of the Alaska Rules of Criminal Procedure - regarding priorities in scheduling criminal cases - now involves the addition of the following sentence after that rule's existing second sentence: **"The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date."**.

These two direct court rule changes, she indicated, would ensure that the court considers the age of the victim without simply giving preference to a certain group of people over others based on age, and are necessary in order to address the problem of some cases either being delayed or not going to trial at all because a witness or the victim himself/herself has died as a result of his/her advanced age.

MS. MUNSON explained that under Version I, Section 47's subsection (c) is now proposing an amendment to uncodified law to reflect the fact that [the last sentence of] Version I's proposed AS 13.26.207(a) would effect an indirect court rule amendment to Rule 77 of the Alaska Rules of Civil Procedure by requiring a hearing within 72 hours of the filing of a petition for the appointment of a temporary conservator. In conclusion, she relayed that in order to ensure that the [Alaska Court System (ACS)] has enough time to create the forms necessitated by the enactment of HB 150, Version I is now proposing an effective date of July 1, 2011, rather than an immediate effective date as proposed in the original bill.

REPRESENTATIVE HOLMES removed her objection to the motion to adopt Version I as the working document. There being no further objection, Version I was before the committee.

[2:35:45 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to add the word, "conservator," to page 16, line 14, after the word, "guardian,". There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG then directed attention to language on page 8, lines 9-10 - existing AS 44.21.415(g)(2) - defining the term, "older Alaskan" to mean a person residing in the state who is 60 years of age or older. Noting that AS 44.21.415 establishes the duties of the state's office of elder fraud and assistance, he questioned whether that statute ought to be

amended such that that office could then provide assistance to any person 60 years of age or older who is physically present in Alaska regardless of whether he/she actually resides in Alaska.

The committee took an at-ease from 2:39 p.m. to 2:49 p.m.

REPRESENTATIVE GRUENBERG, referring to an issue raised earlier by Representative Lynn, asked whether there were any provisions of statute that provide the right of an interpreter to a vulnerable adult not fluent in English.

2:53:08 PM

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), explained that federal law requires the court to provide interpreters to any non-English-speaking persons involved in a court proceeding.

2:53:54 PM

SCOTT STERLING, Supervising Attorney, Elder Fraud and Assistance, Office of Public Advocacy (OPA), Department of Administration (DOA), in response to questions regarding AS 44.21.415 and the term, "residing" as used in its subsection (g)(2)'s definition of "older Alaskan", explained that his office first ascertains whether an elderly person who has been victimized has established actual residency in Alaska, or whether he/she was victimized while just visiting the state. If the latter, then his office still attempts to provide what assistance it can, but doesn't normally engage in full-fledged representation. For example, his office will provide an older visitor who's been victimized with a reference to law enforcement, and will help him/her get immediate assistance from social service agencies if needed. He mentioned that such cases are rare, that it's more common that an Alaska resident who was exploited while living in Alaska then moves out of state, and it's his office's policy to then finish the [advocacy] work begun while the victim was residing in Alaska. He noted, too, that because the statute uses the term, "person" rather than the term, "citizen", his office would provide assistance to an illegal alien residing in Alaska who's been victimized, although to date no such person has sought assistance from his office.

MR. STERLING, in response to questions regarding interpreters, explained that when his office gets a client who requires an interpreter, his office attempts to find a pro bono interpreter

in order to better communicate with that client, and has done so in two instances that he is aware of. He is unaware, however, of any specific statute, court rule, or constitutional provision that requires an executive branch agency to provide an interpreter to a person seeking services, though under his ethical obligations as an attorney, he added, if he is unable to find a pro bono interpreter, he would seek permission from his superiors to retain one. In response to a further question, he opined that in terms of his office's operations and provision of services under AS 44.21.415, the current system is working pretty well with volunteer interpreters, and relayed should he ever need to actually retain an interpreter, he would do his best to persuade his superiors to allow it.

REPRESENTATIVE GRUENBERG indicated a desire to research that issue further.

REPRESENTATIVE THOMPSON - referring to the language of proposed AS 13.26.209(f) that read, "As used in this section, 'actual or legal notice' means delivery by mail or facsimile at the most recently known place of residence or business of the third party or registering with the Department of Public Safety." - asked how registering with the Department of Public Safety (DPS) constitutes notifying a third party about the existence of a protective order.

[3:04:01 PM](#)

KELLY HENRIKSEN, Assistant Attorney General, Human Services Section, Civil Division (Juneau), Department of Law (DOL), surmising that [the third party referred to in that provision is primarily going to be a financial institution], explained that the language regarding registering with the DPS refers to the DPS's registry of protective orders, and that once a protective order is so registered, that in itself is considered to be providing legal notice, since financial institutions already check that registry during the normal course of business. She offered her belief, additionally, that such businesses could simply set up a system of routinely checking that registry every day.

REPRESENTATIVE GRUENBERG questioned what the impact would be of removing the language regarding registering a protective order with the DPS.

MR. STERLING predicted that it could prove very difficult for a vulnerable adult from a rural area of the state to deliver

actual notice to a financial institution that doesn't have a branch in the area. The language providing the alternative of registering a protective order with the DPS would remedy such situations. He acknowledged, though, that under the current language of proposed AS 13.26.209(f), perhaps simply sending a facsimile of the protective order to the financial institution's nearest branch or headquarters would suffice, particularly given that rarely are financial institutions locally owned and operated anymore. He also mentioned that although the financial institutions that his office deals with have uniformly been very cooperative in attempting to stop fraudulent activity, they have relayed that they often feel constrained by provisions of the law that require them to honor even a nominally-valid power of attorney. The hope is that providing for a protective order would protect both the third party and the vulnerable adult from the fraudulent acts of the respondent.

[Chair Gatto turned the gavel over to Vice Chair Thompson.]

VICE CHAIR THOMPSON questioned whether proposed AS 13.26.209(f) ought to be amended such that the protective order would have to be both delivered by mail or facsimile and registered with the DPS.

MR. STERLING surmised that such a change might prove more burdensome on the vulnerable adult - the victim - than would be desirable. Again, providing that a protective order registered with the DPS is legally noticed to a third party would give the victim another option in situations where he/she is unable to deliver actual notice.

[Vice Chair Thompson returned the gavel to Chair Gatto.]

MS. HENRIKSEN concurred.

[After the following motion but before adjournment, members thanked various staff members and department personnel for their subcommittee work on HB 150.]

[3:16:58 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed CS for HB 150, Version 27-GH1722\I, Mischel, 3/17/11, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 150(JUD) was reported from the House Judiciary Standing Committee.

3:20:13 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:20 p.m.