

HB

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§ 47.21.020

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§ 47.24.010 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.24.010

Article 1. Protection of the Elderly.

Section

- 10. Reports of harm
- 20. Action on reports
- 30. Protective services
- 40. Review and referral
- 50. Confidentiality of reports

Section

- 60. Authority of the department
- 70. Regulations
- 75. Quarterly report
- 100. Definitions

Cross references. — For statement of SLA 1983, in the Temporary and Special legislative purpose in enacting AS Acts. 47.24.010 — 47.24.100, see § 1, ch. 36.

HB 4 SECTION 2

Sec. 47.24.010. Reports of harm. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that an elderly person has suffered harm shall, not later than 24 hours after first having cause for the belief, report the harm to the Department of Health and Social Services:

- (1) a physician or other licensed health care provider;
- (2) a mental health professional as defined in AS 47.30.915(11);
- (3) a pharmacist;
- (4) an administrator of a nursing home, residential care or health care facility;
- (5) a guardian or conservator;
- (6) a police officer;
- (7) a village public safety officer;
- (8) a village health aide;
- (9) a social worker;
- (10) a member of the clergy;
- (11) a staff employee of a project funded by the Older Alaskans Commission;
- (12) an employee of a homemaker program or home health aide program;
- (13) an emergency medical technician or a paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include

- (1) the name and address of the elderly person;
- (2) information relating to the nature and extent of the harm;
- (3) other information that the person reporting the harm believes might be helpful in an investigation of the case or in providing protection for the elderly person.

(c) A person who fails to comply with this section is guilty of a violation as defined in AS 11.81.900(b).

(d) This section does not prohibit a person listed in (a) of this section from reporting cases of economic or physical harm to an elderly person that have come to the person's attention in a nonprofessional capacity. This section does not prohibit any other person from reporting economic harm to an elderly person that the person has reasonable cause to believe is a result of theft, fraud, or coercion by a caretaker of the elderly person, or physical harm to an elderly person that the person has reasonable cause to believe is a result of abuse, neglect, or abandonment.

(e) If immediate action is necessary to protect the elderly person from imminent harm, the person shall make the report of harm to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the elderly person and shall, at the earliest opportunity, notify the department.

(f) A person who, in good faith makes a report of economic or physical harm to an elderly person under AS 47.24.010 — 47.24.100, or who participates in judicial proceedings related to the submission of reports under AS 47.24.010 — 47.24.100, is immune from any civil or criminal liability that might otherwise be incurred or imposed.

(g) Failure to make a report under subsections (a) and (d) of this section is not the basis of civil liability unless otherwise provided by law.

(h) If a person makes a good faith report of harm under this section, an employer or supervisor of the person, or a public or private agency or entity that provides benefits, services, or housing to the person, may not discharge, demote, transfer, reduce the pay or benefits or work privileges of, prepare a negative work performance evaluation of, deny or withhold benefits or services, evict, or take other detrimental action against the person because of the report. The person making the report may bring a civil action for compensatory and punitive damages against an employer, supervisor, agency, or entity that violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it was taken within 90 days after the report of harm was made. (§ 2 ch 36 SLA 1983; § 4 ch 108 SLA 1989)

Effect of amendments. — The 1985 amendment added subsection (h).

Sec. 47.24.020. Action on reports. (a) Upon receiving a report of harm, the department shall promptly initiate an investigation to determine the economic or physical condition of the elderly person named in the report and whether action or services are needed for the protection of the elderly person. The department shall personally interview the elderly person during the investigation unless the elderly

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person is unconscious or otherwise physically or mentally impaired to such an extent as to be unable to respond to questions.

(b) The department shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of protective services are to be offered to the elderly person. Upon request, the person who reported harm to the elderly person shall be notified of the status of the investigation. The department shall provide to the Department of Law a copy of each report of an investigation of harm to an elderly person if the report of harm is confirmed to be true.

(c) The department shall immediately terminate an investigation under this section upon the request of an elderly person who is the subject of a report of harm. However, if the department has reasonable cause to believe that the elderly person is incapacitated, the department may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the elderly person for the purpose of obtaining consent to continue the investigation. (§ 2 ch 36 SLA 1983)

Sec. 47.24.030. Protective services. (a) The department shall provide available protective services to a harmed elderly person if and to the extent to which the elderly person consents. If the department has reasonable cause to believe that the elderly person lacks the capacity to consent to receiving protective services, it may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the elderly person for the purpose of obtaining consent.

(b) If an elderly person who has consented to receiving protective services is prevented by a caretaker from receiving the services, the department may assist the elderly person to petition the superior court for an injunction restraining the caretaker from interfering with the provision of protective services to the elderly person. (§ 2 ch 36 SLA 1983)

Sec. 47.24.040. Review and referral. The department shall, not later than 90 days after initiating the provision of protective services to an elderly person, initiate a review of the case to determine whether continuation or modification of protective services that are being provided is warranted. The department shall reevaluate the case every 90 days thereafter until the case is closed. (§ 2 ch 36 SLA 1983)

Sec. 47.24.050. Confidentiality of reports. (a) Investigation reports and reports of harm filed under AS 47.24.010 — 47.24.100 are confidential and are not subject to public inspection and copying under AS 09.25.110 — 09.25.125. However, in accordance with AS 47.24.010 — 47.24.100 and regulations adopted under AS 47.24.010 — 47.24.100, investigation reports may be used by appropriate governmental agencies inside and outside the state, in connection with investigations or judicial proceedings involving harm to an elderly person.

(b) The department shall disclose a report of harm if the elderly person who is the subject of the report consents in writing. The department shall, upon request, disclose the number of verified reports of harm that occurred at an institution for care of the elderly. (§ 2 ch 36 SLA 1983)

Sec. 47.24.060. Authority of the department. In performing its duties under AS 47.24.010 — 47.24.100, the department may, subject to the elderly person's consent, initiate actions necessary to assure the health, safety and welfare of an elderly person, including the transfer of the elderly person from a nursing home, residential care or health care facility. (§ 2 ch 36 SLA 1983)

Sec. 47.24.070. Regulations. Regulations to implement AS 47.24.010 — 47.24.100 shall be approved by the Older Alaskans Commission (AS 44.21.200) before adoption by the department. (§ 2 ch 36 SLA 1983)

Sec. 47.24.075. Quarterly report. The department shall submit to the Older Alaskans Commission each quarter a statistical report of the department's activities related to the protection of elderly persons in the state. The report may not disclose the identity of victims or perpetrators of the harm. (§ 2 ch 36 SLA 1983)

Sec. 47.24.100. Definitions. In AS 47.24.010 — 47.24.100

(1) "abandonment" means desertion of an elderly person by a caretaker;

(2) "abuse" means the infliction of physical pain or injury, the infliction of mental anguish that requires medical attention, or the deprivation by a caretaker of services that are necessary to maintain the physical and mental health of an elderly person;

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

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

(5) "economic harm" means intentional economic exploitation of an elderly person resulting from theft, fraud, or coercion by a caretaker of the elderly person;

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

(7) "harm" means physical harm or economic harm;

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

(9) "neglect" means the failure by the caretaker of an elderly person to provide services necessary to maintain the physical and mental health of the elderly person;

(10) "physical harm" means injury to the person of an elderly person resulting from abuse, neglect or abandonment;

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

(12) "protective services" means services intended to prevent or alleviate harm resulting from abuse, neglect, exploitation, or abandonment. (§ 2 ch 36 SLA 1983)

Article 2. Protection of Disabled Adults.

Section

110. Reports of physical or sexual assault

120. Immunity from liability: retaliation prohibited

EMILE SECTION #3

Sec. 47.24.110. Reports of physical or sexual assault. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that a disabled adult is a victim of assault under AS 11.41.200 — 11.41.230 or sexual assault under AS 11.41.410 — 11.41.420, and that the disabled adult is unable to report the crime, shall promptly report the crime to the nearest law enforcement agency:

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

(2) a mental health professional as defined in AS 47.30.915;

(3) a pharmacist;

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

(5) a caretaker of the disabled adult;

(6) a guardian or conservator of the disabled adult;

(7) a police officer as defined in AS 18.65.290;

(8) a village public safety officer;

(9) a village health aide;

(10) a social worker;

(11) a member of the clergy;

(12) a staff employee of a program or project serving disabled adults;

(13) a licensed foster care provider;

(14) a paid employee of a domestic violence and sexual assault program or a crisis intervention and prevention program as defined in AS 18.66.900;

(15) an employee of a homemaker program or home health aide program;

(16) an emergency medical technician or paramedic in the mobile intensive care program.

(b) A person who knowingly fails or refuses to make a report required under (a) of this section is guilty of a class B misdemeanor.

(c) In this section, "disabled adult" means a person 18 years of age or older who has a physical or mental disability, or physical or mental impairment, as defined in AS 18.80.300. (§ 3 ch 42 SLA 1988)

Sec. 47.24.120. Immunity from liability; retaliation prohibited. (a) A person who in good faith makes a report under AS 47.24.110, regardless of whether the person is required to do so, is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report.

(b) An employer or supervisor of a person who in good faith makes a report under AS 47.24.110 may not discharge, demote, transfer, reduce pay or benefits or work privileges of, prepare a negative work performance evaluation of, or take other detrimental action against the person because the person made the report. The person making the report may bring a civil action for compensatory and punitive damages against an employer or supervisor who violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action by the employer or supervisor was retaliatory if it was taken within 90 days after the report was made. (§ 3 ch 42 SLA 1988)

Chapter 25. Public Assistance.

Article

1. General Relief Assistance (§§ 47.25.120 — 47.25.300)
2. Aid to Families with Dependent Children Act (§§ 47.25.310 — 47.25.420)
3. Job Opportunity and Basic Skills Program (JOBS) (§§ 47.25.421 — 47.25.429)
4. Adult Public Assistance (§§ 47.25.430 — 47.25.615)
5. Food Stamp Program (§§ 47.25.975 — 47.25.990)

Alaska State Legislature



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House of Representatives

SPONSOR STATEMENT FOR CSHB 4 (JUD)

HB 4, An Act relating to failure to report harm or assaults of the elderly or disabled, will place into state law deterrents to crimes against the elderly and disabled.

HB 4 will amend the protection of the elderly and disabled adult protection laws to consistently provide a penalty of a class B misdemeanor for conviction of failure to report a crime under these statutes; it would also require the court to report convictions to the appropriate licensing/regulatory entity. Conviction of a professionally licensed person for a crime against an elderly or disabled person could lead to disciplinary actions or sanctions.

Elderly and handicapped persons are more vulnerable and disproportionately damaged by crimes against them because they are less able to escape offenders and tend to suffer greater relative deprivation. Additionally, the elderly and disabled take longer to recover from the impacts of financial, emotional and physical abuse.

The senior citizen population in Alaska is rapidly growing; between the 1980 and 1990 census, four areas of the state have seen over 130% growth in the senior population (Anchorage, Kenai, Mat-Su and Haines); the statewide average growth for this population group is 93.7%. The number of seniors living alone has grown by 108%.

26 states have adult protection laws, although many of them are underfunded as our services are here in Alaska. About 200 reports of elderly abuse are made in Alaska each year; HB 4, if enacted, will provide both an incentive to report abuse and a deterrent to crimes against the elderly.

I believe this legislation is timely and urge your support.

Alaska State Legislature



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House of Representatives

SECTIONAL ANALYSIS - HB 4

"AN ACT RELATING TO FAILURE TO REPORT HARM OR ASSAULTS OF THE ELDERLY OR DISABLED"

- Section 1 Amends the centralized licensing statute by adding a new section which provides that conviction of a person licensed or regulated by a board or the department under the adult protection or protection of disabled persons statutes may be grounds for disciplinary actions or sanctions.
- Section 2 Amends AS 47.24.010(c) to provide that a person required to report harm to an elderly person under the Protection of the Elderly statute who knowingly fails to report is guilty of a class B misdemeanor. The section also requires the court to report convictions under this section to the appropriate professional regulatory body.
- Section 3 Amends AS 47.24.110(b) to provide that a person required to report physical and sexual assault of a disabled person under the Protection of the Disabled statute who knowingly fails to report the assault is guilty of a class B misdemeanor. The section also requires the court to report convictions under this section to the appropriate professional regulatory body.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 4 (JUD)

Revision Date: April 1, 1993 Dept. Affected: Health and Social Services
 Title: "An Act relating to Assault of Elderly/Disabled and Failure to Report Harm" BRU: Family & Youth Services
 Component: SERO, SCRO, NRO
 Sponsor: Representative Mackie
 Requestor: House Finance Committee COMPONENT SERIAL NO. 0253, 0254, 0255

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL					-	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE						

FUNDING:	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: NONE

ANALYSIS: (Attach a separate page if necessary)
 Alaska, like many states in the early 80's, passed but failed to fund a Protection of the Elderly statute. A decade after Alaska's law was passed, the Department still is not adequately funded for this mandate. There is concern over raising the penalty when mandated professionals fail to report abuse and neglect to elderly persons to the Department as the existing response system is inadequate. This bill, if passed, would not directly create an additional workload on the Department.

Prepared by: Deborah R. Wing, Director
 Division: Department of Health & Social Services
 Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services

Phone: 465-3191
 Date: 04/01/93
 Date: 5/1/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 4 (JUD)

Revision Date:	<u>03-23-93</u>	Dept. Affected:	<u>Corrections</u>
Title:	<u>"...adding an aggravating factor at sentencing."</u>	BRU:	<u>Statewide Programs</u>
Sponsor:	<u>Rep. Mackie</u>	Component:	<u>Statewide Programs</u>
Requestor:	<u>House Judiciary</u>	COMPONENT SERIAL NO.:	<u>1858</u>

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

FUNDING	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF	-0-	-0-	-0-	-0-	-0-	-0-
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

POSITIONS	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary)

CSHB 4 (Jud) removes Section 2 of H.B. 4, and therefore removes the fiscal impact on the Department of Corrections.

Prepared by:	Dana LaTour, Special Assistant <i>[Signature]</i>	Phone:	465-3376
Division:	Office of the Commissioner <i>[Signature]</i>	Date:	03/23/93
Approved by Commissioner:	Lloyd G. Rupp <i>[Signature]</i>	Date:	03/23/93
Agency:	Office of the Commissioner <i>[Signature]</i>		

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. _____ HB 4

Revision Date: 3/25/93 Dept. Affected: Commerce & Economic Development
 Title: Failure to report harm or assaults BRU: Occupational Licensing
of the elderly or disabled. Component: Operations
 Sponsor: Rep. Mackle
 Requestor: Rep. Mackle COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	.01	.01	.01	.01	.01	.01
TRAVEL	.01	.01	.01	.01	.01	.01
CONTRACTUAL	.01	.01	.01	.01	.01	.01
SUPPLIES	.01	.01	.01	.01	.01	.01
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.01	.01	.01	.01	.01	.01
CAPITAL						
REVENUE FUND SOURCE:	.01	.01	.01	.01	.01	.01

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	.01	.01	.01	.01	.01	.01
1006 GF/MHTIA						
Other						
TOTAL	.01	.01	.01	.01	.01	.01

POSITIONS:

FULL-TIME	01	01	01	01	01	01
PART-TIME	01	01	01	01	01	01
TEMPORARY	01	01	01	01	01	01

Estimate of current year (FY 93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 HB4 amends the centralized licensing statutes (AS 08.01) by adding a new section to provide that a licensee who is convicted of failing to report abuse of an elderly or disabled person may subject their license to disciplinary proceedings or sanctions. The bill also mandates the court to notify licensing authorities upon a conviction of a licensee.

(Continued on attached)

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Phone: 465-2144
 Date: 3/25/93

Approved by Commissioner: Paul Fuchs
 Agency: Commerce & Economic Development

Date: 3-25-93

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CONTINUATION of FISCAL NOTE ANALYSIS
FOR BILL/RESOLUTION NO. HB 4

The division was informed that within the past 10 years, there has not been a conviction of individuals for failing to report abuse of elderly or disabled persons. However, should a conviction occur and a report made to the licensing authority, the division will immediately seek new funding through available sources, prior to considering the reported information for disciplinary action.

In the event a conviction is reported and the report is considered by the licensing authority, the licensee is protected by due process under the Administrative Procedure Act; therefore, a hearing and other costs will be generated as part of the hearing process. This bill affects approximately 10,000 licensees and their possible failure to report abuse. If .001% of the licensees fail to report abuse, 10 investigative cases and/or licensing actions will be generated per year.

The Occupational Licensing Investigative Unit is more often than not the first government agency to be notified in similar cases. Rather than to make a report to the State Troopers to investigate events that occur at a health care facility, complaints are lodged with the investigative unit against a licensee. As we have experienced in the past, the State Troopers will usually take over when the investigative unit has developed some hard evidence that they can work with; consequently, there will be expenses involved when it becomes illegal to abuse elderly or disabled persons.

In summary, new funds are not requested at this time to carry out the provisions of HB 4, however, should a conviction occur and a report be filed with the licensing authorities or investigation be deferred to this division, there is a high possibility that disciplinary action will not be initiated unless a position and funding support can be obtained.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 4 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to failure to report harm..." BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Representative Mackie
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0 -	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: John Salemi, Public Defender Phone: 274-1684
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usery Date: 4/12/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 4 (Iud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to failure to report harm or assaults of the ..." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representative Mackie
 Requestor: _____ COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usara *NBCU* Date: 4/12/93
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: CSHB 4(JUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to failure to report harm
or assault of the elderly or disabled." BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Mackie
 Requestor: House Rules COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES					-	
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

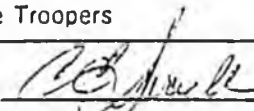
POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 4/02/93
 Approved by Commissioner:  Date: 4/02/93
 Agency: Richard L. Burton, Dept. of Public Safety

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Older Alaskans Commission

POSITION PAPER ON HOUSE BILL 4

"An Act relating to criminal offenses and penalties for offense involving the disabled or elderly"

The Older Alaskans Commission supports passage of this bill.

This bill would add an aggravating factor to the criminal sentencing statutes; specifically to recognize the aggravated harm done when any type of physical or financial criminal harm is perpetrated upon a senior citizen (over 65) or a mentally or physically impaired citizen.

In addition, this bill will expand and enhance Alaska's Elder Abuse Reporting Law. The bill will allow a professional or occupational licensing board to discipline or sanction a licensed professional who is convicted for a knowing failure to report abuse or an elderly or disabled person as required by law. (The Elder and Disabled Abuse reporting statutes list the specific health, social service, and legal professional categories which are required to report abuse.)

Finally, this bill strengthens the existing abuse reporting laws by making the criminal penalty language consistent with the current criminal code, and by adding to the elder abuse law the requirement that the person who fails to report must do so "knowingly" in order to be held to a criminal penalty (consistent with the disabled report law). The bill also adds new provisions that the court system will send notice of the conviction to the licensing board which regulates a professional convicted of failure to report abuse.

The Older Alaskans Commission believes that abuse of elders and disabled adults is a grievous problem that Alaska must better address. The Commission urges passage of HB 4.

Donald M. Hoover

Donald M. Hoover, Chairman
Older Alaskans Commission

Dated: 3/22, 1993

Housing and household statistics from the 1990 census show that for persons age 65 years and over, 74.3% of their housing units were owner occupied. Only 67.2% of housing units were owner occupied for the age group 35-64 years. In Alaska 22.1% of all households consist of one person living alone, with 13.7% of these households consisting of persons over the age of 65. The number of persons age 65 years or older living alone increased 108% from 1980-1990 from 2,753 to 5,737. The United States' 1990 figures show 39.1% of one person households are persons over the age of 65.

There is no single explanation for the large increase in Alaska's older population during the 1980s. However, the primary factor is likely the aging of the population that migrated to Alaska during the post statehood period. Alaska's median age has increased from 22.9 in 1970 to 29.4 in 1990. The United States' median age in 1990 was 32.9 years. Other factors that have contributed to keeping Alaska's older population in Alaska include improved health care and long term care facilities, elimination of Alaska's income tax, the Permanent Fund Dividend program, the Longevity Bonus program, and property and sales tax exemptions.

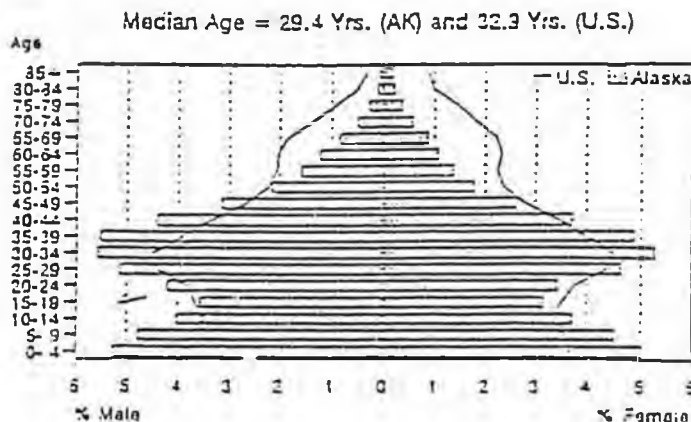
Table 1
Population Comparison for
Persons 65 Years and Older for the
State/Census Areas/Boroughs — 1980 & 1990

	1980	1990	Change	
			1980-90	Percent
Alaska	11,547	22,369	10,322	93.72
Aleutians East Borough	45	53	13	28.39
Aleutians West C.A.	62	82	20	32.26
Anchorage Borough	3,520	8,258	4,738	134.50
Bethel C.A.	431	657	226	52.44
Bristol Bay Borough	25	42	17	68.00
Dillingham C.A.	122	205	83	68.03
Fairbanks North Star Borough	1,276	2,540	1,264	99.06
Haines Borough	73	132	104	133.33
Juneau Borough	771	1,364	593	76.91
Kenai Peninsula Borough	827	2,015	1,153	143.55
Ketchikan Gateway Borough	642	907	265	41.29
Kodiak Island Borough	255	425	170	66.57
Lake and Peninsula Borough	47	85	38	80.35
Matanuska-Susitna Borough	730	1,966	1,136	155.62
Nome C.A.	339	419	80	23.60
North Slope Borough	143	197	49	33.11
Northwest Arctic Borough	249	281	32	12.95
Prince of Wales-Outer Ketchikan C.A.	151	216	65	43.05
Sitka Borough	361	492	131	36.29
Skagway-Yakutat-Angoon C.A.	192	235	43	22.40
Southeast Fairbanks C.A.	142	223	81	57.04
Valdez-Cordova C.A.	295	463	168	56.95
Wade Hampton C.A.	173	258	80	44.94
Wrangell-Petersburg C.A.	353	507	154	43.53
Yukon-Koyukuk C.A.	308	392	84	27.27

*C.A. = Census Area

Source: 1990 Census of Population and Housing, STF1A

Alaska and U.S. Population Percent Distribution by Age and Sex 1990



Alaska Dept. of Labor, Research and Analysis
Demographics Unit

ADULT PROTECTIVE SERVICES

INCIDENCE

In the fall of 1990, the Division of Family and Youth Services in collaboration with the Older Alaskan's Commission sponsored the first Adult Protective Services Conference held in Alaska. More than 100 concerned Alaskans attended.

Dr. Sue Parkins of St. Vincent Medical Center of Toledo, Ohio, spoke on Elder Abuse: A Front Line and National Perspective. She noted that Alaska's reporting of abused and neglected elders and other vulnerable adults is higher than reporting in other states. Yet she also noted that the actual incidence of abuse and neglect to elders is believed to be much higher than the number reported in any state.

Alaska's abused and neglected vulnerable adult profile can be seen in the attached chart of statistics. Due to a transition in statistical record keeping, adult protective services reports of harm statistics after 1989 are not available.

In the 1990 conference, Dr. Parkins indicated nationally there are 9.8 incidents reported per 1000 seniors or about 10 per thousand. About one in eight cases of abuse are actually reported, so perhaps 80 cases per 1000 seniors would reflect actual incidence of abuse and neglect. National incidence data for abused disabled adults younger than age 65 is not available, however, about 1/3 of adult protective services cases nationally and in Alaska are under age 65. Conferees set about exploring actual incidence and an Alaskan response to the problem. Rough projections done in 1990 for Alaska's elder abuse situation follow:

CITY	# SENIORS	PROJECTED ELDER ABUSE/YEAR
Statewide	20,000	1,600
Anchorage	7,300	584
Fairbanks	2,300	184
Mat-Su	1,600	128
Kenai	1,900	152
Juneau	1,200	96
Bethel	700	56
Wrangell/Petersburg	500	40

All other communities in Alaska: probably fewer than 40 cases of elder abuse. These figures do not include abused vulnerable adults under age 65.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Division of Family and Youth Services

Adult Protective Services Reports of Harm*

<u>Number of Reports:</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>Ave.</u>	<u>%</u>
65 and over:	137		155	275	226	198	54
60 - 64	21		40	28	39	32	9
18 - 60	37		122	185	143	134	37
<u>Sex of Victim:</u>							
Male	35		118	135	161	137	38
Female	160		199	303	247	227	62
<u>Type of Harm:</u>							
Abandonment	10	11	11	17	7	11	3
Abuse	128	117	65	171	126	121	34
Economic Harm	40	69	133	127	98	93	26
Neglect	67	129	100	173	177	129	37
<u>Relationship of Perpetrator to Victim:</u>							
Wife	18		3	7	8	10	4
Husband	41		30	40	31	36	14
Son	40		24	43	64	43	17
Daughter	16		18	19	41	24	10
Other Male Family Member	32		10	30	34	27	10
Other Female Family Member	25		15	19	25	21	3
Other Male	31		64	46	65	51	20
Other Female	20		38	62	51	43	17
<u>Did the Victim Request That the Investigation be Terminated?</u>							
Yes	61		80	117	163	105	44
No	116		85	160	183	136	56
<u>Type of Report</u>							
Mandatory	88		123	169	151	133	67
Other	63		79	77	48	57	33
<u>Was the Report Confirmed?</u>							
Yes	142	202	152	150	222	174	62
No	31	94	145	124	129	105	38

REPORTS OF HARM*

	<u>65 and older</u> (all ages combined)	<u>60-65</u>	<u>18-59</u>	<u>TOTAL</u>
FY84				72
FY85	137	21	87	245
FY86	98	39	195	332
FY87	155	40	122	317
FY88	275	28	185	488
FY89	226	39	143	408

*Due to a transition in data collection to Prober, Reports of Harm to adults data is not available after FY89.

ADULT PROTECTIVE SERVICES CLIENTS AND DFYS SERVICES

<u>Age</u>	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>	<u>FY90*</u>	<u>FY91*</u>
18-59	609	577	568	362	279
60 & up	1326	1326	1272	894	846
<u>Sex</u>					
Female	1268	1289	1256	810	725
Male	666	656	625	446	400
<u>Race</u>					
AK Native	792	790	672	461	483
Black	58	59	69	42	36
Caucasian	1020	1000	976	603	511
Unknown	65	91	117	148	178
<u>Services Turnover</u>					
Clients Exiting					
System in the FY	556	438	445	177	137
Clients Began in the FY	301	487	446	122	50
Clients Continued Thru to the next FY	554	543	569	871	853
Clients Interrupted During the FY	87	47	51	2	3
Clients Entered and Exited in the FY	437	428	371	84	86
<u>Homemaker Services</u>					
Number of Clients	1260	1430	1363	76	61
<u>Adult Foster Care</u>					
Number of Clients	27	41	38	28	28
<u>Adult Residential Care</u>					
Number of Clients	66	69	70	77	63

*Homemaker Services were transferred to Public Health in FY90, resulting in a substantial drop in DFYS delivered homemaker services to "at risk" elders and vulnerable adults under the APS program. In addition beginning in FY90 social workers began to transition from the mainframe data system to a new system called Prober. Figures given for FY 90 and 91 are fewer than actual cases, as some cases were recorded only in the new Prober system and are not represented here.

ELDER ABUSE

WHO IS AN ELDERLY PERSON?

Under AS 47.24 an elderly person means a resident of Alaska who is 65 years of age or older.

WHAT CONSTITUTES ELDER ABUSE?

Elder abuse means the infliction of physical pain or injury that requires medical attention, or the infliction of mental anguish that requires medical attention or the deprivation by a caretaker of services which are necessary to maintain the physical and mental health of an elderly person.

WHO IS A CARETAKER?

AS 47.24 defines a caretaker as any individual who is responsible for the care of an elderly person as a result of family relationship or who has assumed responsibility for the care of an elder person voluntarily, by contract, or by court order.

WHO SHOULD REPORT ELDER ABUSE?

Anyone who suspects that abuse may be occurring should report it. Additionally, the following persons are required to report suspected abuse within 24 hours: physicians or other licensed health care provider; mental health professionals; pharmacists; administrators of nursing homes, residential care or health care facilities; guardians/conservators; police officers; village public safety officers; village health aides; social workers; clergy; employees of a project funded by the Older Alaskans Commission; employees of a homemaker program or home health aide program; and emergency medical technicians or paramedics in the mobile intensive care program. Reports are confidential and persons reporting are immune from any civil or criminal liability.

WHERE DO I REPORT ELDER ABUSE?

Call the nearest office of the Division of Family and Youth Services. If immediate action is necessary to protect the elderly person from imminent harm, report the harm to a police officer or a village public safety officer. The police officer will take immediate action to protect the elderly person and will notify the Division.

WHAT WILL THE DIVISION OF FAMILY AND YOUTH SERVICES DO?

The social worker interviews the suspected victim to verify the report and explain possible options for resolving the problem. Together, they will decide which steps to take. It is important to remember that the social worker may act only if the elderly person consents.

WHAT RIGHTS DOES THE ELDERLY PERSON HAVE?

The elderly person has the right to privacy and self-determination and to deny the need for services. If someone is unconscious or otherwise lacks capacity to give consent, the social worker may ask the court to appoint a guardian.

WHAT IF I'M ACCUSED OF ELDER ABUSE?

The social worker would talk with you and the elderly person to determine the extent of the problem and explore possible solutions. Depending on the circumstances, the elderly person may elect to file charges. In most instances however, the problems can be resolved with adequate support services.

WHAT HAPPENS AFTER THE INVESTIGATION?

The Division only provides services with the consent of the elderly person. If the person lacks capacity to give consent, or requests Division assistance, the social worker will provide supportive services to reduce stress and prevent further abuse.

WHAT TYPES OF SERVICES WOULD BE AVAILABLE TO THE ELDERLY PERSON AND HIS FAMILY?

Individual and family counseling, respite care, homemaker or home health aide services, transportation, home delivered meals, day activity center, adult residential care, adult foster homes, etc., may be provided. However, not all services are available in all communities. Occasionally it is necessary to request the appointment of a conservator or guardian to safeguard the individual and his resources.

WILL OTHER PEOPLE KNOW?

All information will be kept confidential. The elderly person must give consent for information to be shared.

ADULT PROTECTIVE SERVICES

The state agency responsible to carry out adult protective services is the Division of Family and Youth Services or grantee in the case on Manniilaq or Kawarek. A protective services response generally should include the following activities:

- (1) the operation of a system to receive reports and referrals of suspected elder abuse, as defined by state law (i.e., abandonment, abuse, neglect, and economic harm); younger vulnerable adults are included under the division's Title XX Plan;
- (2) the investigation of cases of maltreatment by gathering evidence from the victim, family members, appropriate professionals, neighbors and friends, and others determined to be appropriate;
- (3) the substantiation or unsubstantiation of abuse reports based on evidence and agency policy;
- (4) the provision of emergency services to victims or their family members, as needed and as resources permit;
- (5) the administration of assessments, tests, or evaluations, as needed;
- (6) the preparation of legal procedures, as needed;
- (7) the referral of cases to treatment and rehabilitation programs, substitute care programs, long-term care programs, and law enforcement agencies, as appropriate;
- (8) arrangements for the removal of the victim or the perpetrator from the home, when necessary;
- (9) the provision of support, protective, and advocacy services;
- (10) the training of agency staff, related professions, and volunteers;
- (11) the administration of public awareness programs; and
- (12) the collection of statistics for clients and services.

There are currently three workers specializing in Adult Protective Services (two in Anchorage and one in Fairbanks). In all other areas of the state adult protective services are provided by staff who are assigned to provide protective services to both children and adults.

by
National Association of State Units on Aging

Individual and collective advocacy is the essential core of the Older Americans Act and a central mission of the network of state and area agencies that the Act has established across the nation. The OAA network's primary purpose is to assure that individual older people have their civil rights, autonomy and dignity protected, their claims to entitlements honored and their contracts and covenants for care and benefits fulfilled. This responsibility is paramount with respect to those who are unable to secure and protect their own interests. This advocacy mission calls for enhanced federal, state and community leadership and action to design and implement comprehensive and coordinated elder rights systems for older persons.

In our increasingly complex society, we find continuing and growing evidence of threats to and violation of the rights of older persons:

□ The incidents of elder abuse and exploitation in domestic settings are estimated at approximately 1.5 million per year and only 1 in 8 individuals receives protective services. Law enforcement is reluctant to prosecute even serious cases. The interventions of key community services which address alcohol and substance abuse, domestic

violence, protective service and mental health are seldom linked. Health care professionals, financial institutions and other important gatekeepers are not adequately involved in prevention, reporting and assistance activities.

□ Approximately 2 million older persons reside in an estimated 90,000 long term care facilities with growing reports of abuse, loss of autonomy and complaints concerning the quality of care. Although enforcement of protections has been strengthened under OBRA, the full scope and spirit of the Nursing Home Reform Act has yet to be realized. The public is not knowledgeable of these new protections; residents are not aware of avenues of redress.

□ In growing numbers, older persons lose their rights often with no due process safeguards. Guardianship may be awarded with little or no consideration of alternative services or limited orders. The availability of training or support services for guardians and the courts are limited. Required reporting is not reviewed and the courts have little capacity to exercise oversight.

□ More than any other age group older persons rely on increasingly complex and

Elder Rights

changing public benefit programs, services and protections to meet income, housing, health and supportive service needs. Yet millions of older individuals eligible for benefits under the Supplemental Security Income (SSI), food stamp, Medicaid and the Qualified Medicare Beneficiaries (QMB) programs are not currently enrolled. Older people are shifted among various providers and levels of government in order to apply for or receive benefits. Restrictive eligibility criteria, exclusionary and complex application rules and appeal procedures deter too many eligible older people from pursuing benefits. In addition, insensitivity to racial and cultural issues further impedes access to benefits for many older persons.

- In the paramount area of health care, millions of older people are denied benefits to which they are entitled under the Medicare program. Claims processing errors, denials of benefits, provider over billing and inconsistent Medigap coverage add substantially to the confusion older persons face in attempting to pay for their health care and results in substantial and unnecessary out-of-pocket costs.
- Many older persons lose their autonomy and their financial, legal, or personal rights through actions outside the formal legal system. Family members, caregivers and medical and social service providers often assume power and control over the older person's choices and resources, both through quasi-legal transfers of authority and through failure to fully inform elders. As a result elders can not make a truly informed and dignified choice about services,

treatments, residential choices, and expenditures of their resources.

- A growing number of private sector services and products are targeted to older consumers. Fraud and exploitation are on the rise in the marketing of insurance, retirement housing, investment and financial planning, private care management, homecare and medical services and supplies.
- Opportunities for employment are constricted by discriminatory practices. The recent and dramatic 12% increase in the numbers of age discrimination cases brought before the Equal Employment Opportunity Commission in 1991 illustrates that discriminating practices continue to force older people into involuntary retirement, low wage jobs, and limited employment choices.

These growing and increasingly complex threats to, and violation of, the rights of older persons call for the development of a comprehensive system of programs, services, and protections at the community, state and national levels which assist older persons to:

- Understand and exercise their rights.
- Exercise choice through informed decisionmaking.
- Benefit from support and opportunities promised by law.
- Maintain autonomy consistent with capacity.
- Resolve grievances and disputes through appropriate representation and assistance.

A Call For Enhanced Leadership and Action

These emerging elder rights needs have resulted in recent years in numerous initiatives at the federal, state and community levels. Protections in federal law provide an important foundation for the rights of vulnerable citizens. The Older Americans Act, the Civil Rights Act of 1990, the Americans with Disabilities Act, the National Affordable Housing Act, the Spousal Impoverishment Protections, the Nursing Home Reform Amendments, the Age Discrimination Act, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act — all include provisions to protect the rights of older persons. However, these laws are difficult to understand, not enforced uniformly and pose a significant challenge for older persons who want to take advantage of their protections.

At the state level, laws have addressed new issues such as guardianship reform, insurance regulation, consumer protection, financial exploitation, surrogate decisionmaking, advance directives, board and care regulation, and elder abuse intervention. However, progress in these areas has been uneven and incremental, often due to a lack of coordination among agencies and a lack of available resources to ensure enforcement and compliance.

At the community level, the demand for services provided under the long term care ombudsman program, legal assistance, insurance and benefits counseling, elder abuse/protective service, employment and consumer education initiatives far exceeds the capacity to respond. Though they constitute the vanguard for elder rights, these programs are severely constricted by limited resources.

Thus, today the rights of older persons are addressed by a collection of problem specific laws, programs and services — each with its own source of limited funds, its own plan, its own administrative mechanisms, delivery system and, ultimately, its own beneficiaries. While such specialization has merit, it also contributes to the current situation which:

- discourages coordination among the various laws/programs/services;
- remains unresponsive to the vulnerable older person with multiple problems;
- hinders effective management;
- encourages competition for resources;
- lacks flexibility in responding to changing needs and priorities;
- frustrates targeting of resources;
- discourages innovation, except around service specific issues;
- diffuses responsibility and accountability for advocacy; and
- duplicates outreach and access.

NASUA recommends that a systematic effort be undertaken across the nation to address the current and emerging threats to the rights of older persons; to assess the ability of current laws, programs and services to address these threats; to improve the effectiveness of those current protections and interventions; and to make recommendations for new laws and programs as well as new resource, design and implementation strategies. The success of

such an undertaking will require leadership by the Older Americans Act network and other appropriate agencies and organizations at the federal, state and community levels working in partnership to design and develop a truly comprehensive, coordinated and responsive elder rights system for older persons.

Further, NASUA recommends that this national effort be built upon the following framework for action:

- Establish consumer centered elder rights programs which facilitate choice, promote autonomy and support decisionmaking with a minimum of administrative intrusion or confusion.
- Inform and empower older persons to act on their own behalf in exercising their rights.
- Give priority to older persons unable to secure benefits to which they are entitled or protect their own interests.
- Establish a full continuum of laws, programs and services responsive to elder rights needs ranging from information to legal representation and advocacy.
- Secure adequate resources to supply needed services and to enforce laws and protections.
- Identify and address emerging elder rights issues and needs.
- Ensure that new elder rights initiatives be coordinated with and built upon the strengths of the existing infrastructure.

- Identify and respond to needs for collective advocacy on behalf of older persons.

- Respond flexibly to the complex rights and diverse needs of older persons.

The way in which each state will use this framework to build an effective elder rights system will vary according to its elders' needs, current structures and prevailing customs. However, across the country each state agency on aging must assume the primary leadership role in advocating for and designing such a system. It is the aging network which must serve as a vehicle to convey policy relevant information to older people; involve older persons and their families in expressing their values and preferences about the principles, benefits and organization of elder rights systems; and be a forum through which empowered and informed older people can influence the social, economic and political directions of their communities, states and country.

NASUA recognizes the complexity of this undertaking and the need for partnerships among a wide and diverse group of organizations and agencies to quickly advance the elder rights agenda of older persons. NASUA commits itself to this important partnership in meeting the challenges of developing national, state and community strategies to address the elder rights needs of the older population.

NASUA Board of Directors
Adopted March 13, 1992