

CS FOR SENATE BILL NO. 248(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/14/94
Referred: Finance

Sponsor(s): SENATE 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 AS 08.63;
9 (3) a pharmacist;
10 (4) an administrator of a nursing home, residential care or health care
11 facility;
12 (5) a guardian or conservator;
13 (6) a police officer;
14 (7) a village public safety officer;
15 (8) a village health aide;
16 (9) a social worker;
17 (10) a member of the clergy;
18 (11) a staff employee of a project funded by the Department of
19 Administration for the provision of services to older Alaskans, the Department of
20 Health and Social Services, or the Council on Domestic Violence and Sexual
21 Assault [OLDER ALASKANS COMMISSION];
22 (12) an employee of a personal care [HOMEMAKER PROGRAM] or
23 home health aide program;
24 (13) an emergency medical technician or a mobile intensive care
25 paramedic;
26 (14) a caregiver of the vulnerable adult.

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

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

- 31 (1) the name and address of the vulnerable adult [ELDERLY

1 PERSON];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 and

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

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

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

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

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

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

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

30 (d) If the long term care ombudsman or the Department of Health and Social
31 Services receives directly a report regarding the abandonment, exploitation, abuse,

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

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

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

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

30 (c) The department, or its designee, shall immediately terminate an
31 investigation under this section upon the request of the vulnerable adult who is the

1 subject of the report made under AS 47.24.010. However, if the investigation to that
2 point has resulted in reasonable cause to believe that the vulnerable adult is in need
3 of protective services,

4 (1) the department may petition the court as set out in AS 47.24.019;
5 or

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

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

11 (e) A person may not bring an action for damages based on a decision under
12 this section to offer or not to offer protective services to a vulnerable adult.

13 (f) A person may not bring an action for damages based on the provision of
14 protective services under this section unless the action is based on gross negligence or
15 intentional misconduct. The damages awarded in an action under this section may
16 include only direct economic compensatory damages for personal injury.

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

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

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

28 or

29 (B) the vulnerable adult or the spouse have initiated divorce or
30 dissolution proceedings;

31 (2) an individual who lives with the vulnerable adult in a spousal

- 1 relationship or as a domestic partner and who is 18 years of age or older;
2 (3) a son or daughter of the vulnerable adult who is 18 years of age or
3 older;
4 (4) a parent of the vulnerable adult;
5 (5) a brother or sister of the vulnerable adult who is 18 years of age
6 or older; or
7 (6) a close friend or relative of the vulnerable adult who is 18 years of
8 age or older.

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

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

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

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

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

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

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

29 **Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR**
30 **VULNERABLE ADULTS.** (a) If the department determines under AS 47.24.015 that
31 a vulnerable adult is in need of protective services and either the vulnerable adult, the

1 vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected
2 under AS 47.24.016 consents to receipt of the protective services, and to the extent
3 that resources are available, the department shall ensure that the protective services for
4 the vulnerable adult are provided by the department or its designee within 10 working
5 days after the department received the report under AS 47.24.010 regarding the
6 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.
7 However, if circumstances beyond the control of the department or the department's
8 designee make it impossible to provide the protective services within the 10 working
9 days, the department shall ensure that the services are provided as soon as possible
10 after that time.

11 (b) Notwithstanding (a) of this section, if the department determines that an
12 emergency situation exists that necessitates provision of protective services to a
13 vulnerable adult, the department may provide the necessary protective services in a
14 manner determined by the department to be the most appropriate in light of the
15 emergency situation, regardless of whether the vulnerable adult or any other person has
16 consented to receipt of the services.

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

21 Sec. 47.24.019. PETITIONING COURT FOR CERTAIN PROTECTIVE
22 SERVICES. (a) If, after investigation under AS 47.24.015, the department has
23 reasonable cause to believe that a vulnerable adult is in need of protective services and
24 is an incapacitated person, the department may petition the court under AS 13.26 for
25 appointment of a guardian or temporary guardian for the vulnerable adult for the
26 purpose of deciding whether to consent to the receipt of protective services for the
27 vulnerable adult.

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

1 proceeding.

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

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

9 Sec. 47.24.040. MONITORING. If ongoing protective services are provided
10 to a vulnerable adult under AS 47.24.017, the department shall monitor the adult's
11 situation, as the department considers appropriate, until the department determines that
12 the protective services are no longer needed.

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

14 Sec. 47.24.050. CONFIDENTIALITY OF REPORTS. (a) Investigation
15 reports and reports of the abandonment, exploitation, abuse, neglect, or self-neglect
16 of a vulnerable adult [HARM] filed under this chapter [AS 47.24.010 - 47.24.100]
17 are confidential and are not subject to public inspection and copying under
18 AS 09.25.110 - 09.25.125. However, in accordance with this chapter [AS 47.24.010
19 - 47.24.100] and regulations adopted under this chapter [AS 47.24.010 - 47.24.100],
20 investigation reports may be used by appropriate [GOVERNMENTAL] agencies or
21 individuals inside and outside the state, in connection with investigations or judicial
22 proceedings involving the abandonment, exploitation, abuse, neglect, or self-neglect
23 of a vulnerable adult [HARM TO AN ELDERLY PERSON].

24 (b) The department shall disclose a report of the abandonment, exploitation,
25 abuse, neglect, or self-neglect of a vulnerable adult [HARM] if the vulnerable adult
26 [ELDERLY PERSON] who is the subject of the report consents in writing. The
27 department shall, upon request, disclose the number of verified reports of
28 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult
29 [HARM] that occurred at an institution that provides [FOR] care for vulnerable
30 adults [OF THE ELDERLY].

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

1 Sec. 47.24.070. REGULATIONS. Before adoption by the department,
2 regulations to implement this chapter shall be provided to the Older Alaskans
3 Commission (AS 44.21.200) for review.

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

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

10 (b) An employer or supervisor of a person who in good faith makes a report
11 under AS 47.24.010 [AS 47.24.110] may not discharge, demote, transfer, reduce pay
12 or benefits or work privileges of, prepare a negative work performance evaluation of,
13 or take other detrimental action against the person because the person made the report.
14 The person making the report may bring a civil action for compensatory and punitive
15 damages against an employer or supervisor who violates this subsection. In the civil
16 action there is a rebuttable presumption that the detrimental action by the employer or
17 supervisor was retaliatory if it was taken within 90 days after the report was made.

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

19 Sec. 47.24.900. DEFINITIONS. In this chapter,

20 (1) "abandonment" means desertion of a vulnerable adult by a
21 caregiver;

22 (2) "abuse" means

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

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

26 (3) "caregiver" means

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

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

1 (4) "decision making capacity" means the ability to understand and
2 appreciate the nature and consequences of a decision and the ability to reach and
3 communicate an informed decision;

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

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

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

11 (8) "incapacitated person" means a person whose ability to receive and
12 evaluate information or to communicate decisions is impaired to the extent that the
13 person lacks the ability to provide or arrange for the essential requirements for the
14 person's physical health or safety without court-ordered assistance;

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

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

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

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

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

30 (14) "unable to consent" means refusal to, or inability to, accept
31 services because

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

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

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

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

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

13 * Sec. 14. AS 47.24.010(g), 47.24.010(h), 47.24.020, 47.24.030, 47.24.060, 47.24.075,
14 47.24.100, and 47.24.110 are repealed.

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

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

24 (c) The Department of Administration may proceed to adopt regulations necessary to
25 implement the changes made by this Act. The regulations may not take effect before July 1,
26 1994.

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

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