

CS FOR HOUSE BILL NO. 376(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/25/94
Referred: Finance

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

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to services for and protection of vulnerable adults; and
 2 providing for an effective date."

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

4 * **Section 1.** AS 08.86.200(b) is amended to read:

5 (b) Notwithstanding (a) of this section, a psychologist or psychological
 6 associate shall report to the appropriate authority incidents of child abuse or neglect
 7 as required by AS 47.17.020, incidents of [ELDER] abuse of a vulnerable adult as
 8 required by AS 47.24.010, and incidents of abuse of disabled persons disclosed to the
 9 psychologist or psychological associate by a client. In this subsection "disabled
 10 person" means a person who has a physical or mental disability or a physical or mental
 11 impairment, as defined in AS 18.80.300.

12 * **Sec. 2.** AS 47.24.010(a) is amended to read:

13 (a) Except as provided in (e) and (f) of this section, the [THE] following
 14 persons who, in the performance of their professional duties, have reasonable cause to

1 believe that a vulnerable adult suffers from abandonment, exploitation, abuse,
2 neglect, or self-neglect [AN ELDERLY PERSON HAS SUFFERED HARM] shall,
3 not later than 24 hours after first having cause for the belief, report the belief to the
4 department's central information and referral service for vulnerable adults
5 [HARM TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES]:

6 (1) a physician or other licensed health care provider;
7 (2) a mental health professional as defined in AS 47.30.915(11) [AND
8 INCLUDING A MARITAL AND FAMILY THERAPIST LICENSED UNDER
9 AS 08.63];

10 (3) a pharmacist;
11 (4) an administrator of a nursing home, residential care or health care
12 facility;

13 (5) a guardian or conservator;
14 (6) a police officer;
15 (7) a village public safety officer;
16 (8) a village health aide;
17 (9) a social worker;
18 (10) a member of the clergy;

19 (11) a staff employee of a project funded by the Department of
20 Administration for the provision of services to older Alaskans, the Department of
21 Health and Social Services, or the Council on Domestic Violence and Sexual
22 Assault [OLDER ALASKANS COMMISSION];

23 (12) an employee of a personal care [HOMEMAKER PROGRAM] or
24 home health aide program;

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

27 (14) a caregiver of the vulnerable adult.

28 * Sec. 3. AS 47.24.010(b) is amended to read:

29 (b) A report [OF HARM] made under this section may include the name and
30 address of the reporting person [REPORTING THE HARM] and must [SHALL]
31 include

1 (1) the name and address of the vulnerable adult [ELDERLY
2 PERSON];

3 (2) information relating to the nature and extent of the abandonment,
4 exploitation, abuse, neglect, or self-neglect [HARM];

5 (3) other information that the reporting person [REPORTING THE
6 HARM] believes might be helpful in an investigation of the case or in providing
7 protection for the vulnerable adult [ELDERLY PERSON].

8 * Sec. 4. AS 47.24.010(c) is amended to read:

9 (c) The department or its designee shall report to the Department of Law
10 any person required by (a) of this section to report who fails to comply with this
11 section. A person listed in (a) of this section who, because of the circumstances,
12 should have had reasonable cause to believe that a vulnerable adult suffers from
13 abandonment, exploitation, abuse, neglect, or self-neglect but who fails to comply
14 with this section is guilty of a violation as defined in AS 11.81.900(b).

15 * Sec. 5. AS 47.24.010(d) is amended to read:

16 (d) This section does not prohibit a person listed in (a) of this section, or any
17 other person, from reporting cases of abandonment, exploitation, abuse, neglect, or
18 self-neglect of a vulnerable adult [ECONOMIC OR PHYSICAL HARM TO AN
19 ELDERLY PERSON] that have come to the person's attention [IN A
20 NONPROFESSIONAL CAPACITY. THIS SECTION DOES NOT PROHIBIT ANY
21 OTHER PERSON FROM REPORTING ECONOMIC HARM TO AN ELDERLY
22 PERSON THAT THE PERSON HAS REASONABLE CAUSE TO BELIEVE IS A
23 RESULT OF THEFT, FRAUD, OR COERCION BY A CARETAKER OF THE
24 ELDERLY PERSON, OR PHYSICAL HARM TO AN ELDERLY PERSON THAT
25 THE PERSON HAS REASONABLE CAUSE TO BELIEVE IS A RESULT OF
26 ABUSE, NEGLECT, OR ABANDONMENT].

27 * Sec. 6. AS 47.24.010(e) is amended to read:

28 (e) If a person making a report under this section believes that immediate
29 action is necessary to protect the vulnerable adult [ELDERLY PERSON] from
30 imminent risk due to abandonment, exploitation, abuse, neglect, or self-neglect and
31 the reporting person cannot immediately contact the department's central

1 information and referral service for vulnerable adults [HARM], the reporting
2 person may [SHALL] make the report [OF HARM] to a police officer or a village
3 public safety officer. The police officer or village public safety officer shall take
4 immediate action to protect the vulnerable adult [ELDERLY PERSON] and shall, at
5 the earliest opportunity, notify the department.

6 * Sec. 7. AS 47.24.010(f) is repealed and reenacted to read:

7 (f) A person listed in (a) of this section who reports to the long-term care
8 ombudsman under AS 44.21.232, or to the Department of Health and Social Services,
9 that a vulnerable adult has been exploited, abused, or neglected in an out-of-home care
10 facility is considered to have met the duty to report under (a) of this section.

11 * Sec. 8. AS 47.24 is amended by adding new sections to read:

12 Sec. 47.24.011. DUTIES OF THE DEPARTMENT REGARDING SERVICES
13 AND PROTECTION FOR VULNERABLE ADULTS. In order to facilitate the
14 provision of supportive and protective services for vulnerable adults, the department
15 shall

16 (1) compile information on available supportive and protective services
17 for vulnerable adults in the state;

18 (2) establish, publicize, and maintain a central information and referral
19 service for vulnerable adults;

20 (3) develop and coordinate a statewide system to serve vulnerable
21 adults who are in need of protective services;

22 (4) establish criteria and procedures for the authorization and
23 supervision of other state agencies or community-based service providers to serve as
24 designees of the department under this chapter;

25 (5) in accordance with this chapter, designate other state agencies or
26 community-based service providers to deliver supportive and protective services to
27 vulnerable adults who are in need of protective services;

28 (6) develop within the central information and referral service for
29 vulnerable adults a central registry for reports of vulnerable adults in need of protective
30 services;

31 (7) maintain confidentiality of records as provided for in AS 47.24.050;

1 and

2 (8) adopt regulations to carry out the purposes of this chapter.

3 Sec. 47.24.013. REPORTS OF ABANDONMENT, EXPLOITATION, ABUSE,
4 NEGLECT, OR SELF-NEGLECT OF VULNERABLE ADULTS IN OUT-OF-HOME
5 CARE FACILITIES. (a) If a report received under AS 47.24.010 regards the
6 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is
7 60 years of age or older that is alleged to have been committed by or to have resulted
8 from the negligence of the staff or a volunteer of an out-of-home care facility,
9 including a facility licensed under AS 18.20, in which the vulnerable adult resides, and
10 if the Department of Health and Social Services licenses that type of facility, the
11 Department of Administration shall transfer the report for investigation to the long
12 term care ombudsman under AS 44.21.232 and the Department of Health and Social
13 Services.

14 (b) The department shall transfer to the Department of Health and Social
15 Services, for investigation, a report received under AS 47.24.010 regarding the
16 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is
17 less than 60 years of age that is alleged to have been committed by or to have resulted
18 from the negligence of the staff or a volunteer of an out-of-home care facility in which
19 the vulnerable adult resides, if the Department of Health and Social Services licenses
20 that type of facility.

21 (c) Upon receipt of a report from the department under (a) or (b) of this
22 section, the long term care ombudsman and the Department of Health and Social
23 Services shall

24 (1) conduct an investigation as appropriate under AS 44.21.232 or
25 AS 47, respectively;

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

28 (3) provide the results of their actions or investigations to the central
29 information and referral service of the department within 60 days after the receipt of
30 the report.

31 (d) If the long term care ombudsman or the Department of Health and Social

1 Services receives directly a report regarding the abandonment, exploitation, abuse,
2 neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the
3 ombudsman or the Department of Health and Social Services shall provide the report,
4 and the results of their actions or investigations regarding the report, to the central
5 information and referral service of the Department of Administration. The Department
6 of Administration may investigate the report as described in AS 47.24.015 if the
7 department determines that action is appropriate.

8 (e) If the results of an investigation by the long term care ombudsman or the
9 Department of Health and Social Services are provided to the Department of
10 Administration under (c) or (d) of this section, the Department of Administration may
11 make a final determination as described in AS 47.24.015(b), based on the investigation
12 results provided, regarding services to be offered to the vulnerable adult.

13 Sec. 47.24.015. ACTION ON REPORTS. (a) Upon the department's receipt
14 of a report under AS 47.24.010 that is not transferred under AS 47.24.013, the
15 department, or its designee, shall promptly initiate an investigation to determine
16 whether the vulnerable adult who is the subject of the report suffers from
17 abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its
18 designee, shall conduct a face-to-face interview with the vulnerable adult who is the
19 subject of the report unless that person is unconscious or the department, or its
20 designee, has determined that a face-to-face interview could further endanger the
21 vulnerable adult.

22 (b) After the department conducts an investigation under (a) of this section,
23 the department shall prepare a written report of the investigation, including findings,
24 recommendations, and a determination of whether and what kind of supportive or
25 protective services are needed by and are to be offered to the vulnerable adult. After
26 the department's designee conducts an investigation under (a) of this section, the
27 designee shall prepare a written report of the investigation, including findings,
28 recommendations, and a proposed determination of whether and what kind of
29 supportive or protective services are to be offered to the vulnerable adult. The
30 department shall prepare, and attach to the designee's report, a final determination
31 regarding services to be offered to the vulnerable adult.

1 (c) The department, or its designee, shall immediately terminate an
2 investigation under this section upon the request of the vulnerable adult who is the
3 subject of the report made under AS 47.24.010. However, if the investigation to that
4 point has resulted in reasonable cause to believe that the vulnerable adult is in need
5 of protective services,

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

7 or

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

10 (d) Upon request, a person who made a report to the department under
11 AS 47.24.010 regarding a vulnerable adult shall be notified of the procedural status of
12 the investigation conducted under (a) of this section regarding that vulnerable adult.

13 Sec. 47.24.016. SURROGATE DECISION MAKERS FOR VULNERABLE
14 ADULTS. (a) If the department determines under AS 47.24.015 that a vulnerable
15 adult is in need of protective services, but the department cannot obtain the vulnerable
16 adult's consent to receive the services because the vulnerable adult is unable to consent
17 or lacks decision making capacity, and has no guardian or attorney in fact to serve as
18 the vulnerable adult's surrogate decision maker, the department may select from the
19 following list, in the order of priority listed, an individual who is willing to be the
20 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
21 consent to the vulnerable adult's receipt of protective services:

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

23 (A) the vulnerable adult and the spouse have separate domiciles;

24 or

25 (B) the vulnerable adult or the spouse have initiated divorce or
26 dissolution proceedings;

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

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

31 (4) a parent of the vulnerable adult;

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

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

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

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

9 (2) there are allegations that individual is a perpetrator of the
10 abandonment, exploitation, abuse, or neglect of the vulnerable adult.

11 (c) If the department intends to select a surrogate decision maker from a
12 priority level in the list in (a) of this section and there is more than one individual at
13 that priority level who is willing to be the surrogate decision maker, those individuals

14 (1) may select from amongst themselves, by majority vote, an
15 individual to serve as the surrogate decision maker; or

16 (2) as a group may serve as the surrogate decision maker and reach
17 decisions by consensus.

18 Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR
19 VULNERABLE ADULTS. (a) If the department determines under AS 47.24.015 that
20 a vulnerable adult is in need of protective services and either the vulnerable adult, the
21 vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected
22 under AS 47.24.016 consents to receipt of the protective services, and to the extent
23 that resources are available, the department shall ensure that the protective services for
24 the vulnerable adult are provided by the department or its designee within 10 working
25 days after the department received the report under AS 47.24.010 regarding the
26 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.
27 However, if circumstances beyond the control of the department or the department's
28 designee make it impossible to provide the protective services within the 10 working
29 days, the department shall ensure that the services are provided as soon as possible
30 after that time.

31 (b) Notwithstanding (a) of this section, if the department determines that an

1 emergency life threatening situation exists that necessitates temporary provision of
2 protective services to a vulnerable adult, the department may temporarily provide the
3 necessary protective services in a manner determined by the department to be the most
4 appropriate in light of the emergency situation, regardless of whether the vulnerable
5 adult or any other person has consented to receipt of the services.

6 (c) To the extent practicable, protective services provided under this section
7 shall be delivered in a culturally relevant manner that protects the vulnerable adult's
8 right to the least restrictive environment and maximizes that person's own decision
9 making capabilities.

10 Sec. 47.24.019. PETITIONING COURT FOR CERTAIN PROTECTIVE
11 SERVICES. (a) If, after investigation under AS 47.24.015, the department has
12 reasonable cause to believe that a vulnerable adult is in need of protective services and
13 is an incapacitated person, the department may petition the court under AS 13.26 for
14 appointment of a guardian or temporary guardian for the vulnerable adult for the
15 purpose of deciding whether to consent to the receipt of protective services for the
16 vulnerable adult.

17 (b) If, after an investigation under AS 47.24.015, the department has
18 reasonable cause to believe that a vulnerable adult is mentally ill and as a result either
19 is likely to cause serious harm to self or others or is gravely disabled, the department
20 may petition the court under AS 47.30.700 to initiate an involuntary commitment
21 proceeding.

22 (c) If a vulnerable adult who has consented to receive protective services, or
23 on whose behalf consent to receive protective services has been given, is prevented by
24 a caregiver from receiving those services, the department may assist the vulnerable
25 adult or the person who consented to the vulnerable adult's receipt of the services to
26 petition the superior court for an injunction restraining the caregiver from interfering
27 with the provision of protective services to the vulnerable adult.

28 * Sec. 9. AS 47.24.040 is repealed and reenacted to read:

29 Sec. 47.24.040. MONITORING. If ongoing protective services are provided
30 to a vulnerable adult under AS 47.24.017, the department shall monitor the adult's
31 situation, as the department considers appropriate, until the department determines that

1 the protective services are no longer needed.

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

3 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
4 reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect
5 of a vulnerable adult [HARM] filed under this chapter [AS 47.24.010 - 47.24.100]
6 are confidential and are not subject to public inspection and copying under
7 AS 09.25.110 - 09.25.125. However, in accordance with this chapter [AS 47.24.010 -
8 47.24.100] and regulations adopted under this chapter [AS 47.24.010 - 47.24.100],
9 investigation reports may be used by appropriate [GOVERNMENTAL] agencies or
10 individuals inside and outside the state, in connection with investigations or judicial
11 proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect
12 of a vulnerable adult [HARM TO AN ELDERLY PERSON].

13 (b) The department shall disclose a report of the abandonment, exploitation,
14 abuse, neglect, or self-neglect of a vulnerable adult [HARM] if the vulnerable adult
15 [ELDERLY PERSON] who is the subject of the report consents in writing. The
16 department shall, upon request, disclose the number of verified reports of
17 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult
18 [HARM] that occurred at an institution that provides [FOR] care for vulnerable
19 adults [OF THE ELDERLY].

20 * Sec. 11. AS 47.24.070 is repealed and reenacted to read:

21 Sec. 47.24.070. REGULATIONS. Before adoption by the department,
22 regulations to implement this chapter shall be provided to the Older Alaskans
23 Commission established under AS 44.21.200 for review.

24 * Sec. 12. AS 47.24.120 is amended to read:

25 Sec. 47.24.120. IMMUNITY FROM LIABILITY; RETALIATION
26 PROHIBITED. (a) A person who in good faith makes a report under AS 47.24.010
27 [AS 47.24.110], regardless of whether the person is required to do so, is immune from
28 civil or criminal liability that might otherwise be incurred or imposed for making the
29 report.

30 (b) An employer or supervisor of a person who in good faith makes a report
31 under AS 47.24.010 [AS 47.24.110] may not discharge, demote, transfer, reduce pay

1 or benefits or work privileges of, prepare a negative work performance evaluation of,
2 or take other detrimental action against the person because the person made the report.
3 The person making the report may bring a civil action for compensatory and punitive
4 damages against an employer or supervisor who violates this subsection. In the civil
5 action there is a rebuttable presumption that the detrimental action by the employer or
6 supervisor was retaliatory if it was taken within 90 days after the report was made.

7 * Sec. 13. AS 47.24 is amended by adding a new section to read:

8 Sec. 47.24.900. DEFINITIONS. In this chapter,

9 (1) "abandonment" means desertion of a vulnerable adult by a
10 caregiver;

11 (2) "abuse" means

12 (A) the wilful, intentional, or reckless nonaccidental, and
13 nontherapeutic infliction of physical pain, injury, or mental distress; or

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

15 (3) "caregiver" means

16 (A) a person who is providing care to a vulnerable adult as a
17 result of a family relationship, or who has assumed responsibility for the care
18 of a vulnerable adult voluntarily, by contract, or by court order; or

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

21 (4) "decision making capacity" means the ability to understand and
22 appreciate the nature and consequences of a decision and the ability to reach and
23 communicate an informed decision;

24 (5) "department" means the Department of Administration;

25 (6) "designee" means another state agency or a community-based
26 program, individual, or provider of supportive services that has been licensed, or
27 authorized by agreement with the department, to provide one or more services to
28 vulnerable adults;

29 (7) "exploitation" means unjust or improper use of another person or
30 another person's resources for one's own profit or advantage;

31 (8) "incapacitated person" means a person whose ability to receive and

1 evaluate information or to communicate decisions is impaired to the extent that the
2 person lacks the ability to provide or arrange for the essential requirements for the
3 person's physical health or safety without court-ordered assistance;

4 (9) "neglect" means the intentional failure by a caregiver to provide
5 essential care or services necessary to maintain the physical and mental health of the
6 vulnerable adult;

7 (10) "police officer" has the meaning given in AS 18.65.290;

8 (11) "protective services" means services that are intended to prevent
9 or alleviate harm resulting from abandonment, exploitation, abuse, neglect, or self-
10 neglect and that are provided to a vulnerable adult in need of protection; "protective
11 services" includes protective placement;

12 (12) "self-neglect" means an act or omission by a vulnerable adult that
13 results, or could result in the deprivation of essential services necessary to maintain
14 minimal mental, emotional, or physical health and safety;

15 (13) "supportive services" means the range of services delivered by
16 public and private organizations and individuals that assist the elderly and vulnerable
17 adults with their social, health, educational, recreational, transportation, housing,
18 nutritional, financial, legal, or other needs;

19 (14) "unable to consent" means refusal to, or inability to, accept
20 services because

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

23 (B) of coercion by or fear of reprisal from the perpetrator of
24 abandonment, exploitation, abuse, or neglect;

25 (C) of dependency on the perpetrator of abandonment,
26 exploitation, abuse, or neglect for services, care, or support; or

27 (D) of an inability to perceive that refusal to consent results in
28 an imminent and substantial danger of death or irreparable harm to self or
29 others;

30 (16) "vulnerable adult" means a person 18 years of age or older who,
31 because of physical or mental impairment, is unable to meet the person's own needs

1 or to seek help without assistance.

2 * **Sec. 14.** AS 08.63.200(b)(2); AS 47.24.010(g), 47.24.010(h), 47.24.020, 47.24.030,
3 47.24.060, 47.24.075, 47.24.100, and 47.24.110 are repealed.

4 * **Sec. 15. TRANSITION.** (a) Contracts, rights, liabilities, and obligations created by or
5 under a law repealed by this Act and in effect on June 30, 1994, remain in effect
6 notwithstanding this Act's taking effect. Records, equipment, appropriations, and other
7 property of agencies of the state whose functions are transferred under this Act shall be
8 transferred to implement the provisions of this Act.

9 (b) Litigation, hearings, investigations, and other proceedings pending under a law
10 repealed by this Act, or in connection with functions transferred by this Act, continue in effect
11 and may be continued and completed notwithstanding a transfer, amendment, or repeal
12 provided for in this Act.

13 (c) The Department of Administration may proceed to adopt regulations necessary to
14 implement the changes made by this Act. The regulations may not take effect before July 1,
15 1994.

16 * **Sec. 16.** Section 15(c) of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 17.** Sections 1 - 14, 15(a), and 15(b) of this Act take effect July 1, 1994.