

**SB**

**248**

# SENATE COMMITTEE REPORT

DATE: 1/14/94

FURTHER: STATE AFFAIRS  
FINANCE

Date of 5-Day Notice: 1/27/94  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 2/17/94

HES Committee considered SB 248

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

and recommends:

- [ ] replace with \_\_\_\_\_ CS SB 248 (HES)  
 or [ ] adopt previous \_\_\_\_\_ CS \_\_\_\_\_  
 [ ] attaches amendment(s)

- same title  
 new title  
 technical title change (HF only)

- [ ] adopts \_\_\_\_\_ Letter of Intent  
 [ ] further referral to the \_\_\_\_\_

- [ ] do pass  
 [ ] do not pass  
 [ ] no recommendation  
 [ ] individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal
Public Safety	2/2/94	<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
HSS - Purchased Services	1/14/94		(364.5)
HSS - Family Youth Services	1/14/94		(68.0)
HSS Family + Youth Services	1/14/94		(127.1)
Administration	1/14/94	<input checked="" type="checkbox"/>	
Administration	1/14/94		559.6

[ ] Appropriation No Fiscal Note

**DO PASS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**OTHER RECOMMENDATIONS:**

Mike Miller No Rec  
J. Duncan No Rec  
G. E. Sals No Rec  
Grant Adams No Rec

Steve King Do Pass  
 Chair: Signature and Recommendation

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 14, 1994

The Honorable Rick Haltord  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. President:

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to services for and protection of vulnerable adults. This bill will place responsibility for the delivery of services to vulnerable adults within the Department of Administration. This bill also extends the scope of existing adult protective services to include all vulnerable adults who are in need of such services.*

*Section 1 of the bill clarifies the circumstances that give rise to a duty to make a report of a vulnerable adult. The circumstances are abandonment, exploitation, abuse, neglect, or self-neglect. Under this section, the report will be made to the Department of Administration. This section also deletes the existing liability immunity provisions, which are later reestablished in sec. 6 of the bill.*

*Section 2 sets out the duties of the Department of Administration regarding services and protection for vulnerable adults. The duties include establishing a central information and referral service for vulnerable adults, establishing criteria and procedures for the delivery of community-based services, designation of local service providers as department designees to meet local service needs, and adoption of regulations to implement the program.*

*Section 2 also sets out provisions regarding certain reports of abandonment, exploitation, abuse, neglect, or self-neglect, and regarding the action that is to be taken on all reports. The investigation required to be done by the Department of Administration includes a face-to-face interview and a written report of findings. Section 2 also provides for delivery of protective services and assures that, to the extent practicable, the services will be delivered in a timely and culturally relevant manner.*

The Honorable Rick Halford  
January 14, 1994  
Page 2

Section 2 provides authorization for family members or friends to be surrogate decision makers for a vulnerable adult who is in need of protective services but is unable to consent to services. This provision allows for the delivery of necessary protective services without the necessity of seeking an emergency guardianship in adult abuse cases. Section 2 also sets out the procedures available for providing protective services when court action to protect the adult is necessary.

Section 3 repeals and reenacts an existing statute to provide for monitoring of vulnerable adults who are receiving ongoing protective services. Section 4 addresses the confidentiality of reports made under these provisions; sec. 5 requires that regulations being adopted by the Department of Administration be provided to the Older Alaskans Commission; and sec. 6 provides for immunity from liability for individuals who make reports of vulnerable adults.

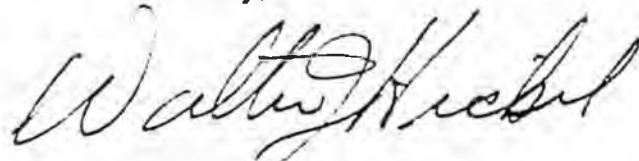
Section 7 sets out, in a more appropriate location, definitions for terms used in AS 47.24. The existing definition section is repealed in sec. 8. Section 8 of the bill also repeals existing statutes that address reports of abuse of elderly and disabled persons to the Department of Health and Social Services.

Section 11 provides a July 1, 1994 effective date for the statutory changes made by the bill.

If this bill is enacted into law, the revisor of statutes will need to make appropriate changes to the existing article structure of AS 47.24.

I urge your support of this important legislation.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel".

Walter J. Hickel  
Governor

SIPK  
Markup Feb. 15  
- 4 pages total -

8-GS2001.1

SENATE BILL NO. 248

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/14/94  
Referred: HES, STA, FIN

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 47.24.010 is amended to read:

5           Sec. 47.24.010. PROTECTIVE REPORTS REGARDING VULNERABLE  
6 ADULTS [REPORTS OF HARM]. (a) Except as provided in (e) and (f) of this  
7 section, the [THE] following persons who, in the performance of their professional  
8 duties, have reasonable cause to believe that a vulnerable adult suffers from  
9 abandonment, exploitation, abuse, neglect, or self-neglect [AN ELDERLY PERSON  
10 HAS SUFFERED HARM] shall, not later than 24 hours after first having cause for the  
11 belief, report the belief to the department's central information and referral service  
12 for vulnerable adults [HARM TO THE DEPARTMENT OF HEALTH AND SOCIAL  
13 SERVICES]:

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

1 re-insert  
2 leave in  
3 the marital therapists

(2) a mental health professional as defined in AS 47.30.915(11) <sup>AND</sup>  
2 ~~INCLUDING A MARITAL AND FAMILY THERAPIST LICENSED UNDER~~  
3 AS 08.63f;

leave this all in  
in regular type no  
brackets

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

22 (b) A report [OF HARM] made under this section may include the name and

23 address of the reporting person [REPORTING THE HARM] and shall include

- 24 (1) the name and address of the vulnerable adult [ELDERLY
- 25 PERSON];
- 26 (2) information relating to the nature and extent of the abandonment,
- 27 exploitation, abuse, neglect, or self-neglect [HARM];
- 28 (3) other information that the reporting person [REPORTING THE
- 29 HARM] believes might be helpful in an investigation of the case or in providing
- 30 protection for the vulnerable adult [ELDERLY PERSON].

31 (c) The department or its designees shall report to the Department of Law

1 any person required by (a) of this section to report who fails to comply with this  
2 section. A person listed in (a) of this section who, because of the circumstances,  
3 should have had reasonable cause to believe that a vulnerable adult suffers from  
4 abandonment, exploitation, abuse, neglect, or self-neglect but who fails to comply  
5 with this section is guilty of a violation as defined in AS 11.81.900(b).

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

17 (e) If a person making a report under this section believes that immediate  
18 action is necessary to protect the vulnerable adult [ELDERLY PERSON] from  
19 of serious ~~to~~ physical harm  
20 imminent risk due to abandonment, exploitation, abuse, neglect, or self-neglect and  
21 the reporting person cannot immediately contact the department's central  
22 information and referral service for vulnerable adults [HARM], the reporting  
23 person may [SHALL] make the report [OF HARM] to a police officer or a village  
24 public safety officer. The police officer or village public safety officer shall take  
25 immediate action to protect the vulnerable adult [ELDERLY PERSON] and shall, at  
the earliest opportunity, notify the department.

26 (f) A person listed in (a) of this section who reports to the long term care  
27 ombudsman under AS 44.21.232, or to the Department of Health and Social  
28 Services, that a vulnerable adult has been exploited, abused, or neglected in an  
29 out-of-home care facility is considered to have met the duty to report under (a)  
30 of this section. [A PERSON WHO, IN GOOD FAITH MAKES A REPORT OF  
31 ECONOMIC OR PHYSICAL HARM TO AN ELDERLY PERSON UNDER

1 AS 47.24.010 - 47.24.100, OR WHO PARTICIPATES IN JUDICIAL PROCEEDINGS  
2 RELATED TO THE SUBMISSION OF REPORTS UNDER AS 47.24.010 -  
3 47.24.100, IS IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY THAT  
4 MIGHT OTHERWISE BE INCURRED OR IMPOSED.]

5 (g) [FAILURE TO MAKE A REPORT UNDER SUBSECTIONS (a) AND (d)  
6 OF THIS SECTION IS NOT THE BASIS OF CIVIL LIABILITY UNLESS  
7 OTHERWISE PROVIDED BY LAW.]

8 (h) [IF A PERSON MAKES A GOOD FAITH REPORT OF HARM UNDER  
9 THIS SECTION, AN EMPLOYER OR SUPERVISOR OF THE PERSON, OR A  
10 PUBLIC OR PRIVATE AGENCY OR ENTITY THAT PROVIDES BENEFITS,  
11 SERVICES, OR HOUSING TO THE PERSON, MAY NOT DISCHARGE, DEMOTE,  
12 TRANSFER, REDUCE THE PAY OR BENEFITS OR WORK PRIVILEGES OF,  
13 PREPARE A NEGATIVE WORK PERFORMANCE EVALUATION OF, DENY OR  
14 WITHHOLD BENEFITS OR SERVICES, EVICT, OR TAKE OTHER  
15 DETRIMENTAL ACTION AGAINST THE PERSON BECAUSE OF THE REPORT.  
16 THE PERSON MAKING THE REPORT MAY BRING A CIVIL ACTION FOR  
17 COMPENSATORY AND PUNITIVE DAMAGES AGAINST AN EMPLOYER,  
18 SUPERVISOR, AGENCY, OR ENTITY THAT VIOLATES THIS SUBSECTION.  
19 IN THE CIVIL ACTION THERE IS A REBUTTABLE PRESUMPTION THAT THE  
20 DETRIMENTAL ACTION WAS RETALIATORY IF IT WAS TAKEN WITHIN 90  
21 DAYS AFTER THE REPORT OF HARM WAS MADE.]

22 \* Sec. 2. AS 47.24 is amended by adding new sections to read:

23 Sec. 47.24.011. DUTIES OF THE DEPARTMENT REGARDING SERVICES  
24 AND PROTECTION FOR VULNERABLE ADULTS. In order to facilitate the  
25 provision of supportive and protective services for vulnerable adults, the department  
26 shall

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

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

31 (3) develop and coordinate a statewide system to serve vulnerable

1 adults who are in need of protective services:

2 (4) establish criteria and procedures for the authorization and  
3 supervision of other state agencies or community-based service providers to serve as  
4 designees of the department under AS 47.24;

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

8 (6) develop within the central information and referral service for  
9 vulnerable adults a central registry for reports of vulnerable adults in need of protective  
10 services;

11 (7) maintain confidentiality of records as provided for in AS 47.24.050;  
12 and

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

14 Sec. 47.24.013. REPORTS OF ABANDONMENT, EXPLOITATION, ABUSE,  
15 NEGLECT, OR SELF-NEGLECT OF VULNERABLE ADULTS IN OUT-OF-HOME  
16 CARE FACILITIES. (a) If a report received under AS 47.24.010 regards the  
17 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is  
18 60 years of age or older that is alleged to have been committed by or to have resulted  
19 from the negligence of the staff or a volunteer of an out-of-home care facility  
20 including a facility licensed under AS 18.20, in which the vulnerable adult resides, and  
21 if the Department of Health and Social Services licenses that type of facility, the  
22 Department of Administration shall transfer the report for investigation to the long  
23 term care ombudsman under AS 44.21.232 and the Department of Health and Social  
24 Services.

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

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

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

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

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

11 (d) If the long term care ombudsman or the Department of Health and Social  
12 Services receives directly a report regarding the abandonment, exploitation, abuse,  
13 neglect, or self-neglect of a vulnerable adult in an out-of-home care facility, the  
14 ombudsman or the Department of Health and Social Services shall provide the report,  
15 and the results of their actions or investigations regarding the report, to the central  
16 information and referral service of the Department of Administration. The Department  
17 of Administration may investigate the report as described in AS 47.24.015 if the  
18 department determines that action is appropriate.

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

24 Sec. 47.24.015. ACTION ON REPORTS. (a) Upon the department's receipt  
25 of a report under AS 47.24.010 that is not transferred under AS 47.24.013, the  
26 department, or its designee, shall promptly initiate an investigation to determine  
27 whether the vulnerable adult who is the subject of the report suffers from  
28 abandonment, exploitation, abuse, neglect, or self-neglect. The department, or its  
29 designee, shall conduct a face-to-face interview with the subject of the report unless  
30 that person is unconscious or the department, or its designee, has determined that a  
31 face-to-face interview could further endanger the vulnerable adult.

1 (b) After the department conducts an investigation under (a) of this section,  
2 the department shall prepare a written report of the investigation, including findings,  
3 recommendations, and a determination of whether and what kind of supportive or  
4 protective services are needed by and are to be offered to the vulnerable adult. After  
5 the department's designee conducts an investigation under (a) of this section, the  
6 designee shall prepare a written report of the investigation, including findings,  
7 recommendations, and a proposed determination of whether and what kind of  
8 supportive or protective services are to be offered to the vulnerable adult. The  
9 department shall prepare, and attach to the designee's report, a final determination  
10 regarding services to be offered to the vulnerable adult.

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

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

17 or

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

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

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

When the vulnerable adult is no longer unable to consent or requires decision-making and (d) capacity, the department may no longer use the consent given by the surrogate decision maker as a basis for continuation of protective services to the vulnerable adult.

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- (1) the vulnerable adult's spouse, unless
  - (A) the vulnerable adult and the spouse have separate domiciles;
  - or
  - (B) the vulnerable adult or the spouse have initiated divorce or dissolution proceedings;
- (2) an individual who lives with the vulnerable adult in a spousal relationship or as a domestic partner and who is 18 years of age or older;
- (3) a son or daughter of the vulnerable adult who is 18 years of age or older;
- (4) a parent of the vulnerable adult;
- (5) a brother or sister of the vulnerable adult who is 18 years of age or older; or
- (6) a close friend or relative of the vulnerable adult who is 18 years of age or older.

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

- (1) the department determines that individual does not possess decision making capacity; or
- (2) there are allegations that individual is a perpetrator of the abandonment, exploitation, abuse, or neglect of the vulnerable adult.

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

- (1) may select from amongst themselves, by majority vote, an individual to serve as the surrogate decision maker; or
- (2) as a group may serve as the surrogate decision maker and reach decisions by consensus.

(d) ~~INSERT~~  
 Sec. 47.24.017. DELIVERY OF PROTECTIVE SERVICES FOR VULNERABLE ADULTS. (a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services and either the vulnerable adult, the vulnerable adult's guardian or attorney in fact, or a surrogate decision maker selected

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

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

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

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

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

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

7 \* Sec. 3. AS 47.24.040 is repealed and reenacted to read:

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

12 \* Sec. 4. AS 47.24.050 is amended to read:

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

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

30 \* Sec. 5. AS 47.24.070 is repealed and reenacted to read:

31 Sec. 47.24.070. REGULATIONS. Before adoption by the department,

1 regulations to implement this chapter shall be provided to the Older Alaskans  
2 Commission (AS 44.21.200) for review.

3 \* Sec. 6. AS 47.24.120 is amended to read:

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

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

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

18 Sec. 47.24.900. DEFINITIONS. In this chapter,

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

21 (2) "abuse" means

22 (A) the wilful, intentional, or reckless non-accidental, and non-  
23 therapeutic infliction of physical pain, injury, or mental distress; or

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

25 (3) "caregiver" means

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

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

31 (4) "decision making capacity" means the ability to understand and

Note:

1 appreciate the nature and consequences of 222a decision and the ability to reach and  
2 communicate an informed decision;

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

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

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

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

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

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

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

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

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

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

31 (A) the person is an incapacitated person or apparently is an

1           incapacitated person;

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

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

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

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

12       \* Sec. 8. AS 47.24.020, 47.24.030, 47.24.060, 47.24.075, 47.24.100, and 47.24.110 are  
13       repealed.

14       \* Sec. 9. TRANSITION. (a) Contracts, rights, liabilities, and obligations created by or  
15       under a law repealed by this Act and in effect on June 30, 1994, remain in effect  
16       notwithstanding this Act's taking effect. Records, equipment, appropriations, and other  
17       property of agencies of the state whose functions are transferred under this Act shall be  
18       transferred to implement the provisions of this Act.

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

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

26       \* Sec. 10. Section 9(c) of this Act takes effect immediately under AS 01.10.070(c).

27       \* Sec. 11. Sections 1 - 8, 9(a), and 9(b) of this Act take effect July 1, 1994.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: SB 248

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Assist & Protect Vulnerable Adults BRU: Alaska State Troopers  
 \_\_\_\_\_ Component: Detachments  
 Sponsor: S. RULES by Request  
 Requestor: S. HES COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-


Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 2/2/94  
 Approved by Commissioner:  Date: 2/2/94  
 Agency: Richard S. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 1

Bill Version: SB 248

(S) Publish Date: 1-14-94

Revision Date: 1/10/94 Dept. Affected: Health and Social Services  
 Title: Vulnerable Adults Protective Services BRU: Purchased Services  
 Component: Adult Services  
 Sponsor: Rules Committee  
 Requestor: by Request of Governor COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	(364.5)					
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>(364.5)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(342.9)					
1005 GF/Program Receipts						
1006 GF/MHTIA	(21.6)					
Other						
<b>TOTAL</b>	<b>(364.5)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

When the existing Protection of the Elderly statute was passed in 1983, no funding was provided. In the late 70's, the department had also been given statutory responsibility for licensing adult facilities. Again no funds were provided for licensing and no funds were provided for upgrading the care of dependent adults residing in existing facilities, then called, boarding homes.

In 1983, the department obtained funds for residential and foster care for dependent adults. Those funds became the Adult Services Component of the Purchased Services BRU and are being transferred from the Division of Family and Youth Services, DHSS, to the Division of Senior Services, Department of Administration to support the Protection of Vulnerable Adults Legislation.

Prepared by: Elizabeth R. Wing, Director *Elizabeth R. Wing*  
 Division: Division of Family & Youth Services

Phone: 465-3191  
 Date: 01/10/94

Approved by Commissioner: Margaret Lowe, M. Ed., Ed. S.  
 Agency: Department of Health & Social Services

Date: \_\_\_\_\_

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FISCAL NOTE

No. 2

Bill Version: SR 248

(S) Publish Date: 1-14-94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: 1/10/94 Dept. Affected: Health and Social Services  
 Title: Vulnerable Adults Protective Services BRU: Family & Youth Services  
 Component: Northern Region  
 Sponsor: Rules Committee  
 Requestor: By Request of Governor COMPONENT SERIAL NO. 255

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(68.0)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>(68.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(68.0)					
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>(68.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	1					
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

One Adult Protective Services (APS) specialist is being transferred from the Division of Family and Youth Services (DFYS) Northern Region to the new Division of Senior Services to support the Protection of Vulnerable Adults Legislation.

When the existing Protection of the Elderly statute was passed in 1983, no funding was provided, other than 5.0 for brochures. The specialist position in Fairbanks was created from child protective services funds. Subsequent efforts to expand funding for a credible adult protective services program have not been fruitful. The Task Force that reviewed APS within DFYS recommended it be consolidated with other senior services where it is believed the program may be better supported and developed.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*  
 Division: Division of Family & Youth Services

Phone: 465-3191

Date: 01/12/94

Approved by Commissioner: Margaret R. Lowe  
Margaret Lowe, M. Ed., Ed. S.

Date: 1-13-94

Agency: Department of Health & Social Services

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FISCAL NOTE

No. 3

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 248

(S) Publish Date: 1-14-94

Revision Date: 1/10/94 Dept. Affected: Health and Social Services  
 Title: Vulnerable Adults Protective Services BRU: Family & Youth Services  
 Component: Southcentral Region  
 Sponsor: Rules Committee  
 Requestor: By Request of Governor COMPONENT SERIAL NO. 254

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(127.1)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>(127.1)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(127.1)					
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>(127.1)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	2					
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: None

ANALYSIS: (Attach a separate page if necessary)

Two Adult Protective Services (APS) specialists are being transferred from the Division of Family and Youth Services (DFYS) Southcentral Region to the new Division of Senior Services to support the Protection of Vulnerable Adults Legislation.

When the existing protection of the Elderly statute was passed in 1983, no funding was provided, other than 5.0 for brochures. The Adult Protective Services Specialist positions in Anchorage were created from child protective services funds. Subsequent efforts to expand funding for a credible adult protective services program have not been fruitful. The Task Force that reviewed APS within DFYS recommended it be consolidated with other senior services where it is believed the program may be better supported and developed.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*  
 Division: Division of Family & Youth Services

Phone: 465-3191  
 Date: 01/10/94

Approved by Commissioner: Margaret R. Lowe, M. Ed., Ed. S. *Margaret R. Lowe*  
 Agency: Department of Health & Social Services

Date: 1-11-94

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# FISCAL NOTE

No. 4

Bill Version: SB 248

(S) Publish Date: 1-14-94

**STATE OF ALASKA  
1994 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: An act relating to services for and protection BRU: Senior Services  
of vulnerable adults. Component: Pioneers' Homes  
 Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 1950

(Thousands of Dollars)

EXPENDITURES/REVENUES	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>						
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(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other						
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	(2)					
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page in necessary)

Two vacant positions will be transferred to the Senior Services Administration component.

Prepared by: Connie J. Sipe, Director Phone: 563-5654  
 Division: Senior Services Date: \_\_\_\_\_  
 Approved by Commissioner: [Signature] Date: 12/27/93  
 Agency: Administration

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# FISCAL NOTE

No. 5

Bill Version: SB 248

(S) Publish Date: 1-14-94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: An act relating to services for and protection BRU: Senior Services  
of vulnerable adults. Component: Senior Services Administration  
 Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 1981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	258.5	263.7	268.9	274.3	279.8	285.4
TRAVEL	20.0	20.4	20.8	21.2	21.6	22.1
CONTRACTUAL	264.1	269.4	274.8	280.3	285.9	291.6
SUPPLIES	5.0	5.1	5.2	5.3	5.4	5.5
EQUIPMENT	12.0	12.2	12.5	12.7	13.0	13.2
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>559.6</b>	<b>570.8</b>	<b>582.2</b>	<b>593.9</b>	<b>605.7</b>	<b>617.8</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	538.0	549.2	560.6	572.3	584.1	596.2
1005 GF/Program Receipts						
1006 GF/MHTIA	21.6	21.6	21.6	21.6	21.6	21.6
Other						
<b>Total</b>	<b>559.6</b>	<b>570.8</b>	<b>582.2</b>	<b>593.9</b>	<b>605.7</b>	<b>617.8</b>

Estimate of current year (FY94) cost: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME	5	5	5	5	5	5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page in necessary)

Future costs inflated at 2% annual increase.

This fiscal note reflects the transfer of staff and support for Adult Protective Services to the Senior Services BRU. See fiscal notes from the Department of Health and Social Services for equivalent reductions.

Further analysis is on the attached pages.

Prepared by: Connie J. Sipe, Director Phone: 563-5654  
 Division: Older Alaskans Commission Date: \_\_\_\_\_  
 Approved by Commissioner: [Signature] Date: 1-14-94  
 Agency: Administration

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Fiscal Note Analysis  
Adult Protective Services

Transfers:

1. Transfer from Department of Health and Social Services, Family and Youth Services BRU, Southcentral and Northern Regional Office Components: Three full-time Social Worker positions, range 16, PCNs 06-3714, 06-3426, and 06-3725.  
Total = 195.1
  
2. Transfer from Department of Health and Social Services, Purchased Services BRU, Adult Services Component: Adult foster/residential care, other purchased protective and contractual services.  
Total = 364.5.
  
3. Transfer from Department of Administration, Senior Services BRU, Pioneers' Homes Component:
  - a. One full-time position (vacant) transferred within the BRU and reclassified to Clerk Typist, Anchorage.
  - b. One position will be reclassified to become a Social Worker in Anchorage for adult protective services.

Total Funds transferred = 559.6

Adult Protective Services will use the funds as follows:

Personal Services:	<u>Months</u>	<u>Subtotal</u>	<u>Total</u>
1 PFT Soc. Worker III (Fbks)	12	66.8	
2 PFT Soc. Worker III (Anch)	24	128.3	
1 PFT Soc. Worker I (Anch)	10	35.1	
1 PFT Clerk Typist (Anch)	10	<u>28.3</u>	
Total Personal Services			258.5

Note: The division will identify and cross-train personnel in one or more Pioneers' Homes in Southeast to handle Adult Protective Services cases in that region on an "as needed" basis.

Travel	20.0
--------	------

Contractual:		
Purchased protective services, adult foster/residential	190.0	
Lease space	33.0	
Telephone (800 number, 24 hr. answering/paging)	34.0	
Risk management and other contractual costs	7.1	
Total Contractual services		264.1
Supplies		5.0
Equipment: software, telephones, computers, furniture		<u>12.0</u>
Total Transferred In for Protective Services		<u>559.6</u>

Senate Bill 248

For An Act Entitled: "An Act relating to services for and protection of vulnerable adults; and providing for an effective date."

Senior Legislative Package

This bill is part of a legislative package intended to consolidate and improve services for seniors. The package includes amendments to support a Division of Senior Services within the Department of Administration (HB 378), protection of vulnerable adults (HB 376/SB 248), and licensing of adult facilities (HB 377/SB 249). By divesting itself of adult services, DFYS will be fully focused on services to children, youth and families. Key department staff participated in drafting the content of the package. We believe that moving Adult Protective Services and licensing of adult facilities out of DFYS will improve services to the elderly and to vulnerable adults as the functions are relocated to divisions specializing in those populations. The department urges review and passage of this bill as well as the remaining bills in the package.

Background for Change

In the 1992 legislative session, the department recommended that a Task Force be created to address adult protective services issues which were raised in legislation. The department stated:

DFYS activity in APS is so understaffed that neighbors of victims do not know help is possible and professionals fail to report, assuming an inadequate investigative response. In 1983 the Protection of the Elderly reporting statute was passed, but not funded. Ten years later

- We don't have a full protective services system.
- We don't provide the same level of protection to elderly and vulnerable adults as we do to children.
- We know that we don't have an adequate system.
- We want to do better. So how do we do that?

Community members tend to report incidents of suspected abuse or neglect to elderly and vulnerable adult victims, if they perceive the protective services agency as able to effectively respond. Reports of harm have grown from 78 the first year after the reporting law was passed to around 440 in recent years. This is in line with the national average, but we believe that confidence in DFYS' response to adults in need is not there. Since only one in eight cases of abuse or neglect are reported, community confidence in the responding agency is critical.

There are only three workers specializing in Adult Protective Services (two in Anchorage and one in Fairbanks). In all other areas of the state (35 field offices) adult protective services are provided by staff who are assigned to provide protective services to both children and adults. DFYS also relies heavily on other agencies to provide services to adults following the investigation and disposition of a report of harm. The APS program in DFYS has been on the frontage road rather than on the expressway.

This administration created a two tiered collaborative effort in the fall of 1992 to address APS and related issues. Members included an eight member Deputy Commissioner and Director level policy working group from the departments of Administration and Health and Social Services and a separate task force of program specialists. This bill is an outcome of those deliberations. Passage would respond to the concern of the department expressed in 1992. We believe that over time re-locating protective services for adults will result in development of a professional response system.

#### DEPARTMENTS POSITION

The department strongly supports this bill.

Recommended:

Deborah R. Wing

Date:

1/21/94

Deborah R. Wing, Director  
Division of Family and Youth Services

Approved:

Margaret R. Lowe

Date:

1-24-94

Margaret R. Lowe, M.Ed., Ed.S.  
Commissioner  
Department of Health and Social Services

# DEPARTMENT OF ADMINISTRATION

## SENATE BILL 248 SERVICES AND PROTECTION FOR VULNERABLE ADULTS

Senate Bill 248 has been introduced by Governor Hickel with the intent to make significant improvements in the way that protective services would be provided to vulnerable adults who are victims of abuse, neglect or exploitation. The bill would transfer the authority for adult protective services from the Department of Health & Social Services (Division of Family & Youth Services) to the Department of Administration (Division of Senior Services).

The Department of Administration worked as part of Governor Hickel's Interagency Task Force on Senior Services to develop this bill. Briefly, here are the highlights of improvements and changes contained in the bill. A more detailed analysis follows.

Senate Bill 248 would:

- Combine protective services for the elderly and other adults
- Offer protection to the "vulnerable," without interfering with elderly or disabled adults capable of caring for themselves
- Streamline abuse reporting and reduce duplicative work by state investigating agencies
- Open a central information and referral service for all vulnerable adults and their caregivers
- Promote more coordination with local service provider agencies to the same population
- Use local service providers as more "friendly" outreach workers wherever possible
- Honor a competent adult's refusal of services or request to terminate investigation
- Share appropriate information on status of investigation with the reporter of the abuse
- Use family members as "surrogate decision makers" when abuse victim is not able to give consent to receipt of services
- Clarify when and for what relief the state may seek judicial intervention to protect a person
- Redefine abuse to focus on intentional or reckless - not accidental - harm to adults
- Redefine neglect to focus on intentional failure to provide care, not inability to care
- Redefine exploitation to include exploitation of the victim's person as well as resources
- Provide for a smooth transition and transfer between the departments

## DETAILED ANALYSIS OF BILL'S IMPROVEMENTS

**New perspective on who are "vulnerable adults" and what is "abuse."** The first section of the bill, at page 1, lines 5 -13, defines the protected class of persons as "vulnerable" adults who suffer abandonment, exploitation, abuse, neglect or self-neglect. This new definition in effect combines two formerly separate statutes: one for elder abuse and one for abuse of disabled persons. The definition also more correctly recognizes that not all elderly and not all disabled persons are "vulnerable." This section transfers the function of receiving reports to a new central information and referral service to be located in the Department of Administration.

**Reporting of abuse updated and streamlined.** As the first section continues onto page 2, the bill amends the list of persons who are required by this law to report their belief that a vulnerable adult is suffering from one of the listed types of abuse. (For brevity's sake, this paper will use "abuse" generally to refer to the entire list of types of harm covered by the bill.)

Section 1, subsections (c) and (d), page 2, l. 31 through page 3, l.16, bring the reporting requirements into compliance with the new assignment to Administration and with the new terminology in the bill regarding vulnerable adults and the types of abuse covered.

Section 1, subsection (e), page 3., ll.17 -25 clarify that when a victim is in imminent risk, the reporting person may contact a local police officer if the reporter is unable to contact the department, so that the police officer may take action to protect the vulnerable adult.

Section 1, subsection (f) , starting page 3, l. 26, clarifies that a person who observes abuse in an out-of-home care facility may fulfill the person's duty to report by making a report to the long term care ombudsman (of the Older Alaskans Commission) or the Department of Health & Social Services (the licensing section of the Medical Assistance Division or the Division of Mental Health & Developmental Disabilities).

The deletions from subsection (f), shown on page 3, ll.30 -31 and page 4, ll. 1 -21, simply delete duplicative language on protections for reporting persons, as that subject is covered later in Section 6 of the bill.

### **Department of Administration's new system for serving vulnerable adults who are abused.**

Section 2, starting on page 4, l. 22, describes the duties of the department under the amended law. The Department of Administration will compile information on abuse, maintain a central information and referral (I & R) line, run a statewide system to serve abused adults.

**More coordination with local service providers.** The Department would be able to designate other (willing) state agencies or community-based service providers to deliver some or all of the supportive and protective services needed. This would be a major improvement over the current system, as the Department could use local provider agencies more familiar and less threatening to the alleged victim of abuse, such as the outreach worker from the local senior center to make initial contact and offer services. If cases involve serious abuse, the department might immediately send its social worker, or the social worker could pick up the case after the local senior center's first contact and assessment of the situation.

**Reducing duplicate investigations by state agencies.** Sec. 47.24.013, starting page 5, l. 14, is one of the bill's major improvements over the current delivery system. Currently, an allegation that abuse has occurred in a nursing home or hospital requires reporting to the Division of Family & Youth Services and to the Certification and Licensing Unit of Medical Assistance. In addition, the Long Term Care Ombudsman has jurisdiction under federal and state law to investigate the same situation if the office is called. Facilities often find themselves dealing with three to five state agencies over one allegation.

The bill improves this inefficient use of state resources by stating that when a facility is licensed by Health & Social Services (nursing homes, hospitals) and the victim is over the age of 60, then the report of abuse will be transferred for investigation and action to the appropriate licensing unit in DH&SS and the long term care ombudsman's office, which will be required to investigate, coordinate their investigations and responses, and to provide a report of the results to the central I & R service of Administration within 60 days.

Similarly, when the alleged victim of abuse in a licensed out-of-home care facility is under age 60, the case will still be transferred to the appropriate licensing agency within DH&SS, and the protective services unit in Administration will not be required to duplicate efforts by investigating the same case.

**Investigative duties.** Sec. 47.24.015, starting at page 6, l. 24, outlines how the Department of Administration is to take action on reports of possible abuse. The department is required to initiate a prompt investigation, which must include a face-to-face interview with the subject of the report, unless a personal interview would endanger the vulnerable adult. Note that the department may use a designee agency to conduct this work. The department's investigation must be summarized in a written report, including a summary of services to be provided.

**Victim's request to drop investigation.** If the subject of the report requests that the investigation cease, the department or its designee must terminate the investigation. However, in an improvement over current law, the department is not forced to abandon the case altogether upon the alleged victim's request. Rather, when the investigation to date has already resulted in "reasonable cause to believe that the vulnerable adult is in need of protective services," the department may either petition the court for certain protective services or may report the case for criminal investigation.

This new procedure recognizes the reality of many cases where the alleged victim is too scared of or threatened by the perpetrator to be willing to cooperate with any investigation, or where the victim appears to be temporarily or permanently incapable of making an informed decision about his or her own safety and affairs.

**Sharing of information with reporter of abuse.** Page 7, lines 20 - 22, are also an attempt to cure a problem in the current delivery system for protective services for adults. This section explicitly requires the department to notify the person who made the abuse report about the status of the investigation regarding the vulnerable adult. This will improve relations with reporters who are ongoing caregivers for the subject adult, as these caregivers need to know whether the person is safe and how the caregiver can best interact with the subject adult in the future.

**New use of surrogate decision makers.** A new official recognition of "surrogate decision makers" for vulnerable adults is included in sec. 47.24.016, which starts at page 7, l. 23. Under this

section, when the department finds that a vulnerable adult needs protective services, but the adult victim lacks decision making capacity or is "unable to consent" due to illness, coercion, fear of reprisal from or dependency on the perpetrator, then the department may seek consent from a guardian or attorney in fact for the victim. Under this new law, if there is no guardian, the department may select from the statute's list of surrogate decision makers for the person, for the purpose of deciding whether the person will "consent" to receiving protective or supportive services.

The surrogate decision maker selection process in the bill is modeled after similar acts in several other states. It allows the department to use --in the priority order listed--the consent of the vulnerable adult's spouse, domestic partner, adult child, parent, sibling, or close adult friend or relative. An incompetent person or an alleged perpetrator of the abuse may not be used as a surrogate. If more than one willing surrogate exists at the chosen priority level--like three adult children--then those persons may choose among themselves or make surrogate decisions by a majority vote.

Allowing surrogate decision making will allow the department to more quickly move ahead with protective services in many situations, and will avoid the expense of petitioning the court for orders or for a guardianship in those many situations here the crisis is only temporary and can be remedied by health care treatments or movement to a new safer environment. (Note that this power can not be used when the vulnerable adult victim retains capacity and capability to make his or her own consent decisions.)

**Delivery of protective services.** Sec. 47.24.017, starting page 8, l. 28 discusses service delivery. When the department determines that a vulnerable adult needs protective services, and the person or appropriate surrogate has consented, the department will provide services within 10 days, to the extent of resources available from all sources (department, client, other agencies). When an emergency situation exists the department may provide protective services without consent. Services are always to be delivered in a culturally relevant manner that protects the adult's right to live in the "least restrictive environment" and maximizes the person's own decision making capabilities.

**Petitioning the court for protective services.** Section 47.24.019, starting at page 9, l. 20., gives the department authority to petition the court for appointment of a guardian in order to decide if the person will consent to services, or to petition for involuntary commitment when the person is mentally ill and likely to seriously harm self or others, or to petition the court to issue an injunction against any caregiver who is interfering with the person's receiving services which the person has consented to receive.

**Confidentiality and disclosure of reports.** Section 4 of the bill amends AS 47.24.050, as shown at page 10, ll. 12 - 29. Under the proposed bill, confidential reports about investigations may be shared with "appropriate agencies or individuals." The department must delineate who is appropriate and how information will be shared. This section would ease a problem in the current law where confidentiality requirements can be so strictly interpreted that, for example, a local service provider such as an adult day care center which cares for a senior five days a week can not be asked to use its professional staff to help monitor the status of a client who is living with a caregiver who has abused the client in the past.

**Immunity from liability or retaliation.** This protection in the current law is maintained in the bill, section 6, on page 11.

**Definitions.** Many of the definitions are improvements to current law. The most important changes are highlighted here. Definitions are found on pages 11 - 13 of the bill draft.

**"Abuse"** will no longer mean any harm to an elder or disabled person. The proposed bill says that abuse is the wilful, intentional or reckless infliction of injury or mental distress, or sexual assault. The new definition will eliminate current investigations of purely accidental harm where other professionals who witness the accidental harm (such as in a nursing home) feel compelled by law to make a formal report of the abuse.

(One actual case that could have been ignored under this new definition was the accidental dropping from two feet above to the bed by one of two nurses' aides doing a difficult transfer of a resident. Although everyone saw the aide crying in remorse over the accident, and the aide had no history of carelessness or abuse, under the current statute, the elder was "harmed" and other employees felt compelled to report this technical incident of "abuse.")

**"Designee"** of the department, which can assist with investigation or provision of services to vulnerable adults, includes state agencies, community-based programs, individuals, or providers of supportive services licensed or authorized by agreement with the department .

**"Exploitation"** will include unjust or improper use of either the vulnerable person or his or her resources for another person's profit or advantage.

**"Neglect"** will mean the intentional failure by a caregiver to provide essential care, and not just the financial or physical inability of the caregiver to render care.

**"Protective services"** can include protective placement or other services intended to prevent or alleviate harm.

**"Unable to consent,"** as discussed earlier, will be broader than just those persons who are "incompetent," i.e. permanently incapacitated from decision making. Unable to consent will include persons who are unable to consent due to coercion, fear, dependency, or temporary inability to perceive the imminent and substantial risk of death or irreparable injury if the person refuses assistance.

**"Vulnerable adult"** means a person over age 18 who, because of physical or mental impairment, is unable to meet his or her own needs, or is unable to seek help. Note that the bill would change the current law's presumption that all elderly persons and all physically, developmentally or mentally disabled persons are vulnerable and subject to special protection and possible interference in their affairs by state protective services.

**General provisions of the bill.** Section 8, page 13, lines 12 -13 repeals the existing abuse of the disabled law . Section 9, page 13, starting line 14, specifies how the transition of resources, cases, and ongoing contracts will be transferred between agencies upon the effective date of the Act. The bill authorizes the Department of Administration to proceed with regulations while awaiting the effective date of the Act. The transition section has an immediate effective date upon the Governor's signature, and the rest of the bill would be effective July 1, 1994.

## ***Hazel J. Edmands, Elder Care***

Senate bill #248

It is apparent that the Legislative body as a whole is concerned about the treatment of our Older Alaskans, however, as a caregiver to my aged mother afflicted with Alzheimers Disease and related dementia it is also apparent that in Sect 47:24:120 that there are no provisions for curtailment of harassment by third parties who have devious desires in reporting " abandonment, exploitation, abuse, neglect, or self-neglect".

I would like to suggest to the legislative body that the above quoted section be amended to include the following statement (at least in content if not verbatim)

"INVESTIGATION OF SAID REPORTING INDIVIDUAL SHALL BE CONDUCTED BY THE AGENCY TO INSURE THAT THE REPORTING IS IN GOOD FAITH AND NOT RETALIATORY OR VINDICTIVE IN NATURE" INVESTIGATION SHALL BE DOCUMENTED AND EVIDENCE SHALL BE PRESENTED TO THE ACCUSED SO THAT REBUTTAL AND/OR REFUTING EVIDENCE MAY BE PRESENTED.

## **Hazel J. Edmands, Elder Care**

### Sec 47.33.430 COMPLAINT

(b) "The licensing agency shall investigate a complaint filed under this section unless the agency reasonably concludes that the complaint is without merit."

This subsection should be amended to include: —

The licensing agency shall investigate the complainant to determine if reporting is in good faith and not retaliatory or malicious vindictiveness.

### Sec 47.33.520 INVESTIGATION

A subsection under investigation should read:

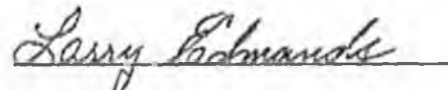
" The agency shall investigate all complainants to determine the validity of the complaint, if it is malicious in nature, or vindictive prior to subjecting the caregiver facility to rebuttal."

(e) Except as otherwise provided in AS 47.33.500(c), completed investigation reports and responses from homes are public records and should include complainant's name. (This is for the purpose of investigation into chronic complainants and those persons acting in bad faith or with malicious purpose)

## *Hazel J. Edmands, Elder Care*

IT APPEARS THAT THE LAWMAKERS HAVE FORGOTTEN THAT THE RIGHTS OF THE ACCUSED, TO FACE THE ACCUSER, HAVE BEEN ABUSED.

I have been caring for my mother since 1986 but only since I requested licensing for a Foster Care Facility have I been subjected to harassment through anonymous accusations to the licensing facility. I have thus far answered all allegations to the satisfaction of the Agency.



Larry Edmands, Director

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR RIEGER

TO: SB 248

Page 3, line 25, after ".":

Insert "A person may not bring an action for damages against a police officer, village public safety officer, the state, or a political subdivision of the state based on a decision under this subsection to take or not to take immediate action to protect a vulnerable adult. If a decision is made under this subsection to take immediate action to protect a vulnerable adult, a person may not bring an action for damages based on the protective actions taken unless the protective actions were performed with gross negligence or intentional misconduct: damages awarded in the action may include only direct economic compensatory damages for personal injury."

Page 7, after line 22:

Insert new subsections to read:

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

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

RECEIVED FEB 15 1994

HOMER



SENIOR

CITIZENS

January 9, 1994

*Please share  
with others  
on the H&SS  
Committee.  
Thanks!*

Senator Steve Rieger, Chair  
Health, Education and Social Services Committee  
Room 516 C  
Juneau, Ak 99811

Ref: SB 248

The PURPOSE of this bill has the wholehearted endorsement of this Corporation which is pursuing at this time a loan from Alaska Housing Finance Corporation to build 40 units of AFFORDABLE assisted senior living housing. In order to assure that the housing will be affordable to all income groups, this Corporation has the philosophy that services already available in the community should not be duplicated by staff at its apartments. Such costs would be passed onto all tenants who may not need the services provided. This Corporation further has the philosophy that as landlords renting apartments which will become the tenants home, it has the responsibility to allow those service providers access to the tenants home to provide services.

In designing this proposed facility, the State Fire Marshall's Office REQUIRED this Corporation to sign a letter of intent that this Corporation would provide NO nursing services or allow long term bed ridden tenants in the facility BEFORE that office would allow the architects to design the facility under residential requirements in lieu of the more costly institutional requirements.

The heavy emphasis on medical terms and procedures in the "admissions" section could possibly cause this Corporation to forgo licensing of the facility as an assisted living facility. This Corporation recommends that friendly amendments be made to those sections where such terms and procedures are included. Examples would be:

- Sec. 47.33.210 ADMISSION CONTRACTS - to "Lease Agreement or Rental Agreement"
- " " " " (b)(4) "discharge of resident" - to "termination of the lease or rental agreement"
- Sec. 47.33.220 (3) "administrator of the home" - to "lessor"
- Sec. 47.33.240 EVALUATION OF ASSISTED LIVING PLAN -change "resident admitted" to "leasee"; it is also questioned as to why the distinction in evaluation times review

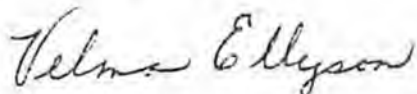
An additional section questioned by this Corporation:

Sec. 47.33.220 in which the home "shall ensure" a plan but in Section 47.33.230 (d) the home "shall prepare" the plan. This Corporation is hopeful that the tenant, tenants representative, etc. would be allowed to use the services of the Care Coordinator of South Peninsula Hospital to prepare the plan and avoid the duplication and additional cost of having to pay for a staff person at the home to also prepare one.

Because this bill will cover not only assisted living facilities for all age groups and a varying number of "beds" in the facility, this Corporation recommends that the sections which contain medical terms and procedures be review as if a homeowner in a small village such as Port Graham across the Kachemak Bay wished to become licensed under this bill. Because this Corporation with experience managing an independent living senior housing complex would have difficulty with achieving a license by these requirements, it has great sympathy for those persons who will be providing fewer beds and living in even more rural areas than Homer.

Thank you for your consideration in this matter.

Sincerely,



Velma Ellyson  
Executive Director

P. S.

Yes, I'm the same Velma that served on the ASHA committee on housing in Alaska, senior housing sub-committee, a few years ago.

ALASKA STATE

**HOSPITAL & NURSING HOME**

ASSOCIATION

February 16, 1994

Senator Steve Reiger, Chair  
Health, Education & Social Services  
Committee  
Alaska State Senate  
Juneau, AK 99801

Re: Support SB 248, 249, 250

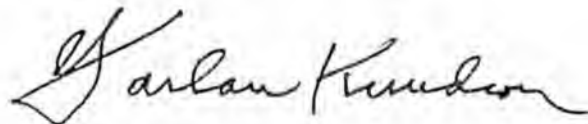
Dear Senator Reiger:

ASHNHA, representing community hospitals and nursing homes would like to add it's support for SB 248, to assist and protect vulnerable adults; SB 249, regulating assisted living homes and SB 250, revising the Older Alaskan's Commission.

The association supports the state's efforts through Project Choice that allows for a Medicaid waiver and provision of continuum of care from an individuals home through assisted living and if and when needed nursing home care. This new series of legislation, SB 248, SB 249 and SB 250 adds to the efforts to provide care as close to home and in as most cost effective manner as possible.

We ask the support of the Senate HESS Committee for SB 248, SB 249 and SB 250.

Sincerely,



Harlan R. Knudson  
President/CEO