

BY THE SENATE SPECIAL COMMITTEE ON SENIOR CITIZENS AND PIONEERS

1 IN THE SENATE

2

SENATE BILL NO. 477

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to harm suffered by elderly persons
7 and vulnerable adults."

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

9 * Section 1. AS 47.24.010(a) is amended to read:

10 (a) The following persons who, in the performance of their
11 professional duties, have reasonable cause to believe that an elderly
12 person or vulnerable adult has suffered harm shall, not later than 24
13 hours after first having cause for the belief, report the harm to the
14 Department of Health and Social Services:

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

16 (2) a mental health professional as defined in AS 47.30.-
17 915(11);

18 (3) a pharmacist;

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

21 (5) a guardian or conservator;

22 (6) a police officer;

23 (7) a village public safety officer;

24 (8) a village health aide;

25 (9) a social worker;

26 (10) a member of the clergy;

27 (11) a staff employee of a project funded by the Older
28 Alaskans Commission;

29 (12) an employee of a homemaker program or home health aide

1 program;

2 (13) an emergency medical technician or a paramedic in the
3 mobile intensive care program.

4 * Sec. 2. AS 47.24.010(b) is amended to read:

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

8 (1) the name and address of the elderly person or vulnera-
9 ble adult;

10 (2) information relating to the nature and extent of the
11 harm;

12 (3) other information that the person reporting the harm
13 believes might be helpful in an investigation of the case or in pro-
14 viding protection for the elderly person or vulnerable adult.

15 * Sec. 3. AS 47.24.010(d) is amended to read:

16 (d) This section does not prohibit a person listed in (a) of
17 this section from reporting cases of economic or physical harm to an
18 elderly person or vulnerable adult that have come to the person's
19 attention in a nonprofessional capacity. This section does not pro-
20 hibit any other person from reporting economic harm to an elderly
21 person or vulnerable adult that the person has reasonable cause to
22 believe is a result of theft, fraud, or coercion by a caretaker of the
23 elderly person or vulnerable adult, or physical harm to an elderly
24 person or vulnerable adult that the person has reasonable cause to
25 believe is a result of abuse, neglect, or abandonment.

26 * Sec. 4. AS 47.24.010(e) is amended to read:

27 (e) If immediate action is necessary to protect the elderly
28 person or vulnerable adult from imminent harm, the person shall make
29 the report of harm to a police officer or a village public safety

1 officer. The police officer or village public safety officer shall
2 take immediate action to protect the elderly person or vulnerable
3 adult and shall, at the earliest opportunity, notify the department.

4 * Sec. 5. AS 47.24.010(f) is amended to read:

5 (f) A person who, in good faith, makes a report of economic or
6 physical harm to an elderly person or vulnerable adult under AS 47.-
7 24.010 - 47.24.100, or who participates in judicial proceedings re-
8 lated to the submission of reports under AS 47.24.010 - 47.24.100, is
9 immune from [ANY] civil or criminal liability that might otherwise be
10 incurred or imposed.

11 * Sec. 6. AS 47.24.020 is amended to read:

12 Sec. 47.24.020. ACTION ON REPORTS. (a) Upon receiving a report
13 of harm, the department shall promptly initiate an investigation to
14 determine the economic or physical condition of the elderly person or
15 vulnerable adult named in the report and whether action or services
16 are needed for the protection of the elderly person or vulnerable
17 adult. The department shall personally interview the elderly person
18 or vulnerable adult during the investigation unless the elderly person
19 or vulnerable adult is unconscious or otherwise physically or mentally
20 impaired to such an extent as to be unable to respond to questions.

21 (b) The department shall prepare a written report of the inves-
22 tigation, including findings, recommendations, and a determination of
23 whether and what kind of protective services are to be offered to the
24 elderly person or vulnerable adult. Upon request, the person who
25 reported the harm [TO THE ELDERLY PERSON] shall be notified of the
26 status of the investigation. The department shall provide to the
27 Department of Law a copy of each report of an investigation of harm
28 [TO AN ELDERLY PERSON] if the report of harm is confirmed to be true.

29 (c) After the personal interview required under (a) of this

1 section, the [THE] department shall immediately terminate an inves-
2 tigation under this section upon the request of the [AN] elderly
3 person or vulnerable adult who is the subject of a report of harm.
4 However, if the department has reasonable cause to believe that the
5 elderly person or vulnerable adult is incapacitated, the department
6 may petition the superior court under AS 13.26 for appointment of a
7 guardian or temporary guardian for the [ELDERLY] person for the pur-
8 pose of obtaining consent to continue the investigation.

9 * Sec. 7. AS 47.24.030 is amended to read:

10 Sec. 47.24.030. PROTECTIVE SERVICES. (a) The department shall
11 provide available protective services to a harmed elderly person or
12 vulnerable adult if and to the extent to which the [ELDERLY] person
13 consents. If the department has reasonable cause to believe that the
14 elderly person or vulnerable adult lacks the capacity to consent to
15 receiving protective services, it may petition the superior court
16 under AS 13.26 for appointment of a guardian or temporary guardian for
17 the [ELDERLY] person for the purpose of obtaining consent.

18 (b) If an elderly person or vulnerable adult who has consented
19 to receiving protective services is prevented by a caretaker from
20 receiving the services, the department may assist the [ELDERLY] person
21 to petition the superior court for an injunction restraining the
22 caretaker from interfering with the provision of protective services
23 to the [ELDERLY] person.

24 * Sec. 8. AS 47.24 is amended by adding a new section to read:

25 Sec. 47.24.035. TEMPORARY GUARDIANSHIP PROCEEDINGS. (a) Not-
26 withstanding AS 13.26.140(c), when the department petitions the supe-
27 rior court for a temporary guardian under AS 47.24.020(c) or 47.24.-
28 030(a), the burden of proof at the hearing shall be a preponderance of
29 the evidence.

1 (b) Every 72 hours, the court shall review the appointment of a
2 temporary guardian under AS 47.24.020(c) or 47.24.030(a) in order to
3 determine if the appointment should be renewed. This subsection does
4 not apply to a temporary guardianship that is based on clear and
5 convincing evidence as noted by the court in its findings.

6 * Sec. 9. AS 47.24.040 is amended to read:

7 Sec. 47.24.040. REVIEW AND REFERRAL. The department shall, not
8 later than 90 days after initiating the provision of protective ser-
9 vices to an elderly person or vulnerable adult, initiate a review of
10 the case to determine whether continuation or modification of protec-
11 tive services that are being provided is warranted. The department
12 shall reevaluate the case every 90 days thereafter until the case is
13 closed.

14 * Sec. 10. AS 47.24.050 is amended to read:

15 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
16 reports and reports of harm filed under AS 47.24.010 - 47.24.100 are
17 confidential and are not subject to public inspection and copying
18 under AS 09.25.110 - 09.25.125. However, in accordance with AS 47.-
19 24.010 - 47.24.100 and regulations adopted under AS 47.24.010 - 47.-
20 24.100, investigation reports may be used by appropriate governmental
21 agencies, inside and outside the state, in connection with investiga-
22 tions or judicial proceedings involving harm to an elderly person or
23 vulnerable adult.

24 (b) The department shall disclose a report of harm if the el-
25 derly person or vulnerable adult who is the subject of the report
26 consents in writing. The department shall, upon request, disclose the
27 number of verified reports of harm that occurred at an institution for
28 care of the elderly or vulnerable adults.

29 * Sec. 11. AS 47.24.060 is amended to read:

1 Sec. 47.24.060. AUTHORITY OF THE DEPARTMENT. In performing its
2 duties under AS 47.24.010 - 47.24.100, the department may, subject to
3 the elderly person's or vulnerable adult's consent, initiate actions
4 necessary to assure the health, safety, and welfare of an elderly
5 person or vulnerable adult, including the transfer of the [ELDERLY]
6 person from a nursing home, or residential care or health care facil-
7 ity.

8 * Sec. 12. AS 47.24.100 is amended to read:

9 Sec. 47.24.100. DEFINITIONS. In AS 47.24.010 - 47.24.100

10 (1) "abandonment" means desertion of an elderly person or
11 vulnerable adult by a caretaker;

12 (2) "abuse" means the infliction of physical pain or in-
13 jury, the infliction of mental anguish that requires medical atten-
14 tion, or the deprivation by a caretaker of services that are necessary
15 to maintain the physical and mental health of an elderly person or
16 vulnerable adult;

17 (3) "caretaker" means a person who is responsible for the
18 care of an elderly person or vulnerable adult as a result of a family
19 relationship, or who has assumed responsibility for the care of an
20 elderly person or vulnerable adult voluntarily, by contract, or by
21 court order;

22 (4) "department" means the Department of Health and Social
23 Services;

24 (5) "economic harm" means intentional economic exploitation
25 of an elderly person or vulnerable adult resulting from theft, fraud,
26 or coercion by the person's [A] caretaker [OF THE ELDERLY PERSON];

27 (6) "elderly person" means a resident of Alaska who is 65
28 years of age or older;

29 (7) "harm" means physical harm or economic harm except for

1 assault or sexual assault against a disabled adult that must be re-
2 ported under AS 47.24.110;

3 (8) "incapacitated" means a person's ability to receive and
4 evaluate information or to communicate decisions is impaired for
5 reasons other than minority to the extent that the person lacks the
6 ability to obtain the essential requirements for physical health or
7 safety without court-ordered assistance;

8 (9) "neglect" means the failure by the caretaker of an
9 elderly person or vulnerable adult to provide services necessary to
10 maintain the physical and mental health of the [ELDERLY] person;

11 (10) "physical harm" means injury to the person of an el-
12 derly person or vulnerable adult resulting from abuse, neglect, or
13 abandonment;

14 (11) "police officer" has the meaning given in AS 18.65.290;

15 (12) "protective services" means services intended to pre-
16 vent or alleviate harm resulting from abuse, neglect, exploitation, or
17 abandonment;

18 (13) "vulnerable adult" means a person 18 years of age or
19 older who

20 (A) is a resident or inpatient of a hospital, Pio-
21 neers' Home, or nursing home, or a facility or institution for
22 dependent adults required to be licensed under AS 47.35;

23 (B) receives services at or from a facility or insti-
24 tution for dependent adults required to be licensed under
25 AS 47.35, except a person receiving outpatient services for
26 treatment of alcohol or drug abuse or mental illness;

27 (C) receives services from a homemaker program or home
28 health aide program; or

29 (D) regardless of residence or type of service

1 received, is unable or unlikely to report harm without assistance
2 because of impairment of mental or physical function or emotional
3 status.