

HB

150

<TARGET><BILL>HB 150</BILL><SUBJECT>HB
150</SUBJECT><COMM>HJUD27</COMM></TARGET>

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
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February 10, 2011

The Honorable Carl Gatto, Chair
House Judiciary Committee
State Capitol Room 118
Juneau, AK 99801



Dear Representative Gatto:

The Department of Health and Social Services respectfully requests a hearing in the House Judiciary Committee on House Bill 150, "An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

The bill strengthens the laws against financial exploitation and enhances the ability to obtain emergency protection orders for seniors. It improves the ability of those investigating reports of harm to obtain vital information in a timely manner, and will lead to better services and safety for vulnerable adults who are abused, neglected or exploited and unable to protect their own interests.

A copy of Governor Parnell's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,

William J. Streur
Commissioner

cc: Heather Brakes, Legislative Director, Office of the Governor

SECTIONAL ANALYSIS

HB 150, “An Act relating to the protection of property of persons under disability and minor; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date.”

Section 1 makes the knowing violation or attempted violation of a financial protective order (introduced in section 7 of this legislation to protect vulnerable adults and elders) a crime.

Section 2 amends the definition of protective orders found in AS 11.56.740 to include financial protective orders being introduced with this legislation to protect the financial security of vulnerable adults and elders.

Section 3 makes the fact that a defendant knowingly directed criminal conduct at a person 65 years of age or older an aggravating factor at sentencing.

Section 4 adds being a victim of fraud as a basis for appointing a conservator by amending AS 13.26.165(2)(a). This will allow courts to protect individuals who may not be suffering from any mental deficiency but are victims of financial abuse.

Section 5 adds attorneys, caregivers, and the Department of Health and Social Services as entities who may petition for conservatorship for an individual. These additions widen the net of

individuals who can help protect victims to include entities who likely have first-hand knowledge of the abuse.

Section 6 creates a procedure for requesting the appointment of a temporary conservator in a conservatorship petition by adding a new subsection to AS 13.26.180. Currently, there is no statutory basis for appointing a conservator on a temporary basis. Under this section, a temporary conservator may be requested if it appears that the respondent's property will be wasted or dissipated during the pendency of the conservatorship proceedings.

Section 7 adds two new statutes. The first provides the statutory basis for temporary conservators to protect the victims of fraud and financial abuse and to ensure that funds are obtained to meet the needs of the respondent and respondent's dependents. Procedurally, this proposed statute parallels the existing statute AS 13.26.140 which deals with temporary guardians. The second statute creates a process for obtaining financial protective orders to immediately stop suspected financial abuse of the elderly and vulnerable adults. An initial 20-day protective order may be obtained ex parte, without notice to the respondent. The protective order may be extended for up to six months, after notice and a hearing at which the respondent may be heard.

Section 8 adds a definition of fraud (which is already found in the statutes creating the Office of Elder Fraud and Assistance) to conservatorship statutes.

Section 9 excludes the crime of violating a financial protective order from the crimes subject to warrantless arrest.

Sections 10 and 11 add financial protective order to the registry of protective orders maintained by the Department of Public Safety and updated by law enforcement officers.

Section 12 adds the concept of undue influence to the list of reportable harms to a vulnerable adult. Employees of nursing homes, residential care or health care facilities and the staff of educational institutions are added to the list of mandated reporters.

Section 13 clarifies information that may be contained in a report of harm to include contact information regarding the vulnerable adult and information regarding any undue influence.

Section 14 adds “undue influence” to the list of reportable harms.

Section 15 adds “undue influence” to the list of reportable harms and clarifies that a mandatory reporter is not prohibited from reporting harm in their non-occupational capacity. It also clarifies that no person is prohibited from making a report of harm.

Section 16 requires mandated reporters to contact law enforcement in situations where they believe the vulnerable adult is at imminent risk of serious physical harm and it is not possible to contact the department. “Undue influence” is added as one of the reportable harms. Law enforcement is required to contact the department within 24 hours of receiving the report.

Section 17 adds “undue influence” and “abandonment” to the list of harms that can be reported regarding a vulnerable adult residing in an out-of-home care facility.

Section 18 adds two new subsections. The first subsection states that a mandatory reporter is not relieved of the obligation to report to the department by reporting to their supervisor or another employee. The second subsection makes an individual who willfully or recklessly makes a false report liable for civil damages.

Section 19 adds “undue influence” to the list of reportable harms regarding vulnerable adults 60 years of age or older residing in an out-of-home care facility. The department is required to transfer these reports to the long term care ombudsman.

Section 20 adds “undue influence” to the list of reportable harms the department is required to investigate regarding individuals under 60 years of age living in out-of-home facilities.

Section 21 clarifies that the department and the long term care ombudsman must provide the results of their actions or investigations to the office of the department that handles adult protective services.

Section 22 adds “undue influence” to the list of reportable harms included in the reports sent to the department by the long term care ombudsman. It is clarified that these reports are sent to the office of the department that handles adult protective services.

Section 23 adds “undue influence” to the list of reportable harms the department is required to investigate.

Section 24 adds “undue influence” to the list of reported harm that applies to an alleged perpetrator.

Section 25 adds seven new subsections. These subsections

- Require individuals and entities to provide the department access to health and financial records of a vulnerable adult as part of its investigation;
- Prohibit anyone from interfering in an investigation;
- Allow the department to file an ex parte order for access to records if necessary if no petition for guardianship or conservatorship has been filed;
- Allow adult protective services access to any departmental information necessary to assist in the case;
- Allow the department to audio or video tape an interview of a vulnerable adult with their consent;
- Require the department to provide training to investigators and
- Define “financial records”.

Section 26 adds an attorney-in-fact, a surrogate for health care decisions and a trustee as individuals who may serve as a surrogate decision maker for the purpose of consenting to the receipt of protective services for a vulnerable adult. It also deletes the requirement that in order for a spouse to be a surrogate decision maker, the spouse and vulnerable adult may not be living

in separate domiciles.

Section 27 adds an allegation of “undue influence” to the allegations that would disqualify an individual from being selected as a surrogate decision maker.

Section 28 requires the department to discontinue protective services if a vulnerable adult who has regained the cognitive ability to make their own decisions refuses services. Services may be continued only if the adult consents.

Section 29 adds attorney-in-fact, surrogate for health care decisions and a trustee as individuals who may consent to the provision of protective services to a vulnerable adult and adds undue influence to the list of potential reports of harm.

Section 30 adds family members, trustees and conservators to the list of individuals who may be restrained by a court injunction from interfering with the provision of protective services to a vulnerable adult.

Section 31 adds “undue influence” to the types of harm contained in confidential reports and adds trustee to the list of individuals who may consent to release a confidential report.

Section 32 clarifies that a person is not considered to be unduly influenced if they choose to consent to treatment by spiritual means only.

Section 33 redefines “abuse” to include the infliction of emotional distress or fear, including coercion and intimidation.

Section 34 redefines “caregiver” to include someone who is an employee of a business that provides care in an adult’s home.

Section 35 defines “informed decision” as a decision made free from undue influence.

Section 36 redefines “exploitation” to include acts by a person in a position of trust with a vulnerable adult who obtains profit or advantage through undue influence, deception, intimidation or breach of fiduciary duty.

Section 37 redefines neglect to include the willful or reckless failure by a caregiver to provide access to services or to carry out a treatment plan necessary to the health of a recipient.

“Essential care or services are defined as food, clothing, shelter, medical care and supervision.

Section 38 expands the definition of protective services to include services that obtain basic health care needs, financial assistance services, and protection from abuse, obtaining basic food, shelter and clothing, among others. Undue influence is added to the list of types of harm.

Section 39 amends the definition of “unable to consent” by adding the concept of “undue influence” and that the inability to consent includes a person’s inability to perceive a loss of income or assets, eviction, and physical or mental harm.

Section 40 amends the definition of a vulnerable adult by more clearly defining what constitutes a physical or mental impairment.

Section 41 adds definitions for the following terms:

- Deception
- Fiduciary duty
- Financial institution
- Person who stands in a position of trust or confidence
- Undue influence

Section 42 amends the uncodified law. Under Alaska Rules of Criminal Procedure, the court, when considering a motion for continuance of a trial date, will be required to consider whether the victim is vulnerable due to advanced age and what effect the delay would have on the victim. In addition, trials in which the victim is vulnerable due to advanced age will be added to cases that will be given preference for scheduling.

Section 43 amends Indirect Court Rules in three areas. First, amending Rule 17, Alaska Rules of Probate Procedure, to allow ex parte orders to be issued to protect persons from financial exploitation. Second, amending Rule 9, Alaska Rules of Administration, by not requiring filing fees for an ex parte protective order. Third, amending Rule 65, Alaska Rules of Civil Procedure, by allowing ex parte orders to be issued to access records related to the investigation of a report of harm.

Section 44 amends the uncodified law by indicating that Section 1, 2, 3, and 42 apply to offenses committed on or after the effective date of the Act.

Section 45 amends the uncodified law regarding the number of votes required to enact Sections 7 and 25 of this bill.

Section 46 amends the uncodified law by adding revisor's instructions.

Section 47 provides for an effective date.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB 150
 () Publish Date _____

Identifier (file name) 11 HB150-ACS-TC-2-22-11
 Title Protection of Vulnerable Adults/Minors
 Sponsor House Rules Committee
 Requester Governor
 Dept. Affected _____
 Appropriation Alaska Court System
 Allocation Trial Courts
 OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Doug Wooliver, Administrative Attorney
 Division Alaska Court System
 Approved by Christine Johnson, Administrative Director, by Doug Wooliver
Alaska Court System

Phone 907-463-4750
 Date/Time 2-22-2011 @ 2:00 pm
 Date 2/22/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

House Bill 150 makes several changes to the statutes that govern guardianships. Two of those changes will likely impact the court system, though the extent of the impact is too speculative to support a fiscal note and, in any event, may not be felt immediately.

Sections 6 and 7 allow for temporary conservators to be appointed within 72 hours of the filing of the petition and section 7 allows for ex parte protective orders when a person believes that an order is necessary to protect a vulnerable person from fraud.

The court's current experience with temporary guardianships (AS 13.26.140), and ex parte protective orders issued in other contexts suggests that the passage of this bill will result in more cases being filed that must be heard on short notice. If that increase becomes significant, and it likely will in the future, the court system may need to return to the legislature for additional funding. At this point, however, the number of conservatorship petitions filed each year is not great enough to warrant a fiscal note.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 150
(H) Publish Date: 2/9/11

Identifier (file name): 1722-DHSS-SDSA-02-08-2011 Dept. Affected: Health and Social Services
Title: Adult Protective Services Appropriation: Senior and Disabilities Services
Allocation: Senior and Disabilities Services Admin
Sponsor: Rules by Request of the Governor
Requester: Governor OMB Component Number: 2663

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by: Duane Mayes, Director
Division: Senior and Disabilities Services
Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Phone 269-2083
Date/Time 2/8/11 1:00 PM
Date 2/8/2011

COMMITTEE COPY

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis:

This legislation provides additional protections to seniors and other vulnerable adults. The proposed changes in the vulnerable adult statutes add the concept of undue influence as a potential harm. This bill provides additional legal and investigatory tools to the department in order to respond to reports of harm and establish protective services to individuals who need them. There is no fiscal impact anticipated.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
Bill Version HB 150
(H) Publish Date 2/9/11

Identifier (file name) LL1722-DOA-OPA-2-8-11 Dept. Affected DOA
Title An Act relating to the protection of property of persons under Appropriation Legal and Advocacy Services
disability Allocation Office of Public Advocacy
Sponsor Rules by Request
Requester Governor OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please identify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Rachel Levitt, Acting Director
Division Office of Public Advocacy
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
Date/Time 2/8/2011, 10:30 am.
Date 2/8/2011

FISCAL NOTE #2

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

This bill will enhance the legal protections against fraud and financial abuse available to elders and vulnerable adults. The Office of Public Advocacy wishes to highlight two portions of the bill that will provide new emergency procedures to protect vulnerable adults who may be served by the agency's Elder Fraud or Probate practices.

In section 7, this bill creates two emergency judicial proceedings to stop and prevent financial exploitation of vulnerable adults. The first is a process for the appointment of temporary conservators. This will allow the court to impose emergency conservatorships to assist vulnerable individuals with their financial affairs to prevent imminent waste or fraudulent dissipation of their estates.

The second creates a process for the imposition of financial protective orders. Individual victims and other concerned parties will be able to apply for the protections of 20 day ex parte protective orders to stop or prevent financial exploitation. The initial ex parte order may be extended for up to six months after notice and a hearing at which the respondent may be heard.

The bill also provides for expanded reporting of financial abuse and enhanced penalties in criminal cases when there is an elderly victim. Additionally, the bill criminalizes violations of the financial protective orders.

The agency does not believe that this will result in significant cost increases to the agency.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 6
Bill Version HB 150
(H) Publish Date 2/9/11

Identifier (file name) JU2010201722-DOC-OC-02-08-11 Dept. Affected DOC
Title "An Act relating to the protection of property of persons under Appropriation Admin & Support
" Allocation Commissioner's Office
Sponsor Rules Committee
Requester Governor OMB Component Number 684

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	**	**	**	**	**	**	**

CAPITAL EXPENDITURES	0.0	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							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	**	**	**	**	**	**	**

Estimate of any current year (FY2011) cost **

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the first version of the bill.

Prepared by Leslie Houston, Director
Division Dept. of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Dept. of Corrections

Phone 465-3339
Date/Time 2/08/11 1:00 p.m.
Date 2/8/2011

COMMITTEE COPY

FISCAL NOTE #6

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

This legislation creates a new crime of violating protective orders and adds aggravating factors at sentencing for a crime against a victim 65 years or older. Violation of this law could result in incarceration. However, the Department of Corrections is unable to determine the number of future offenders and therefore is unable to determine the fiscal impact of the passage of this legislation.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 5
 Bill Version HB 150
 (H) Publish Date 2/9/11

Identifier (file name) LL1722-DPS-DET-02-08-11 Dept. Affected Public Safety
 Title "An Act relating to the protection of property of persons under disability and minors;...vulnerable adults..." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Rules Committee
 Requester Governor OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version.

Prepared by Lt Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph Masters
Commissioner

Phone 907-247-4480
 Date/Time 2/8/11 1:30PM
 Date 2/8/2011

FISCAL NOTE #5

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

This bill makes several changes to AS 13.26 and AS 47.24 concerning vulnerable adults. It adds fraud as a reason that might necessitate a conservatorship, and as a basis for seeking an ex parte financial protective order. This bill also adds the concept of undue influence to the list of reportable harms and adds certain individuals as mandatory reporters of harm to vulnerable adults. Finally, this bill expands the investigatory authority of the Adult Protective Services Office.

Passage of this legislation will have no fiscal impact on the division.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 4
 Bill Version HB 150
 (H) Publish Date 2/9/11

Identifier (file name) LL1722-DPS-DSS-02-08-11 Dept. Affected Public Safety
 Title "An Act relating to the protection of property...Vulnerable Adults" Appropriation Statewide Support
 Sponsor Rules Committee Allocation Records & Identification
 Requester Governor OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel	16.0							
Services	32.0							
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	48.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF	48.0						
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	48.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by David Schade
 Division Statewide Services
 Approved by Joseph Masters
 Commissioner

Phone 907-269-0202
 Date/Time 2/8/11 12:00 AM
 Date 2/8/2011

COMMITTEE COPY

FISCAL NOTE #4

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

This bill treats AS 13 protective orders in the same manner as stalking, sexual assault, and domestic violence protective orders under AS 18 and will require the development of new protective order forms with substantial collaboration between DPS, the Alaska Court System, DHSS, the Office of Public Advocacy, and the Department of Revenue. The findings and orders for these new AS 13 protective orders will differ from the AS 18 orders in the existing protection order registry, which address violence and domestic situations.

Once the forms are developed, APSIN programming changes will be required to accommodate new fields and types of information required. A separate version of the APSIN central registry must be developed to accommodate these new orders. Note: these new orders do not meet the necessary criteria for entry into the national registry of protection, stalking and sexual assault orders (NCIC) because they do not necessarily involve physical violence.

Programming and analysis for APSIN changes will require 280 hours of contractual work @ \$100/hr to evaluate and make recommendations regarding statewide implementation of new processes and procedures for entering and maintaining these new orders into existing APSIN . Additionally, 40 hours of contractual work (at \$100/hr) will be required to integrate these new orders in new APSIN.

Statewide training will then be required on the new forms and APSIN procedures. Statewide training costs are included.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 3
Bill Version HB 150
(H) Publish Date 2/9/11

Identifier (file name): 1722-LAW-CIV-02-03-11
Title An Act relating to property of persons; crime of violating protective order, aggravating factors at sentencing; protection; amending...
Sponsor Rules
Requester Request of the Governor
Dept. Affected Law
Appropriation Civil
Allocation Human Services
OMB Component Number 2962

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 2/3/11 4:15 PM
Date 2/3/2011

FISCAL NOTE #3

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 150

Analysis

This bill adds a 20-day and six-month ex parte process for financial fraud, and a temporary conservatorship process when the need exists during the pendency of a regular petition for conservatorship. The bill also expands the list of mandatory reporters of harm to a vulnerable adult, adds the harm of undue influence, and expands the investigative powers of the Office of Adult Protective Services, including the authority to seek an ex parte order for access to a vulnerable adult or records regarding an adult. The bill also amends the crime of violating a protective order by adding the crime of violating a protective order issued to protect a vulnerable adult under AS 13.26.180 or 13.26.209. Violating a protective order is a class A misdemeanor.

There is no anticipated fiscal impact to Department of Law.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 150

1 Page 6, line 8:

2 Delete all material and insert:

3 “ (2) theft and related offenses under AS 11.46.100 – 11.46.295;

4 (3) vehicle theft under AS 11.46.360 and AS 11.46.365;

5 (4) forgery and related offenses under AS 11.46.500 – 11.46.580;

6 (5) business and commercial offenses under AS 11.46.600 – 11.46.740;”

7

8 Renumber the following paragraph accordingly.

Sec. 08.63.200. Confidentiality of communication.

(a) A person licensed under this chapter may not reveal to another person a communication made to the licensee by a client about a matter concerning which the client has employed the licensee in a professional capacity. This section does not apply to

(1) a case conference or case consultation with other mental health professionals at which the patient is not identified;

(2) the release of information that the client in writing authorized the licensee to reveal;

(3) information released to the board as part of a disciplinary or other proceeding;

(4) situations where the rules of evidence applicable to the psychotherapist-patient privilege allow the release of the information;

(5) a communication to a potential victim or to law enforcement officers where a threat of imminent serious physical harm to an identified victim has been made by a client; or

(6) a disclosure revealing a communication about an act that the licensee has reasonable cause to suspect constitutes unlawful or unethical conduct that would be grounds for imposition of disciplinary sanctions by a person licensed to provide health or mental health services, if the disclosure is made only to the licensing board with jurisdiction over the person who allegedly committed the act, and the disclosure is made in good faith.

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by an elderly person or disabled adult as required by AS 47.24.

(c) Information obtained by the board under (a)(3) of this section is confidential and is not a public record for purposes of AS 40.25.110 - 40.25.140.

vulnerable
adult

ADD to BILL

1 Department of Commerce, Community, and Economic Development.

2 * **Sec. 3.** AS 08.29.200(b) is amended to read:

3 (b) Notwithstanding (a) of this section, a person licensed under this chapter
4 shall report incidents of

5 (1) child abuse or neglect as required by AS 47.17;

6 (2) harm or assaults suffered by **a vulnerable adult** [AN ELDERLY
7 PERSON OR DISABLED ADULT] as required by AS 47.24.

8 * **Sec. 4.** AS 08.40.120(a) is amended to read:

9 (a) Each applicant shall be examined to determine the applicant's

10 (1) ability to understand plans, design specifications, and engineering
11 terms commonly used in the electrical field;

12 (2) knowledge of electrical installations and wiring;

13 (3) familiarity with the regulations contained in the National Electrical
14 Code and the National Electrical Safety Code, as approved by the **American National**
15 **Standards Institute** [AMERICAN STANDARDS ASSOCIATION];

16 (4) familiarity with other installation and safety regulations approved
17 by the **American National Standards Institute** [AMERICAN STANDARDS
18 ASSOCIATION];

19 (5) personal skill and ability.

20 * **Sec. 5.** AS 08.42.060(a) is amended to read:

21 (a) The department shall examine applicants for an embalmer's license; the
22 examination may include any or all of the following subjects: (1) theory and practice
23 of embalming, (2) anatomy, (3) pathology, (4) bacteriology, (5) hygiene, including
24 sanitation and public health, (6) chemistry, including toxicology, (7) restorative arts,
25 including plastic surgery and demi-surgery, (8) funeral service arts and sciences [,]
26 and funeral service administration, including accounting, funeral law, psychology,
27 funeral principles, directing, and management, (9) Alaska vital statistics law, and (10)
28 the provisions of this chapter and the regulations adopted by the department under this
29 chapter. The department shall examine applicants for a funeral director's license; the
30 examination may include any or all of the subjects included in (8), (9), and (10) of this
31 subsection. The department may use the examination provided by the **International**

Sarah Munson

From: House Judiciary
Sent: Monday, March 07, 2011 9:50 AM
To: LAA Legal
Subject: Request for CS for HB150 (27-GH1722VA)

Hello,

The House Judiciary Committee would like a CS for HB 150 (27-GH1722\A) that contains the following changes:

- Page 5, line 21: Replace **"person"** with **"party"**
- Page 6, line 8: Replace **"theft and related offenses"** with **"offenses against property"**
- Page 9, lines 7-8: Following **"department"** insert **"at the earliest opportunity"**
- Page 14, lines 29-30: Replace **"a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker"** with **"anyone"**
- Pages 14, line 31 – Page 15, line 1: Replace **"family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker"** with **"person"**
- Page 16, line 24: Replace **"means"** with **"includes"**
- Page 16, line 30: Following **"consent;"** insert **"and"**
- Page 17, line 3: Following **"deception,"** insert **"fraud,"**
- Page 17, line 17: Following **"protection;"** insert **"and"**
- Page 18, line 9: Following **"loss"** insert **", waste, or dissipation"**
- Page 19, line 20: Following **"to"** insert **"wrongfully"**
- Page 19, line 21: Delete **"deceptively"**

Please send an electronic copy (along with the hard copy) to this e-mail address when it is complete. The committee has a Work Group session scheduled on Thursday, March 10th at 3:00 pm to discuss this bill and the CS, if it is ready.

Thank you,

Sarah Munson
Committee Aide
House Judiciary Committee
The Office of Representative Gatto
Alaska State Capitol Building, Rm 118
p. 465-4990
f. 465-2381

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 10, 2011

SUBJECT: CSHB 150(JUD) (Work Order No. 27-GH1722\M)

TO: Representative Carl Gatto
Chair of the House Judiciary Committee
Attn: Sarah Munson

FROM: Pamela Finley 
Revisor of Statutes

Enclosed is the referenced CS with the changes you requested. In addition to minor editorial changes, we have changed "and" to "or" in the amendment to AS 18.65.530 in sec. 11. We also renumbered the new section added by sec. 10 as AS 13.26.324 because AS 13.26.325 is a number that has already been used. Finally, it appears to us that the 72 hour rule in the last sentence of AS 13.26.207(a), added in sec. 9, may be an attempt to change a court rule, specifically Civil Rule 77. If so, the court rule change should be noted. Since this is a governor's bill, perhaps the Department of Law should be consulted on the last point. I am writing this memo because Jean Mischel is temporarily out of the office. Please contact her if you want additional work on this bill.

PF:plm
11-133.plm

Enclosure

27-GH1722\M
Mischel
3/7/11

CS FOR HOUSE BILL NO. 150(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the protection of property of persons under disability and minors;
2 relating to the crime of violating a protective order concerning certain vulnerable
3 persons; relating to aggravating factors at sentencing for offenses concerning a victim 65
4 years or older; relating to the protection of vulnerable adults; making conforming
5 amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure,
6 Rule 65, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure,
7 and Rule 9, Alaska Rules of Administration; and providing for an effective date."

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

9 * **Section 1.** AS 08.29.200(b) is amended to read:

10 (b) Notwithstanding (a) of this section, a person licensed under this chapter
11 shall report incidents of

12 (1) child abuse or neglect as required by AS 47.17;

13 (2) harm or assaults suffered by a vulnerable [AN ELDERLY

1 PERSON OR DISABLED] adult as required by AS 47.24.

2 * **Sec. 2.** AS 08.63.200(b) is amended to read:

3 (b) Notwithstanding (a) of this section, a person licensed under this chapter
4 shall report incidents of

5 (1) child abuse or neglect as required by AS 47.17;

6 (2) harm or assaults suffered by a vulnerable [AN ELDERLY
7 PERSON OR DISABLED] adult as required by AS 47.24.

8 * **Sec. 3.** AS 11.56.740(a) is amended to read:

9 (a) A person commits the crime of violating a protective order if the person is
10 subject to a protective order

11 (1) issued or filed under AS 18.66 and containing a provision listed in
12 AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
13 reckless disregard that the act violates or would violate a provision of the protective
14 order; [OR]

15 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
16 commits or attempts to commit an act that violates or would violate a provision listed
17 in AS 18.65.850(c)(1) - (3); or

18 (3) issued under AS 13.26.180 or 13.26.209 and knowingly commits
19 or attempts to commit an act with reckless disregard that the act violates or
20 would violate a provision of the protective order.

21 * **Sec. 4.** AS 11.56.740(c) is amended to read:

22 (c) In this section, "protective order" means an order issued or filed under
23 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

24 * **Sec. 5.** AS 12.55.155(c) is amended by adding a new paragraph to read:

25 (35) the defendant knowingly directed the conduct constituting the
26 offense at a victim because that person was 65 years of age or older.

27 * **Sec. 6.** AS 13.26.165 is amended to read:

28 **Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and
29 hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may
30 appoint a conservator or issue another [MAKE OTHER] protective order for cause as
31 follows:

1 (1) appointment of a conservator or other protective order may be
2 made in relation to the estate and affairs of a minor if the court determines that

3 (A) a minor owns money or property that requires management
4 or protection that [WHICH] cannot otherwise be provided;[,]

5 (B) the minor has or may have business affairs that [WHICH]
6 may be jeopardized or prevented by the status of being a minor;[,] or

7 (C) [THAT] funds are needed for the minor's support and
8 education and [THAT] protection is necessary or desirable to obtain or provide
9 funds;

10 (2) appointment of a conservator or other protective order may be
11 made in relation to the estate and affairs of a person if the court determines that

12 (A) the person is unable to manage the person's property and
13 affairs effectively for reasons such as mental illness, mental deficiency,
14 physical illness or disability, advanced age, chronic use of drugs, chronic
15 intoxication, fraud, confinement, detention by a foreign power, or
16 disappearance; and

17 (B) the person has property that [WHICH] will be wasted or
18 dissipated unless proper management is provided, or that funds are needed for
19 the support, care, and welfare of the person or those entitled to be supported by
20 the person and [THAT] protection is necessary or desirable to obtain or
21 provide funds.

22 * **Sec. 7.** AS 13.26.180(a) is amended to read:

23 (a) The person to be protected, a person's attorney or other legal
24 representative, any person who is interested in the estate, affairs, or welfare of the
25 person to be protected, including a parent, guardian, [OR] custodian, or caregiver, the
26 Department of Health and Social Services, or any person who would be adversely
27 affected by lack of effective management of the property and affairs of the person to
28 be protected, may petition for the appointment of a conservator or for other
29 appropriate protective order.

30 * **Sec. 8.** AS 13.26.180 is amended by adding a new subsection to read:

31 (c) The petition may include a request for temporary conservatorship as

1 provided in AS 13.26.207 if it appears that the respondent's property is likely to be
2 wasted or dissipated during the pendency of the conservatorship proceeding. A request
3 for temporary conservatorship must specify the facts that cause the petitioner to
4 believe that a temporary conservatorship is necessary.

5 * **Sec. 9.** AS 13.26 is amended by adding new sections to read:

6 **Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an
7 initial petition for conservatorship, it appears that the respondent is in need of a
8 protective order to protect the respondent against waste or dissipation of funds or
9 property, or to obtain funds that are needed for the immediate support, care, and
10 welfare of the respondent or persons entitled to be supported by the respondent, and
11 the respondent is not capable of protecting the respondent's funds or property or
12 obtaining the funds that are needed to support the respondent or persons whom the
13 respondent is required to support, the petitioner may request the appointment of a
14 temporary conservator to authorize the protection or to obtain the necessary funds. The
15 request must state the reasons and factual basis for the request. The petitioner shall
16 immediately file the request with the court and serve copies on the respondent and the
17 respondent's attorney. The court shall conduct a hearing within 72 hours after the
18 filing.

19 (b) If the court determines that a temporary conservator should be appointed,
20 it shall make the appointment and grant to the temporary conservator only the
21 authority that is least restrictive upon the liberty of the respondent and that enables the
22 temporary conservator to provide the protection or authority necessary to protect the
23 respondent from waste or dissipation of funds or property or to obtain the funds
24 necessary for support.

25 (c) The temporary conservatorship expires at the time of the appointment of a
26 full or partial conservator or on the dismissal of the petition for conservatorship.

27 **Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders;**
28 **fees.** (a) A person who is allowed to file a petition for a protective order under
29 AS 13.26.180(a) may file a petition for an ex parte protective order against another
30 person. If the court finds that the petition establishes probable cause that the
31 respondent is financially defrauding the petitioner or a person for whose benefit the

1 petitioner filed the petition and that, because of the fraud, there has been or is an
2 immediate threat of a waste or dissipation of the proposed protected person's funds or
3 other property, the court shall ex parte and without notice to the respondent issue a
4 protective order. The petitioner shall certify to the court in writing any effort that the
5 petitioner made to provide notice to the respondent. The court shall cause a copy of
6 the protective order to be served on the respondent.

7 (b) An ex parte protective order under this section may

8 (1) grant any protection described in AS 13.26.200;

9 (2) supersede an existing power of attorney;

10 (3) prohibit the respondent from having any direct or indirect contact
11 with the petitioner or other person for whose benefit the petitioner filed the petition;
12 and

13 (4) prohibit the respondent from taking any act with respect to the
14 funds or other property of the petitioner or other person for whose benefit the
15 petitioner filed the petition.

16 (c) An ex parte protective order expires 20 days after it is issued, at the end of
17 a six-month extension if granted by the court under (d) of this section, or on the
18 appointment of a temporary or permanent conservator or dismissal of the petition for
19 the ex parte order.

20 (d) On application filed with the court before the expiration of the 20-day ex
21 parte protective order, the court shall schedule a hearing on whether to extend the
22 protective order for up to six months. The court shall provide to the respondent at least
23 10 days' notice of the hearing and the respondent's right to appear and be heard. If the
24 court finds by a preponderance of the evidence that the respondent has committed
25 fraud against the petitioner or the person for whose benefit the petition was filed,
26 regardless of whether the respondent appears at the hearing, the court may extend the
27 ex parte protective order for up to six months.

28 (e) A protective order issued under this section is in addition to any other civil
29 or criminal remedy.

30 (f) A third party shall comply with a protective order issued under this section.
31 A third party who does not comply with a protective order granted under this section

1 may be liable in a civil action to the protected person or the protected person's heirs,
2 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
3 costs, and fees associated with the failure to comply with the protective order. A third
4 party who does not comply with a protective order granted under this section may also
5 be criminally liable under AS 11.56.740 for violating a protective order.

6 (g) The Alaska Court System, after consulting with the Department of Health
7 and Social Services, the office of public advocacy, the office of elder fraud and
8 assistance, the long term care ombudsman, and other interested persons and
9 organizations, shall prepare forms for petitions and protective orders and instructions
10 for use of the forms by a person seeking a protective order under this section. The
11 forms must conform to the Alaska Rules of Probate Procedure and Alaska Rules of
12 Civil Procedure, except that information on the forms may be filled in by legible
13 handwriting. The office of the clerk of each superior and district court shall make
14 available to the public the forms a person seeking a protective order under this section
15 may need and instructions for the use of the forms. The clerk shall provide assistance
16 in completing and filing the forms.

17 (h) Filing fees may not be charged for a petition under this section.

18 * **Sec. 10.** AS 13.26 is amended by adding a new section to article 4 to read:

19 **Sec. 13.26.324. Definitions.** In AS 13.26.165 - 13.26.324, unless the context
20 requires otherwise, "fraud" means

- 21 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
22 (2) offenses against property under AS 11.46.100 - 11.46.740; or
23 (3) exploitation of another person or another person's resources for
24 personal profit or advantage if no significant benefit accrues to the person who is
25 exploited.

26 * **Sec. 11.** AS 18.65.530(a) is amended to read:

27 (a) Except as provided in (b) or (c) of this section, a peace officer, with or
28 without a warrant, shall arrest a person if the officer has probable cause to believe the
29 person has, either in or outside the presence of the officer, within the previous 12
30 hours,

- 31 (1) committed domestic violence, except an offense under

1 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

2 (2) committed the crime of violating a protective order in violation of
3 AS 11.56.740(a)(1) or (2) [AS 11.56.740];

4 (3) violated a condition of release imposed under AS 12.30.016(e) or
5 (f) or 12.30.027.

6 * **Sec. 12.** AS 18.65.540(a) is amended to read:

7 (a) The Department of Public Safety shall maintain a central registry of
8 protective orders issued by or filed with a court of this state under AS 13.26.180,
9 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
10 include, for each protective order, the names of the petitioner and respondent, their
11 dates of birth, and the conditions and duration of the order. The registry shall retain a
12 record of the protective order after it has expired.

13 * **Sec. 13.** AS 18.65.540(b) is amended to read:

14 (b) A peace officer receiving a protective order from a court under
15 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
16 modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a
17 protective order shall [, MUST] take reasonable steps to ensure that the order,
18 modified order, or dismissal is entered into the central registry within 24 hours after
19 being received.

20 * **Sec. 14.** AS 47.24.010(a) is amended to read:

21 (a) Except as provided in (e) and (f) of this section, the following persons
22 who, in the performance of their professional duties, have reasonable cause to believe
23 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
24 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
25 the belief, report the belief to the department's central information and referral service
26 for vulnerable adults in the office of the department that handles adult protective
27 services:

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

29 (2) a mental health professional as defined in AS 47.30.915(11) and
30 including a marital and family therapist licensed under AS 08.63;

31 (3) a pharmacist;

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

3 (5) a guardian or conservator;

4 (6) a police officer;

5 (7) a village public safety officer;

6 (8) a village health aide;

7 (9) a social worker;

8 (10) a member of the clergy;

9 (11) a staff employee of a project funded by the Department of
10 Administration for the provision of services to older Alaskans, the Department of
11 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

12 (12) an employee of a personal care or home health aide program;

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

15 (14) a caregiver of the vulnerable adult;

16 (15) a certified nurse aide;

17 (16) an educator or administrative staff member of a public or
18 private educational institution.

19 * **Sec. 15.** AS 47.24.010(b) is amended to read:

20 (b) A report made under this section may include the name and address of the
21 reporting person and must include

22 (1) the name and contact information [ADDRESS] of the vulnerable
23 adult;

24 (2) information relating to the nature and extent of the undue
25 influence, abandonment, exploitation, abuse, neglect, or self-neglect;

26 (3) other information that the reporting person believes might be
27 helpful in an investigation of the case or in providing protection for the vulnerable
28 adult.

29 * **Sec. 16.** AS 47.24.010(c) is amended to read:

30 (c) The department or its designees shall report to the Department of Law any
31 person required by (a) of this section to report who fails to comply with this section. A

1 person listed in (a) of this section who, because of the circumstances, should have had
2 reasonable cause to believe that a vulnerable adult suffers from **undue influence**,
3 abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to
4 comply with this section is guilty of a class B misdemeanor. If a person convicted
5 under this section is a member of a profession or occupation that is licensed, certified,
6 or regulated by the state, the court shall notify the appropriate licensing, certifying, or
7 regulating entity of the conviction.

8 * **Sec. 17.** AS 47.24.010(d) is amended to read:

9 (d) This section does not prohibit a person listed in (a) of this section, or any
10 other person, from reporting cases of **undue influence**, abandonment, exploitation,
11 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's
12 attention **in the person's nonoccupational capacity. This section does not prohibit**
13 **any other person from reporting a harm under this section.**

14 * **Sec. 18.** AS 47.24.010(e) is amended to read:

15 (e) If a person making a report under this section believes that immediate
16 action is necessary to protect the vulnerable adult from imminent risk of serious
17 physical harm due to **undue influence**, abandonment, exploitation, abuse, neglect, or
18 self-neglect and the reporting person cannot immediately contact the department's
19 central information and referral service for vulnerable adults, the reporting person
20 **shall** [MAY] make the report to a police officer or a village public safety officer. The
21 police officer or village public safety officer shall take immediate action to protect the
22 vulnerable adult and shall [,] at the earliest opportunity **within 24 hours after**
23 **receiving the report of harm** [,] notify the department. A person may not bring an
24 action for damages against a police officer, **a** village public safety officer, the state, or
25 a political subdivision of the state based on a decision under this subsection to take or
26 not to take immediate action to protect a vulnerable adult. If a decision is made under
27 this subsection to take immediate action to protect a vulnerable adult, a person may
28 not bring an action for damages based on the protective actions taken unless the
29 protective actions were performed with gross negligence or intentional misconduct;
30 damages awarded in the action may include only direct economic compensatory
31 damages for personal injury.

1 * **Sec. 19.** AS 47.24.010(f) is amended to read:

2 (f) A person listed in (a) of this section who reports to the long term care
3 ombudsman under AS 47.62.015, or to the Department of Health and Social Services,
4 that a vulnerable adult has been **unduly influenced, abandoned,** exploited, abused, or
5 neglected in an out-of-home care facility is considered to have met the duty to report
6 under (a) of this section.

7 * **Sec. 20.** AS 47.24.010 is amended by adding new subsections to read:

8 (i) A person required to report under this section who makes the report to the
9 person's job supervisor or to another individual working for the entity that employs the
10 person is not relieved of the obligation to make the report to the department as
11 required under (a) of this section.

12 (j) A person who recklessly makes a false report under this section is civilly
13 liable for actual damages suffered by the person who is the subject of the report.

14 * **Sec. 21.** AS 47.24.013(a) is amended to read:

15 (a) If a report received under AS 47.24.010 **pertains to** [REGARDS] the
16 **undue influence,** abandonment, exploitation, abuse, neglect, or self-neglect of a
17 vulnerable adult who is 60 years of age or older that is alleged to have been committed
18 by or to have resulted from the negligence of the staff or a volunteer of an out-of-
19 home care facility, including a facility licensed under AS 47.32, in which the
20 vulnerable adult resides, the department shall transfer the report for investigation to
21 the long term care ombudsman under AS 47.62.015.

22 * **Sec. 22.** AS 47.24.013(b) is amended to read:

23 (b) The department shall investigate a report received under AS 47.24.010
24 regarding the **undue influence,** abandonment, exploitation, abuse, neglect, or self-
25 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have
26 been committed by or to have resulted from the negligence of the staff or a volunteer
27 of an out-of-home care facility in which the vulnerable adult resides.

28 * **Sec. 23.** AS 47.24.013(c) is amended to read:

29 (c) Upon receipt of a report under (a) or (b) of this section, the long term care
30 ombudsman and the department shall

31 (1) conduct an investigation as appropriate under AS 47.62.015 or this

1 title, respectively;

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

4 (3) provide the results of their actions or investigations to the central
5 information and referral service of the **office of the** department **that handles adult**
6 **protective services** within 60 days after the receipt of the report.

7 * **Sec. 24.** AS 47.24.013(d) is amended to read:

8 (d) If the long term care ombudsman receives directly a report regarding the
9 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
10 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
11 report, and the results of the ombudsman's actions or investigations regarding the
12 report, to the central information and referral service of the **office of the** department
13 **that handles adult protective services**. The department may investigate the report as
14 described in AS 47.24.015 if the department determines that action is appropriate.

15 * **Sec. 25.** AS 47.24.015(a) is amended to read:

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

24 * **Sec. 26.** AS 47.24.015(c) is amended to read:

25 (c) The department[,] or its designee[,] shall immediately terminate an
26 investigation under this section upon the request of the vulnerable adult who is the
27 subject of the report made under AS 47.24.010. However, the department or its
28 designee may not terminate the investigation if the investigation to that point has
29 resulted in probable cause to believe that the vulnerable adult is in need of protective
30 services and the request is made personally by the vulnerable adult and the vulnerable
31 adult is not competent to make the request on the adult's own behalf, or the request is

1 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
2 and that person is the alleged perpetrator of the undue influence, abandonment,
3 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
4 this chapter. If the department has probable cause to believe that the vulnerable adult
5 is in need of protective services,

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

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

9 (3) in cases involving fraud, the department or its designee may refer
10 the report made to the department under AS 47.24.010 to the office of public advocacy
11 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.324
12 [AS 44.21.415].

13 * **Sec. 27.** AS 47.24.015 is amended by adding new subsections to read:

14 (h) An individual or entity shall cooperate with an investigation initiated by
15 the department under this section. The individual or entity shall permit representatives
16 of the department to obtain and review any health care or financial records related to a
17 vulnerable adult and to interview staff who have had contact with, treated, or observed
18 the vulnerable adult.

19 (i) A person may not interfere with the department in the performance of its
20 investigation under this section, including interfering with the department's access to
21 the vulnerable adult.

22 (j) If an entity or other person denies the department access to a vulnerable
23 adult, a vulnerable adult's residence, or the health care or financial records of a
24 vulnerable adult, the department may file a petition with the court for an ex parte order
25 granting access if the department has not filed a petition for guardianship or
26 conservatorship of the vulnerable adult. The court may grant the ex parte order if the
27 petition shows that the department has received a report of harm under AS 47.24.010
28 and that the order is necessary for access to the adult or that the health care or financial
29 records are relevant to the department's investigation under this section. Notice of the
30 order shall be given to the party denying access as directed by the court.

31 (k) Notwithstanding any other provision of law, the office of the department

1 that handles adult protective services shall have access to any information compiled or
2 retained by other divisions in the department, regardless of the nature of the
3 information or whether the information is considered confidential, to assist in
4 administering the provisions of this chapter.

5 (l) The department may audiotape or videotape an interview of a vulnerable
6 adult if the adult has the capacity to consent and gives that consent. The department
7 shall document the consent in its investigative file. The department may not audiotape
8 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

9 (m) The department shall provide for the training of investigators who
10 investigate reports of harm under this section. Training must include instruction in
11 federal, state, and local laws and policies of the department related to vulnerable
12 adults, and in investigative techniques. The department may require other appropriate
13 training.

14 (n) In this section, "financial records" include records related to the vulnerable
15 adult maintained by the following:

- 16 (1) the vulnerable adult or a fiduciary for the vulnerable adult;
- 17 (2) a financial institution;
- 18 (3) a caregiver of a vulnerable adult;
- 19 (4) a member of the vulnerable adult's family.

20 * **Sec. 28.** AS 47.24.016(a) is amended to read:

21 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
22 in need of protective services, but the department cannot obtain the vulnerable adult's
23 consent to receive the services because the vulnerable adult is unable to consent or
24 lacks decision making capacity, and has no guardian, [OR] attorney-in-fact, trustee,
25 or surrogate for health care decisions under AS 13.52.030 to serve as the
26 vulnerable adult's surrogate decision maker, the department may select from the
27 following list, in the order of priority listed, an individual who is willing to be the
28 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
29 consent to the vulnerable adult's receipt of protective services:

- 30 (1) the vulnerable adult's spouse, unless

31 [(A) THE VULNERABLE ADULT AND THE SPOUSE

1 HAVE SEPARATE DOMICILES; OR

2 (B)] the vulnerable adult or the spouse have initiated divorce or
3 dissolution proceedings;

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

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

8 (4) a parent of the vulnerable adult;

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

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

13 * **Sec. 29.** AS 47.24.016(b) is amended to read:

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

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

18 (2) there are allegations that individual is a perpetrator of the **undue**
19 **influence**, abandonment, exploitation, abuse, or neglect of the vulnerable adult.

20 * **Sec. 30.** AS 47.24.016(d) is amended to read:

21 (d) The department may not continue to provide protective services to a
22 vulnerable adult based on the consent of a surrogate decision maker serving under this
23 section **or AS 13.52.030** if the department determines that the vulnerable adult has
24 become able to consent or has regained decision making capacity since the surrogate's
25 consent was given. The department may continue protective services to a vulnerable
26 adult who has become able to consent or has regained decision making capacity only
27 if the vulnerable adult consents.

28 * **Sec. 31.** AS 47.24.017(a) is amended to read:

29 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
30 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
31 adult's guardian, [OR] attorney-in-fact, or **trustee**, a surrogate decision maker selected

1 under AS 47.24.016, or a surrogate for health care decisions under AS 13.52.030
2 consents to receipt of the protective services, and to the extent that resources are
3 available, the department shall ensure that the protective services for the vulnerable
4 adult are provided by the department, or its designee, within 10 working days after the
5 department received the report under AS 47.24.010 regarding the undue influence,
6 abandonment, exploitation, abuse, neglect, or self-neglect of the vulnerable adult.
7 However, if circumstances beyond the control of the department or the department's
8 designee make it impossible to provide the protective services within the 10 working
9 days, the department shall ensure that the services are provided as soon as possible
10 after that time.

11 * **Sec. 32.** AS 47.24.019(c) is amended to read:

12 (c) If a vulnerable adult who has consented to receive protective services, or
13 on whose behalf consent to receive protective services has been given, is prevented by
14 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
15 SURROGATE DECISION MAKER] from receiving those services, the department
16 may petition the superior court for an injunction restraining the person
17 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
18 DECISION MAKER] from interfering with the provision of protective services to the
19 vulnerable adult.

20 * **Sec. 33.** AS 47.24.050 is amended to read:

21 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
22 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
23 neglect of a vulnerable adult filed under this chapter are confidential and are not
24 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
25 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
26 chapter, investigation reports may be used by appropriate agencies or individuals
27 inside and outside the state, in connection with investigations or judicial proceedings
28 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
29 neglect of a vulnerable adult.

30 (b) The department shall disclose a report of the undue influence,
31 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the

1 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
2 attorney-in-fact, trustee, or surrogate decision maker consents in writing. The
3 department may not disclose a report of the undue influence, abandonment,
4 exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the vulnerable
5 adult's guardian, attorney-in-fact, trustee, or surrogate decision maker if that person is
6 an alleged perpetrator of the undue influence, abandonment, exploitation, abuse, or
7 neglect of the vulnerable adult and is being investigated under this chapter. The
8 department shall, upon request, disclose the number of verified reports of undue
9 influence, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable
10 adult that occurred at an institution that provides care for vulnerable adults or that
11 were the result of actions or inactions of a public home care provider.

12 * **Sec. 34.** AS 47.24.130 is amended to read:

13 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
14 construed to mean that a person is unduly influenced, abused, neglected, self-
15 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
16 emergency or protective services for the sole reason that the person relies on or is
17 being furnished treatment by spiritual means through prayer alone under [IN
18 ACCORDANCE WITH] the tenets and practices of a church or religious
19 denomination of which the person is a member or adherent, if [PROVIDED THAT]
20 the person consents to the treatment through spiritual means only and the treatment is
21 administered by an accredited practitioner of the church or religious denomination. In
22 this section, "church or religious denomination" has the meaning given to "religious
23 organization" in AS 05.15.690.

24 * **Sec. 35.** AS 47.24.900(2) is amended to read:

25 (2) "abuse" means

26 (A) the [WILFUL,] intentional[,] or reckless nonaccidental [,]
27 and nontherapeutic infliction of physical pain, injury, [OR] mental or
28 emotional distress, or fear, including coercion and intimidation; or

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

30 * **Sec. 36.** AS 47.24.900(3) is amended to read:

31 (3) "caregiver" means

1 (A) a person who is providing care to a vulnerable adult as a
2 result of a family relationship, or who has assumed some or all responsibility
3 for the care of a vulnerable adult voluntarily, by contract, as an employee of a
4 business that provides care in an adult's home, or by court order; or

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

7 * Sec. 37. AS 47.24.900(4) is amended to read:

8 (4) "decision making capacity" means the ability to understand and
9 appreciate the nature and consequences of a decision and the ability to reach and
10 communicate an informed decision; in this paragraph, "informed decision"
11 includes a decision made by the vulnerable adult that is free from undue
12 influence;

13 * Sec. 38. AS 47.24.900(7) is amended to read:

14 (7) "exploitation"

15 (A) means unjust or improper use of another person or another
16 person's resources for one's own profit or advantage, with or without the
17 person's consent; and

18 (B) includes acts by a person who stands in a position of
19 trust or confidence with a vulnerable adult or who knows or should know
20 that the vulnerable adult lacks the capacity to consent that involve
21 obtaining profit or advantage through undue influence, deception, fraud,
22 intimidation, or breach of fiduciary duty;

23 * Sec. 39. AS 47.24.900(9) is amended to read:

24 (9) "neglect" means the intentional or reckless failure by a caregiver
25 to provide essential care or services or access to essential care or services or to
26 carry out a prescribed treatment plan necessary to maintain the physical and mental
27 health of the vulnerable adult when the vulnerable adult is unable to provide or
28 obtain the essential care or services or to carry out the prescribed treatment plan
29 on the vulnerable adult's own behalf; in this paragraph, "essential care or
30 services" means food, clothing, shelter, medical care, and supervision;

31 * Sec. 40. AS 47.24.900(11) is amended to read:

1 (11) "protective services" means services that are intended to prevent
 2 or alleviate harm resulting from undue influence, abandonment, exploitation, abuse,
 3 neglect, or self-neglect and that are provided to a vulnerable adult in need of
 4 protection; in this paragraph, "services" ["PROTECTIVE SERVICES"] includes

- 5 (A) protective placement;
- 6 (B) applying for or obtaining public benefits;
- 7 (C) obtaining health care services and supplies;
- 8 (D) freezing an account at a financial institution;
- 9 (E) petitioning for an ex parte protective order under

10 AS 13.26.209;

- 11 (F) assisting with personal hygiene;
- 12 (G) obtaining food and clothing;
- 13 (H) protection from physical and emotional abuse;
- 14 (I) obtaining representative payee services; and
- 15 (J) coordinating protective services;

16 * **Sec. 41.** AS 47.24.900(15) is amended to read:

17 (15) "unable to consent" means refusal to, or inability to, accept
 18 services because

- 19 (A) the person is an incapacitated person or apparently is an
 20 incapacitated person;
- 21 (B) of coercion by or fear of reprisal from the perpetrator of
 22 undue influence, abandonment, exploitation, abuse, or neglect;
- 23 (C) of dependency on the perpetrator of undue influence,
 24 abandonment, exploitation, abuse, or neglect for services, care, or support; or
- 25 (D) of an inability to perceive that refusal to consent results in
 26 an imminent and substantial danger of loss, waste, or dissipation of income
 27 or assets, eviction, physical or mental harm to self or others, or death [OR
 28 IRREPARABLE HARM TO SELF OR OTHERS];

29 * **Sec. 42.** AS 47.24.900(16) is amended to read:

30 (16) "vulnerable adult" means a person 18 years of age or older who,
 31 because of incapacity, mental illness, mental deficiency, physical illness or

1 **disability, advanced age, chronic use of drugs, chronic intoxication, fraud,**
2 **confinement, or disappearance** [PHYSICAL OR MENTAL IMPAIRMENT], is
3 unable to meet the person's own needs or to seek help without assistance.

4 * **Sec. 43.** AS 47.24.900 is amended by adding new paragraphs to read:

5 (17) "deception" means creating, reinforcing, or failing to correct a
6 false impression or preventing another person from acquiring information that would
7 affect the person's judgment regarding a transaction;

8 (18) "fiduciary duty" means the duty of a guardian, conservator,
9 trustee, representative payee, or holder of a power of attorney of a vulnerable adult to
10 act for the benefit of the vulnerable adult;

11 (19) "financial institution" means an institution subject to state or
12 federal banking or financial regulations, including

13 (A) a broker-dealer;

14 (B) a commercial bank;

15 (C) a savings bank;

16 (D) a credit union;

17 (E) a premium finance company;

18 (F) a small loan company;

19 (G) a bank holding company;

20 (H) a financial holding company;

21 (I) a trust company;

22 (J) a savings and loan association;

23 (K) a deferred deposit advance licensee;

24 (L) an investment bank;

25 (M) an insurance company subject to regulation by AS 21;

26 (N) a licensee subject to regulation by AS 21; and

27 (O) an investment adviser;

28 (20) "person who stands in a position of trust or confidence" means a
29 person who

30 (A) is a relative by blood or marriage;

31 (B) is a joint tenant or tenant in common;

(C) has a legal or fiduciary relationship; or

(D) is a person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's assets or income;

(21) "undue influence" means the use by a person of trust and confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care.

* Sec. 44. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 12(h), Alaska Rules of Criminal Procedure, is amended to read:

(h) **Continuance of Trial.** A motion for continuance of a trial date will be granted by the court only for cause shown. In determining cause, the court shall consider whether the victim is vulnerable because of advanced age and the effect the delay would have on that person. The court shall place its findings on the record. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

* Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Priorities in Scheduling Criminal Cases.** The court shall provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings, and the trial of defendants in custody and of cases in which the victim is vulnerable because of advanced age shall be given preference over other criminal cases. Trial dates in criminal cases in the superior court shall be set at the time of arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set for a date certain.

1 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.209(a) - (g), enacted by
4 sec. 9 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,
5 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
6 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
7 financial exploitation.

8 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, has the effect of amending Rule 9,
9 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
10 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 9 of this Act.

11 (c) AS 47.24.015(j), enacted by sec. 27 of this Act, has the effect of amending Rule
12 65, Alaska Rules of Civil Procedure, relating to injunctions, by allowing ex parte orders to be
13 issued related to injunctive relief for certain access to persons or records in order to
14 investigate a report of harm under AS 47.24.010 for a vulnerable adult.

15 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** Sections 3 - 5, 44, and 45 of this Act apply to offenses committed
18 on or after the effective date of this Act.

19 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **REVISOR'S INSTRUCTIONS.** The revisor of statutes is instructed to change the
22 catch line of

23 (1) AS 47.24.010 from "Reports of harm" to "Persons required to report;
24 reports of harm;"

25 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
26 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
27 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
28 out-of-home care facilities."

29 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **CONDITIONAL EFFECT.** (a) AS 13.26.209(a) - (g), enacted by sec. 9 of this Act,

1 take effect only if sec. 46(a) of this Act receives the two-thirds vote of each house required by
2 art. IV, sec. 15, Constitution of the State of Alaska.

3 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, takes effect only if sec. 46(b) of
4 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
5 the State of Alaska.

6 (c) AS 47.24.015(j), enacted by sec. 27 of this Act, takes effect only if sec. 46(c) of
7 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
8 the State of Alaska.

9 * **Sec. 50.** This Act takes effect immediately under AS 01.10.070(c).

HB 150 PROTECTION OF VULNERABLE ADULTS/MINORS

House Judiciary Subcommittee Working Group

Progress Report

03/11/10

I. Explanation of changes from Version A to Version M

- Version A: Add revisor's language on Title 8:
Page 1, line 10: Insert two new sections to read:

***Sec. 1. AS 08.29.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24.

***Sec. 2. AS 08.63.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24."

Renumber the following sections accordingly.

- Version M: Page 1, line 9; Section 1, AS 08.29.200(b): Change made.
- Version M: Page 2, line 2; Section 2, AS 08.63.200(b): Change made.
- Version A: Page 5, line 21; Section 7, 13.26.209(f): Replace "**person**" with "**party**"
 - Version M: Page 6, line 4; Section 9, 13.26.209(f): Change made.
- Version A: Page 6, line 8; Section 8, 13.26.325(2): Replace "**theft and related offenses**" with "**offenses against property**"
 - Version M: Page 6, line 22; Section 10, 13.26.324(2): Change made, but statute renumbered to 13.26.324 due to 13.26.325 already being used.
- Version A: Page 6, line 20; Section 9, 18.65.530(a)(2): Legal Services determined that the use of "**and**" was not appropriate and replaced it with "**or**"
 - Version M: Page 7, line 3; Section 11, 18.65.530(a)(2): Change made.
- Version A: Page 9, lines 7-8; Section 16, 47.24.010(e): Following "**department**" insert "**at the earliest opportunity**"
 - Version M: Page 9, lines 22-23; Section 18, 47.24.010(e): Change made.
- Version A: Page 14, lines 29-30; Section 30, 47.24.019(c): Replace "**a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**" with "**anyone**"
 - Version M: Page 15, line 14; Section 32, 47.24.019(c): Change made using phrase "**any person**"
- Version A: Pages 14, line 31 – Page 15, line 1; Section 30, 47.24.019(c) : Replace "**family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**" with "**person**"
 - Version M: Page 15, line 16; Section 32, 47.24.019(c): Change made.
- Version A: Page 16, line 24; Section 35, 47.24.900(4): Replace "**means**" with "**includes**"
 - Version M: Page 17, line 11; Section 37, 47.24.900(4): Change made.
- Version A: Page 16, line 30; Section 36, 47.24.900(7)(A): Following "**consent;**" insert "**and**"
 - Version M: Page 17, line 17; Section 38, 47.24.900(7)(A): Change made.
- Version A: Page 17, line 3; Section 36, 47.24.900(7)(B): Following "**deception,**" insert "**fraud,**"
 - Version M: Page 17, line 21; Section 36, 47.24.900(7)(B): Change made, but Legal Services wondered if it needed to be added elsewhere. Sarah will check.

- Version A: Page 17, line 17; Section 38, 47.24.900(11)(A): Following **“protection;”** insert **“and”**
 - Version M: Page 18, lines 1-15; Section 40, 47.24.900(11): Legal Services redrafted this section and removed the need for the change.
- Version A: Page 18, line 9; Section 39, 47.24.900(15)(D): Following **“loss”** insert **“, waste, or dissipation”**
 - Version M: Page 18, line 26; Section 41, 47.24.900(15)(D): Change made.
- Version A: Page 19, line 20; Section 41, 47.24.900(21): Following **“to”** insert **“wrongfully”**
 - Version M: Page 20, lines 5-9; Section 43, 47.24.900(21): Change made, but it should be noted that Legal Services redrafted this section to fit their drafting standards.
- Version A: Page 19, line 21; Section 41, 47.24.900(21): Delete **“deceptively”**
 - Version M: Page 20, lines 5-9; Section 43, 47.24.900(21): Change made, but it should be noted that Legal Services redrafted this section to fit their drafting standards.
- Version A: Page 6, line 20; Section 9, 18.65.530(a)(2): Legal Services determined that the used of **“and”** was not appropriate and replaced it with **“or”**
 - Version M: Page 7, line 3; Section 11, 18.65.530(a)(2): Change made.

II. Conceptual Amendments to Version M (03/10/11):

1. Page 4, lines 17-18; Section 9, 13.26.207(a): the 72-hour instructions to the court regarding temporary conservator requests may be a change to the court rules, specifically Civil Rule 77
2. Page 5, line 4; Section 9, 13.26.209(a): following **“protective order.”** insert **“A third-party filing for an ex parte order under this section on behalf of a proposed protected person shall certify to the court in writing that a copy of the petition has been actually served upon the proposed protected person or the proposed protected person’s legal representative or certify the reasons why providing such service would cause immediate threat of harm to the best interests of the proposed protected person. The court shall cause a copy of any order, including any order setting a hearing on the application for ex parte relief, to be served upon the proposed protected person or legal representative. A proposed protected person filing for ex parte relief under this section either in person or through counsel of record is exempt from the requirements of this section.”**
3. Page 20, line 5; Section 43, 47.24.900(21): following **“person”** insert **“who stands in a postion”** and replace **“and”** with **“or”**
4. Page 4, line 17; Section 9, 13.26.207(a): following **“attorney”** insert **“and other persons as may be ordered by the court”**
5. Page 6, line 22; Section 10, 13.26.324(2): make 44.21.415(g)(1)(B) conform to the language here in Title 13
 - Page 7, line 13: insert

**** Sec. 13. AS 44.21.415(g) is amended to read:**

(g) In this section,
(1) "fraud" means
(A) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
(B) [THEFT AND RELATED OFFENSES] offenses against property under AS 11.46.100 - 11.46.740; or
(C) exploitation of another person or another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited;
(2) "older Alaskan" means a person residing in the state who is 60 years of age or older.”

- Renumber the following bill sections accordingly.

6. Page 13, line 15; Section 27, 47.24.015(n): replace **“the following:”** with **“any person.”** and delete the remainder of the section
7. Page 13, line 24; Section 28, 47.24.016(a): following **“guardian”** insert **“conservator”**
8. Page 14, lines 2-3; Section 28, 47.24.016(a)(1): replace **“divorce or dissolution proceedings;”** with **“divorce, dissolution, or legal separation proceedings;”**
9. Page 14, line 31; Section 31, 47.24.017(a): following **“guardian”** insert **“conservator”**
10. Page 16, line 1; Section 33, 47.24.050(b): following **“guardian”** insert **“conservator”**
11. Page 16, line 26; Section 35, 47.24.900(2)(A): following **“the [WILFUL,]”** insert **“, knowing”** and following **“intentional”** reinsert **“,”**
12. Page 17, line 30; Section 39, 47.24.900(9): replace **“means”** with **“includes”**
13. Page 17, line 24; Section 39, 47.24.900(9): following **“intentional”** insert **“, knowing,”**
14. Page 18, line 8; Section 40, 47.24.900(11): remove (D) and replace with **“(D) staying financial transactions;”**
15. Page 19, lines 8-10; Section 43, 47.24.900(18): remove (18) and replace with **“(18) “fiduciary duty” means the duty of a third-party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act with due regard for the benefit and interests of that person;”**

III. Additional Amendments to Version M:

1. Page 5, line 30; Section 9, 13.26.209(f): replace **“A third party shall comply with a protective order issued under this section.”** with **“A third party who has received actual or legal notice of a protective order issued under this section shall comply with that order. Actual and legal notice of a protective order issued under this section is effective upon the third-party receiving a copy of the order by means of delivery, mail or fax transmission at the nearest residence or place of business of the third-party. Actual and legal notice of a protective order issued under this section is also effective upon all persons upon that order being recorded with the State Recorder.”**
2. Page 12, lines 14-18 and page 12, lines 22-30; Section 27, 47.24.015(h) & (j): Kelly will rewrite.
3. Page 13, lines 5-8; Section 27, 47.24.015(l): Kelly will broaden.
4. Page 17, line 21; Section 38, 47.24.900(7): Sarah will ask Legal Services what their issue was with inserting **“fraud”**.
5. Page 20, lines 10-31; Sections 44 & 45, Direct Court Rule Amendments: Annie and Doug will discuss and solve.
6. Page 21 lines 1-14; Section 46, Indirect Court Rule Amendments: Legal Services will redraft when the rest of the bill is complete.
7. Page 21, lines 19-28; Section 48, Revisor’s Instructions: Legal Services will redraft when the rest of the bill is complete.
8. Page 22, line 9; Section 50, Effective Date: All affected agencies will discuss and solve.

HB 150 PROTECTION OF VULNERABLE ADULTS/MINORS

House Judiciary Subcommittee Working Group

Progress Report

03/16/10

I. Explanation of changes from Version A to Version M

- Version A: Add revisor's language on Title 8:
Page 1, line 10: Insert two new sections to read:

****Sec. 1. AS 08.29.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24.

***Sec. 2. AS 08.63.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24."

Renumber the following sections accordingly.

- Version M: Page 1, line 9; Section 1, AS 08.29.200(b): Change made.
- Version M: Page 2, line 2; Section 2, AS 08.63.200(b): Change made & subsequent sections renumbered.
- Version A: Page 5, line 21; Section 7, 13.26.209(f): Replace "**person**" with "**party**"
 - Version M: Page 6, line 4; Section 9, 13.26.209(f): Change made.
- Version A: Page 6, line 8; Section 8, 13.26.325(2): Replace "**theft and related offenses**" with "**offenses against property**"
 - Version M: Page 6, line 22; Section 10, 13.26.324(2): Change made, but statute renumbered to 13.26.324 due to 13.26.325 already being used.
- Version A: Page 6, line 20; Section 9, 18.65.530(a)(2): Legal Services determined that the use of "**and**" was not appropriate and replaced it with "**or**"
 - Version M: Page 7, line 3; Section 11, 18.65.530(a)(2): Change made.
- Version A: Page 9, lines 7-8; Section 16, 47.24.010(e): Following "**department**" insert "**at the earliest opportunity**"
 - Version M: Page 9, lines 22-23; Section 18, 47.24.010(e): Change made.
- Version A: Page 14, lines 29-30; Section 30, 47.24.019(c): Replace "**a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**" with "**anyone**"
 - Version M: Page 15, line 14; Section 32, 47.24.019(c): Change made using phrase "**any person**"
- Version A: Pages 14, line 31 – Page 15, line 1; Section 30, 47.24.019(c) : Replace "**family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**" with "**person**"
 - Version M: Page 15, line 16; Section 32, 47.24.019(c): Change made.
- Version A: Page 16, line 24; Section 35, 47.24.900(4): Replace "**means**" with "**includes**"
 - Version M: Page 17, line 11; Section 37, 47.24.900(4): Change made.
- Version A: Page 16, line 30; Section 36, 47.24.900(7)(A): Following "**consent;**" insert "**and**"
 - Version M: Page 17, line 17; Section 38, 47.24.900(7)(A): Change made.
- Version A: Page 17, line 3; Section 36, 47.24.900(7)(B): Following "**deception,**" insert "**fraud,**"

- Version M: Page 17, line 21; Section 36, 47.24.900(7)(B): Change made, but Legal Services wondered if it needed to be added elsewhere. **Sarah and Legal Services determined that it did not.**
- Version A: Page 17, line 17; Section 38, 47.24.900(11)(A): Following **“protection;”** insert **“and”**
 - Version M: Page 18, lines 1-15; Section 40, 47.24.900(11): Legal Services redrafted this section and removed the need for the change.
- Version A: Page 18, line 9; Section 39, 47.24.900(15)(D): Following **“loss”** insert **“, waste, or dissipation”**
 - Version M: Page 18, line 26; Section 41, 47.24.900(15)(D): Change made.
- Version A: Page 19, line 20; Section 41, 47.24.900(21): Following **“to”** insert **“wrongfully”**
 - Version M: Page 20, lines 5-9; Section 43, 47.24.900(21): Change made, but it should be noted that Legal Services redrafted this section to fit their drafting standards.
- Version A: Page 19, line 21; Section 41, 47.24.900(21): Delete **“deceptively”**
 - Version M: Page 20, lines 5-9; Section 43, 47.24.900(21): Change made, but it should be noted that Legal Services redrafted this section to fit their drafting standards.
- Version A: Page 6, line 20; Section 9, 18.65.530(a)(2): Legal Services determined that the used of **“and”** was not appropriate and replaced it with **“or”**
 - Version M: Page 7, line 3; Section 11, 18.65.530(a)(2): Change made.

II. Conceptual Amendments to Version M (03/10/11):

1. Page 4, lines 17-18; Section 9, 13.26.207(a): the 72-hour instructions to the court regarding temporary conservator requests require a change to the court rules, specifically Civil Rule 77
2. Page 5, line 4; Section 9, 13.26.209(a): following **“protective order.”** insert **“A third-party filing for an ex parte order under this section on behalf of a proposed protected person shall certify to the court in writing that a copy of the petition has been actually served upon the proposed protected person or the proposed protected person’s legal representative or certify the reasons why providing such service would cause immediate threat of harm to the best interests of the proposed protected person. The court shall cause a copy of any order, including any order setting a hearing on the application for ex parte relief, to be served upon the proposed protected person or legal representative. A proposed protected person filing for ex parte relief under this section either in person or through counsel of record is exempt from the requirements of this section.”**
3. Page 20, line 5; Section 43, 47.24.900(21): following **“person”** insert **“who stands in a position”** and replace **“and”** with **“or”**
4. Page 4, line 17; Section 9, 13.26.207(a): following **“attorney”** insert **“and other persons as may be ordered by the court”**
5. Page 6, line 22; Section 10, 13.26.324(2): make 44.21.415(g)(1)(B) conform to the language here in Title 13
 - Page 7, line 13: insert

“* Sec. 13. AS 44.21.415(g) is amended to read:

(g) In this section,

(1) "fraud" means

(A) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

(B) [THEFT AND RELATED OFFENSES] offenses against property under AS 11.46.100 - 11.46.740; or

(C) exploitation of another person or another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited;

(2) "older Alaskan" means a person residing in the state who is 60 years of age or older.”

- Renumber the following bill sections accordingly.
6. Page 13, line 15; Section 27, 47.24.015(n): replace **“the following:”** with **“any person.”** and delete the remainder of the section
 7. Page 13, line 24; Section 28, 47.24.016(a): following **“guardian”** insert **“conservator”**
 8. Page 14, lines 2-3; Section 28, 47.24.016(a)(1): replace **“divorce or dissolution proceedings;”** with **“divorce, dissolution, or legal separation proceedings;”**
 9. Page 14, line 31; Section 31, 47.24.017(a): following **“guardian”** insert **“conservator”**
 10. Page 16, line 1; Section 33, 47.24.050(b): following **“guardian”** insert **“conservator”**
 11. Page 16, line 26; Section 35, 47.24.900(2)(A): following **“the [WILFUL,]”** insert **“, knowing”** and following **“intentional”** reinsert **“,”**
 12. Page 17, line 30; Section 39, 47.24.900(9): replace **“means”** with **“includes”**
 13. Page 17, line 24; Section 39, 47.24.900(9): following **“intentional”** insert **“, knowing,”**
 14. Page 18, line 8; Section 40, 47.24.900(11): remove (D) and replace with **“(D) staying financial transactions;”**
 15. Page 19, lines 8-10; Section 43, 47.24.900(18): remove (18) and replace with **“(18) “fiduciary duty” means the duty of a third-party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act with due regard for the benefit and interests of that person;”**

III. Additional Amendments to Version M:

- Page 5, line 30; Section 9, 13.26.209(f): replace **“A third party shall comply with a protective order issued under this section.”** with **“A third party who has received actual or legal notice of a protective order issued under this section shall comply with that order. Actual and legal notice of a protective order issued under this section is effective upon the third-party receiving a copy of the order by means of delivery, mail or fax transmission at the nearest residence or place of business of the third-party. Actual and legal notice of a protective order issued under this section is also effective upon all persons upon that order being recorded with the State Recorder.”**
- Page 12, lines 14-18 and page 12, lines 22-30; Section 27, 47.24.015(h) & (j): Delete (h) and (j) and replace with **“(h) In conducting its investigation under this section, the department may issue subpoenas, conduct interviews, and examine any health care or financial records related to a vulnerable adult. The department may seek a court order to enforce a subpoena.”** Re-letter the following subsections accordingly.
- Page 13, lines 5-8; Section 27, 47.24.015(l): Rep. Gruenberg or Gretchen will draft an amendment if they feel this section still needs work.
- Page 17, line 21; Section 38, 47.24.900(7)(B): Following **“duty;”** insert **“in this subsection, “fraud” has the meaning given in AS 13.26.324(1) and (2);”**
- Page 20, lines 10-31; Sections 44 & 45, Direct Court Rule Amendments: Annie and Doug will discuss and solve.
- Page 21 lines 1-14; Section 46, Indirect Court Rule Amendments: Legal Services will redraft when the rest of the bill is complete.
- Page 21, lines 19-28; Section 48, Revisor’s Instructions: Legal Services will redraft when the rest of the bill is complete.

- Page 22, line 9; Section 50, Effective Date: replace “**immediately under AS 01.10.070(c).**” with “**July 1, 2011.**”

IV. Explanation of changes from Version M to Version B

- (4) Version M: Page 4, line 17; Section 9, 13.26.207(a): following “**attorney**” insert “**and other persons as may be ordered by the court**”
 - Version B: Page 4, line 18; Section 9, 13.26.207(a): Change made.
- (1) Version M: Page 4, lines 17-18; Section 9, 13.26.207(a): the 72-hour instructions to the court regarding temporary conservator requests require a change to the court rules, specifically Civil Rule 77
 - Version B: Page 21, lines 21-23; Section 47, Indirect Court Rule Amendments: Change made in (c).
- (2) Version M: Page 5, line 4; Section 9, 13.26.209(a): following “**protective order.**” insert “**A third-party filing for an ex parte order under this section on behalf of a proposed protected person shall certify to the court in writing that a copy of the petition has been actually served upon the proposed protected person or the proposed protected person’s legal representative or certify the reasons why providing such service would cause immediate threat of harm to the best interests of the proposed protected person. The court shall cause a copy of any order, including any order setting a hearing on the application for ex parte relief, to be served upon the proposed protected person or legal representative. A proposed protected person filing for ex parte relief under this section either in person or through counsel of record is exempt from the requirements of this section.**”
 - Version B: Page 4, line 31-page 5, line 3 and Page 5, lines 11-12; Section 9, 13.26.209(a): Change made with different language. See Legal Services memo.
- Version M: Page 5, line 30; Section 9, 13.26.209(f): replace “**A third party shall comply with a protective order issued under this section.**” with “**A third party who has received actual or legal notice of a protective order issued under this section shall comply with that order. Actual and legal notice of a protective order issued under this section is effective upon the third-party receiving a copy of the order by means of delivery, mail or fax transmission at the nearest residence or place of business of the third-party. Actual and legal notice of a protective order issued under this section is also effective upon all persons upon that order being recorded with the State Recorder.**”
 - Version B: Page 6, lines 5-15; Section 9, 13.26.209(f): Change made with new language. See Legal Services memo. May require correction...
- (5) Version M: Page 7, line 13: insert new section (and renumber the following bill sections accordingly) to read:

“* Sec. 13. AS 44.21.415(g) is amended to read:

(g) In this section,

(1) “**fraud**” means

(A) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

(B) [THEFT AND RELATED OFFENSES] offenses against property under AS 11.46.100 - 11.46.740; or

(C) exploitation of another person or another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited;

(2) “**older Alaskan**” means a person residing in the state who is 60 years of age or older.”

- Version B: Page 7, line 30; Section 14, 44.21.415(g): Change made as a new section 14.
- Version M: Page 12, lines 14-18; Section 27, 47.24.015(h): delete (h) and replace with “**(h) In conducting its investigation under this section, the department may issue subpoenas, conduct interviews, and examine any health care or financial records related to a vulnerable adult. The department may seek a court order to enforce a subpoena.**”
 - Version B: Page 13, lines 5-8; Section 28, 47.24.015(h): Change made.
- Version M: Page 12, lines 22-30; Section 27, 47.24.015(j): delete (j) and re-letter the following subsections accordingly
 - Version B: Page 13, line 12; Section 28, 47.24.015(j): Change made and caused a change to the indirect court rules on page 21 (removed the original (c), which was later replaced by Court Rule 77).
- (6) Version M: Page 13, line 15; Section 27, 47.24.015(n): replace “**the following:**” with “**any person.**” and delete the remainder of the section
 - Version B: Page 13, line 27; Section 28, 47.24.015(m): Change made.
- (7) Version M: Page 13, line 24; Section 28, 47.24.016(a): following “**guardian,**” insert “**conservator,**”
 - Version B: Page 14, line 1; Section 29, 47.24.016(a): Change made.
- (8) Version M: Page 14, lines 2-3; Section 28, 47.24.016(a)(1): replace “**divorce or dissolution proceedings;**” with “**divorce, dissolution, or legal separation proceedings;**”
 - Version B: Page 14, lines 10-11; Section 29, 47.24.016(a)(1): Change made.
- (9) Version M: Page 14, line 31; Section 31, 47.24.017(a): following “**guardian,**” insert “**conservator,**”
 - Version B: Page 15, line 8; Section 32, 47.24.017(a): Change made.
- (10) Version M: Page 16, line 1; Section 33, 47.24.050(b): following “**guardian,**” insert “**conservator,**”
 - Version B: Page 16, line 10; Section 34, 47.24.050(b): Change made.
- (11) Version M: Page 16, line 26; Section 35, 47.24.900(2)(A): following “**the [WILFUL,]**” insert “**, knowing**” and following “**intentional**” reinsert “**,**”
 - Version B: Page 17, line 3; Section 36, 47.24.300(2)(A): Change made.
- Version M: Page 17, line 21; Section 38, 47.24.900(7)(B): following “**duty;**” insert “**in this subsection, fraud has the meaning given in AS 13.26.324(1) and (2);**”
 - Version B: Page 17, line 31 - page 18, line 1; Section 39, 47.24.900(7)(B): Change made.
- (13) Version M: Page 17, line 24; Section 39, 47.24.900(9): following “**intentional**” insert “**, knowing,**”
 - Version B: Page 18, line 3; Section 40, 47.24.900(9): Change made.
- (12) Version M: Page 17, line 30; Section 39, 47.24.900(9): replace “**means**” with “**includes**”
 - Version B: Page 18, line 9; Section 40, 47.24.900(9): Change made.
- (14) Version M: Page 18, line 8; Section 40, 47.24.900(11): delete (D) and replace with “**(D) staying financial transactions;**”
 - Version B: Page 18, line 18; Section 41, 47.24.900(11)(D): Change made.
- (15) Version M: Page 19, lines 8-10; Section 43, 47.24.900(18): delete (18) and replace with “**(18) fiduciary duty means the duty of a third-party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act with due regard for the benefit and interests of that person;**”
 - Version B: Page 19, lines 18-20; Section 44, 47.24.900(18): Change made, **but the edits cause problems.**
- (3) Version M: Page 20, line 5; Section 43, 47.24.900(21): following “**person**” insert “**who stands in a position**”

- Version B: Page 20, lines15-16; Section 44, 47.24.900(21): Change made.
- (3) Version M: Page 20, line 5; Section 43, 47.24.900(21): replace “**and**” with “**or**”
 - Version B: Page 20, lines15-16; Section 44, 47.24.900(21): Change made.
- Version M: Page 22, line 9; Section 50, Effective Date: replace “**immediately under AS 01.10.070(c).**” with “**July 1, 2011.**”
 - Version B: Page 22, line 15; Section 51, Effective Date: Change made.

HB 150 PROTECTION OF VULNERABLE ADULTS/MINORS

House Judiciary Subcommittee Working Group

Final Report

By Sarah Munson, Committee Aide

03/18/10

1. A- Page 1, line 10: Inserted two new sections to read:

****Sec. 1. AS 08.29.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24.

***Sec. 2. AS 08.63.200(b) is amended to read:**

(b) Notwithstanding (a) of this section, a person licensed under this chapter shall report incidents of

(1) child abuse or neglect as required by AS 47.17;

(2) harm or assaults suffered by a vulnerable adult [AN ELDERLY PERSON OR DISABLED ADULT] as required by AS 47.24."

Renumbered the following bill sections accordingly.

- I- Page 1, line 9; Sec. 1. AS 08.29.200(b)
 - I- Page 2, line 2; Sec. 2. AS 08.63.200(b)
2. A- Page 4, line 3; Sec. 7. AS 13.26.207(a): Following "attorney" inserted "and other persons as ordered by the court"
- I- Page 4, line 18; Sec. 9. 13.26.207(a)
3. A- Page 4, line 16; Sec. 7. AS 13.26.209(a): Following "person." inserted "A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person's attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm."
- I- Page 4, line 31-page 5, line 3; Sec. 9. AS 13.26.209(a)
4. A- Page 4, lines 22-23; Sec. 7. AS 13.26.209(a): Replaced "The court shall cause a copy of the protective order to be served on the respondent." with "The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person."
- I-Page 5, lines 10-12; Sec. 9. AS 13.26.209(a)
5. A-Page 5, line 8; Sec. 7. AS 13.26.209(d): Following "notice to" inserted "the protected person and"
- I-Page 5, lines 28-29; Sec. 9. AS 13.26.209(d)
6. A-Page 5, lines 16; Sec. 7. AS 13.26.209(f): Replaced "A third party shall comply with a protective order issued under this section." with "A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order."
- I-Page 6, lines 5-6; Sec. 9. AS 13.26.209(f)
7. A-Page 5, line 21; Sec. 7. AS 13.26.209(f): Replaced "person" with "party"
- I-Page 6, line 10; Sec. 9. AS 13.26.209(f)
8. A-Page 5, line 22; Sec. 7. AS 13.26.209(f): Following "order." inserted "As used in this section, "actual or legal notice" means delivery by mail or facsimile at the most recently known place of residence or business of the third party or registering with the Department of Public Safety."
- I-Page 6, lines 12-15; Sec. 9. AS 13.26.209(f)

9. A-Page 6, line 5; Sec. 8. AS 13.26.325: The reference number 13.26.325 was already used, so Legal Services changed it to 13.26.324.
 - I-Page 6, line 29; Sec. 10. AS 13.26.324
10. A-Page 6, line 8; Sec. 8. AS 13.26.325(2): Replaced “**theft and related offenses**” with “**offenses against property**”
 - I-Page 7, line 1; Sec. 10. AS 13.26.324(2)
11. A-Page 6, line 20; Sec. 9. AS 18.65.530(a)(2): Replaced “**and**” with “**or**”
 - I-Page 7, line 13; Sec. 11. AS 18.65.530(a)(2)
12. A-Page 7, line 5; Inserted new section to read:

“* **Sec. ##. AS 44.21.415(g) is amended to read:**

- (g) In this section,**
- (1) "fraud" means**
- (A) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;**
- (B) [THEFT AND RELATED OFFENSES] offenses against property under AS 11.46.100 - 11.46.740; or**
- (C) exploitation of another person or another person's resources for personal profit or advantage with no significant benefit accruing to the person who is exploited;**
- (2) "older Alaskan" means a person residing in the state who is 60 years of age or older.”**

Renumbered the following bill sections accordingly.

- I-Page 7, line 30-Page 8, line 10; Sec. 14. AS 44.21.415(g)
13. A-Page 9, lines 7-8; Sec. 16. AS 47.24.010(e): Reinserted “**at the earliest opportunity**”
 - I-Page 10, lines 13-14; Sec. 19. AS 47.24.010(e)
 14. A-Page 11, line 29-Page 12, line 2; Sec. 25. AS 47.24.015(h): Redrafted (h)
 - I-Page 13, lines 6-9; Sec.28. AS 47.24.015(h)
 15. A-Page 12, lines 6-14; Sec. 25. AS 47.24.015(j): Deleted (j) and re-lettered the following subsections accordingly.
 - I-Page 13, line 13; Sec. 28. AS 47.24.015(j): Note that (j) is Version A’s (k)
 16. A-Page 12, line 30-Page 13, line 3; Sec. 25. AS 47.24.015(n): Replaced “**the following:**” and (1) – (4) with “**any person**”
 - I-Page 13, line 28; Sec. 28. AS 47.24.015(m)
 17. A-Page13, line 8; Sec. 26. AS 47.24.016(a): Following “**guardian,**” inserted “**conservator,**”
 - I-Page 14, line 2; Sec. 29. AS 47.24.015(a)
 18. A-Page13, lines 17-18; Sec. 26. AS 47.24.016(a)(1): Replaced “**divorce or dissolution**” with “**divorce, [OR] dissolution, or legal separation**”
 - I-Page 14, line 11-12; Sec. 29. AS 47.24.015(a)(1)
 19. A-Page 14, line 15; Sec. 29. AS 47.24.017(a): Replaced “**guardian or**” with “**guardian, conservator, [OR]**”
 - I-Page 15, line 9; Sec. 32. AS 47.24.017(a)
 20. A-Page 14, lines 29-30; Sec. 30. AS 47.24.019(c): Replaced “**a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**” with “**any person**”
 - I-Page 15, line 23; Sec. 33. AS 47.24.019(c)
 21. A-Page 14, line 31-Page 15, line 1; Sec. 30. AS 47.24.019(c): Replaced “**a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker**” with “**person**”
 - I-Page 15, line 25; Sec. 33. AS 47.24.019(c)
 22. A-Page 15, line 15; Sec. 31. AS 47.24.050(b): Following “**guardian,**” inserted “**conservator,**”
 - I-Page 16, line 11; Sec. 34. AS 47.24.050(b)

23. NEED TO: I-Page 16, line 14; Sec. 34. AS 47.24.050(b): Following “guardian,” INSERT “conservator,”
24. A-Page 16, line 9; Sec. 33. AS 47.24.900(2)(A): Following “intentional,” inserted “knowing,”
 - I-Page 17, line 4; Sec. 36. AS 47.24.900(2)(A)
25. A-Page 16, line 24; Sec. 35. AS 47.24.900(4): Replaced “means” with “includes”
 - I-Page 17, line 21; Sec. 38. AS 47.24.900(4)
26. A-Page 17, line 3; Sec. 36. AS 47.24.900(7)(B): Following “deception,” inserted “fraud,”
 - I-Page 17, line 31; Sec. 39. AS 47.24.900(7)(B)
27. A-Page 17, line 4; Sec. 36. AS 47.24.900(7)(B): Following “duty,” inserted “in this paragraph, “fraud” has the meaning given in AS 13.26.324(1) and (2);”
 - I-Page 18, lines 1-2; Sec. 39. AS 47.24.900(7)(B)
28. A-Page 17, line 6; Sec. 37. AS 47.24.900(9): Following “intentional,” inserted “knowing,”
 - I-Page 18, line 4; Sec. 40. AS 47.24.900(9)
29. A-Page 17, line 11; Sec. 37. AS 47.24.900(9): Replaced “means” with “includes”
 - I-Page 18, line 10; Sec. 40. AS 47.24.900(9)
30. A-Page 17, lines 13-29; Sec. 38. AS 47.24.900(11): Legal Services reformatted this section, but there was no substantial change
 - I-Page 18, lines 12-26; Sec. 41. AS 47.24.900(11)
31. A-Page 17, line 22; Sec. 38. AS 47.24.900(11)(B)(iv): Replaced “(iv) freezing an account at a financial institution;” with “(D) staying financial transactions;”
 - I-Page 18, line 19; Sec. 41. AS 47.24.900(11)(B)(D)
32. A-Page 18, line 9; Sec. 39. AS 47.24.900(15)(D): Following “loss” inserted “, waste, or dissipation”
 - I-Page 19, line 6; Sec. 42. AS 47.24.900(15)(D)
33. A-Page 18, lines 22-24; Sec. 41. AS 47.24.900(18): Redrafted (18)
 - I-Page 19, lines 19-21; Sec. 44. AS 47.24.900(18)
34. A-Page 19, lines 19-20; Sec. 41. AS 47.24.900(21): Replaced “ “undue influence” means a person of trust or confidence uses the person’s role, relationship or authority to exploit” with “ “undue influence” means the use by a person who stands in a position of trust or confidence of the person’s role, relationship, or authority to wrongfully exploit”
 - I-Page 20, lines 16-18; Sec. 44. AS 47.24.900(21)
35. A-Page 19, line 21; Sec. 41. AS 47.24.900(21): Deleted “deceptively”
 - I-Page 20, line 18; Sec. 44. AS 47.24.900(21)
36. A-Page 19, lines 29-31; Sec. 42. Direct Court Rule Amendments 12(h): Replaced all bold language with “In deciding whether to grant the motion, the court shall consider the victim’s circumstances and the effect that delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record.”
 - I-Page 20, lines 26-29; Sec. 45. Direct Court Rule Amendments 12(h)
37. A-Page 20, lines 5-7; Sec. 42. Direct Court Rule Amendments 45(a): Deleted all bold language.
 - I-Page 21, lines 8-9; Sec. 46. Direct Court Rule Amendments 45(a)
38. A-Page 20, line 7; Sec. 42. Direct Court Rule Amendments 45(a): Following “cases.” inserted “The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date.”
 - I-Page 21, line 8; Sec. 46. Direct Court Rule Amendments 45(a)
39. A-Page 20, lines 20-23; Sec. 43. Indirect Court Rule Amendments (c): Due to the deletion of [A-Page 12, lines 6-14; Sec. 25. AS 47.24.015(j)], deleted (c). Due to [A-Page 4, lines 3-4; Sec. 7. AS 13.26.207(a)], inserted new (c).
 - I-Page 21, lines 23-25; Sec. 47. Indirect Court Rule Amendments (c)
40. A-Page 21, line 18; Sec. 47, Effective Date: Replaced “immediately under AS 01.10.070(c).” with “July 1, 2011.”
 - I-Page 22, line 17; Sec. 51. Effective Date

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2011

SUBJECT: Due process notice (CSHB 150(JUD))
(Work order No. 27-GH1722\B))

TO: Representative Carl Gatto
Chair of the House Judiciary Committee
Attn: Sarah Munson

FROM: Jean M. Mischel
Legislative Counsel

The new work draft that incorporates the changes you requested is enclosed. With regard to the changes requested pertaining to service of a protective order under AS 13.26.209(e), added by sec. 9 of the bill, I did not understand the requested change that provided

"Actual and legal notice of a protective order issued under this section is also effective upon all persons upon that order being recorded with the State Recorder."

In order to attempt to avoid a due process challenge resulting from this provision and to clarify what is meant by "State Recorder," I have modified that language and included that with the requirement of delivery of the notice on the affected person. Did you intend to include these orders in the state registry for sexual assault, stalking, and domestic violence protective orders under AS 18.65.540?

Even with this modification, I do not know whether the changes made to AS 13.26.209(a) and (e) pertaining to service of process and mailed or faxed notices will meet due process standards.

If I may be of further assistance, please advise.

JMM:plm
11-155.plm

Enclosure

27-GH1722AB
Mischel
3/15/11

CS FOR HOUSE BILL NO. 150(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the protection of property of persons under disability and minors;
2 relating to the crime of violating a protective order concerning certain vulnerable
3 persons; relating to aggravating factors at sentencing for offenses concerning a victim 65
4 years or older; relating to the protection of vulnerable adults; making conforming
5 amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure,
6 Rule 77, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure,
7 and Rule 9, Alaska Rules of Administration; and providing for an effective date."

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

9 * **Section 1.** AS 08.29.200(b) is amended to read:

10 (b) Notwithstanding (a) of this section, a person licensed under this chapter
11 shall report incidents of

12 (1) child abuse or neglect as required by AS 47.17;

13 (2) harm or assaults suffered by a vulnerable [AN ELDERLY

1 PERSON OR DISABLED] adult as required by AS 47.24.

2 * **Sec. 2.** AS 08.63.200(b) is amended to read:

3 (b) Notwithstanding (a) of this section, a person licensed under this chapter
4 shall report incidents of

5 (1) child abuse or neglect as required by AS 47.17;

6 (2) harm or assaults suffered by a vulnerable [AN ELDERLY
7 PERSON OR DISABLED] adult as required by AS 47.24.

8 * **Sec. 3.** AS 11.56.740(a) is amended to read:

9 (a) A person commits the crime of violating a protective order if the person is
10 subject to a protective order

11 (1) issued or filed under AS 18.66 and containing a provision listed in
12 AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
13 reckless disregard that the act violates or would violate a provision of the protective
14 order; [OR]

15 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
16 commits or attempts to commit an act that violates or would violate a provision listed
17 in AS 18.65.850(c)(1) - (3); or

18 (3) issued under AS 13.26.180 or 13.26.209 and knowingly commits
19 or attempts to commit an act with reckless disregard that the act violates or
20 would violate a provision of the protective order.

21 * **Sec. 4.** AS 11.56.740(c) is amended to read:

22 (c) In this section, "protective order" means an order issued or filed under
23 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

24 * **Sec. 5.** AS 12.55.155(c) is amended by adding a new paragraph to read:

25 (35) the defendant knowingly directed the conduct constituting the
26 offense at a victim because that person was 65 years of age or older.

27 * **Sec. 6.** AS 13.26.165 is amended to read:

28 **Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and
29 hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may
30 appoint a conservator or issue another [MAKE OTHER] protective order for cause as
31 follows:

1 (1) appointment of a conservator or other protective order may be
2 made in relation to the estate and affairs of a minor if the court determines that

3 (A) a minor owns money or property that requires management
4 or protection **that** [WHICH] cannot otherwise be provided;

5 (B) **the minor**[.] has or may have business affairs **that**
6 [WHICH] may be jeopardized or prevented by the status of being a minor; [,]
7 or

8 (C) [THAT] funds are needed for the minor's support and
9 education and [THAT] protection is necessary or desirable to obtain or provide
10 funds;

11 (2) appointment of a conservator or other protective order may be
12 made in relation to the estate and affairs of a person if the court determines that

13 (A) the person is unable to manage the person's property and
14 affairs effectively for reasons such as mental illness, mental deficiency,
15 physical illness or disability, advanced age, chronic use of drugs, chronic
16 intoxication, **fraud**, confinement, detention by a foreign power, or
17 disappearance; and

18 (B) the person has property **that** [WHICH] will be wasted or
19 dissipated unless proper management is provided, or that funds are needed for
20 the support, care, and welfare of the person or those entitled to be supported by
21 the person and [THAT] protection is necessary or desirable to obtain or
22 provide funds.

23 * **Sec. 7.** AS 13.26.180(a) is amended to read:

24 (a) The person to be protected, **a person's attorney or other legal**
25 **representative**, any person who is interested in the estate, affairs, or welfare of the
26 person to be protected, including a parent, guardian, [OR] custodian, **or caregiver, the**
27 **Department of Health and Social Services**, or any person who would be adversely
28 affected by lack of effective management of the property and affairs of the person to
29 be protected, may petition for the appointment of a conservator or for other
30 appropriate protective order.

31 * **Sec. 8.** AS 13.26.180 is amended by adding a new subsection to read:

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.207 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26 is amended by adding new sections to read:

7 **Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an
8 initial petition for conservatorship, it appears that the respondent is in need of a
9 protective order to protect the respondent against waste or dissipation of funds or
10 property, or to obtain funds that are needed for the immediate support, care, and
11 welfare of the respondent or persons entitled to be supported by the respondent, and
12 the respondent is not capable of protecting the respondent's funds or property or
13 obtaining the funds that are needed to support the respondent or persons whom the
14 respondent is required to support, the petitioner may request the appointment of a
15 temporary conservator to authorize the protection or to obtain the necessary funds. The
16 request must state the reasons and factual basis for the request. The petitioner shall
17 immediately file the request with the court and serve copies on the respondent and the
18 respondent's attorney and other persons as ordered by the court. The court shall
19 conduct a hearing within 72 hours after the filing.

20 (b) If the court determines that a temporary conservator should be appointed,
21 it shall make the appointment and grant to the temporary conservator only the
22 authority that is least restrictive upon the liberty of the respondent and that enables the
23 temporary conservator to provide the protection or authority necessary to protect the
24 respondent from waste or dissipation of funds or property or to obtain the funds
25 necessary for support.

26 (c) The temporary conservatorship expires at the time of the appointment of a
27 full or partial conservator or on the dismissal of the petition for conservatorship.

28 **Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders;
29 fees.** (a) A person who is allowed to file a petition for a protective order under
30 AS 13.26.180(a) may file a petition for an ex parte protective order against another
31 person. A petition filed on behalf of a protected person by another person must be

1 accompanied by proof of service of the petition on the protected person or the person's
2 attorney unless service would cause an immediate threat of harm to the best interests
3 of the protected person and the petition includes a written explanation of the harm. If
4 the court finds that the petition establishes probable cause that the respondent is
5 financially defrauding the petitioner or a person for whose benefit the petitioner filed
6 the petition and that, because of the fraud, there has been or is an immediate threat of a
7 waste or dissipation of the proposed protected person's funds or other property, the
8 court shall ex parte and without notice to the respondent issue a protective order. The
9 petitioner shall certify to the court in writing any effort that the petitioner made to
10 provide notice to the respondent. The court shall cause a copy of the protective order,
11 any related orders, and a scheduling order, if any, to be served on the respondent and
12 the protected person.

13 (b) An ex parte protective order under this section may

14 (1) grant any protection described in AS 13.26.200;

15 (2) supersede an existing power of attorney;

16 (3) prohibit the respondent from having any direct or indirect contact
17 with the petitioner or other person for whose benefit the petitioner filed the petition;
18 and

19 (4) prohibit the respondent from taking any act with respect to the
20 funds or other property of the petitioner or other person for whose benefit the
21 petitioner filed the petition.

22 (c) An ex parte protective order expires 20 days after it is issued, at the end of
23 a six-month extension if granted by the court under (d) of this section, or on the
24 appointment of a temporary or permanent conservator or dismissal of the petition for
25 the ex parte order.

26 (d) On application filed with the court before the expiration of the 20-day ex
27 parte protective order, the court shall schedule a hearing on whether to extend the
28 protective order for up to six months. The court shall provide to the protected person
29 and the respondent at least 10 days' notice of the hearing and the respondent's right to
30 appear and be heard. If the court finds by a preponderance of the evidence that the
31 respondent has committed fraud against the petitioner or the person for whose benefit

1 the petition was filed, regardless of whether the respondent appears at the hearing, the
2 court may extend the ex parte protective order for up to six months.

3 (e) A protective order issued under this section is in addition to any other civil
4 or criminal remedy.

5 (f) A third party that has received actual or legal notice of a protective order
6 issued under this section shall comply with the order. A third party who does not
7 comply with a protective order granted under this section may be liable in a civil
8 action to the protected person or the protected person's heirs, assigns, or estate for a
9 civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees associated
10 with the failure to comply with the protective order. A third party who does not
11 comply with a protective order granted under this section may also be criminally liable
12 under AS 11.56.740 for violating a protective order. As used in this section, "actual or
13 legal notice" means delivery by mail or facsimile at the most recently known place of
14 residence or business of the third party or recording with the Department of Public
15 Safety.

16 (g) The Alaska Court System, after consulting with the Department of Health
17 and Social Services, the office of public advocacy, the office of elder fraud and
18 assistance, the long term care ombudsman, and other interested persons and
19 organizations, shall prepare forms for petitions and protective orders and instructions
20 for use of the forms by a person seeking a protective order under this section. The
21 forms must conform to the Alaska Rules of Probate Procedure and Alaska Rules of
22 Civil Procedure, except that information on the forms may be filled in by legible
23 handwriting. The office of the clerk of each superior and district court shall make
24 available to the public the forms a person seeking a protective order under this section
25 may need and instructions for the use of the forms. The clerk shall provide assistance
26 in completing and filing the forms.

27 (h) Filing fees may not be charged for a petition under this section.

28 * **Sec. 10.** AS 13.26 is amended by adding a new section to article 4 to read:

29 **Sec. 13.26.324. Definitions.** In AS 13.26.165 - 13.26.324, unless the context
30 requires otherwise, "fraud" means

31 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

1 (2) offenses against property under AS 11.46.100 - 11.46.740; or

2 (3) exploitation of another person or another person's resources for
3 personal profit or advantage if no significant benefit accrues to the person who is
4 exploited.

5 * **Sec. 11.** AS 18.65.530(a) is amended to read:

6 (a) Except as provided in (b) or (c) of this section, a peace officer, with or
7 without a warrant, shall arrest a person if the officer has probable cause to believe the
8 person has, either in or outside the presence of the officer, within the previous 12
9 hours,

10 (1) committed domestic violence, except an offense under
11 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

12 (2) committed the crime of violating a protective order in violation of
13 AS 11.56.740(a)(1) or (2) [AS 11.56.740];

14 (3) violated a condition of release imposed under AS 12.30.016(e) or
15 (f) or 12.30.027.

16 * **Sec. 12.** AS 18.65.540(a) is amended to read:

17 (a) The Department of Public Safety shall maintain a central registry of
18 protective orders issued by or filed with a court of this state under AS 13.26.180,
19 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
20 include, for each protective order, the names of the petitioner and respondent, their
21 dates of birth, and the conditions and duration of the order. The registry shall retain a
22 record of the protective order after it has expired.

23 * **Sec. 13.** AS 18.65.540(b) is amended to read:

24 (b) A peace officer receiving a protective order from a court under
25 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
26 modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a
27 protective order shall [, MUST] take reasonable steps to ensure that the order,
28 modified order, or dismissal is entered into the central registry within 24 hours after
29 being received.

30 * **Sec. 14.** AS 44.21.415(g) is amended to read:

31 (g) In this section,

1 (1) "fraud" means

2 (A) robbery, extortion, and coercion under AS 11.41.500 -
3 11.41.530;

4 (B) [THEFT AND RELATED] offenses against property
5 under AS 11.46.100 - 11.46.740; or

6 (C) exploitation of another person or another person's resources
7 for personal profit or advantage with no significant benefit accruing to the
8 person who is exploited;

9 (2) "older Alaskan" means a person residing in the state who is 60
10 years of age or older.

11 * **Sec. 15.** AS 47.24.010(a) is amended to read:

12 (a) Except as provided in (e) and (f) of this section, the following persons
13 who, in the performance of their professional duties, have reasonable cause to believe
14 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
15 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
16 the belief, report the belief to the department's central information and referral service
17 for vulnerable adults in the office of the department that handles adult protective
18 services:

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

20 (2) a mental health professional as defined in AS 47.30.915(11) and
21 including a marital and family therapist licensed under AS 08.63;

22 (3) a pharmacist;

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

25 (5) a guardian or conservator;

26 (6) a police officer;

27 (7) a village public safety officer;

28 (8) a village health aide;

29 (9) a social worker;

30 (10) a member of the clergy;

31 (11) a staff employee of a project funded by the Department of

1 Administration for the provision of services to older Alaskans, the Department of
2 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

3 (12) an employee of a personal care or home health aide program;

4 (13) an emergency medical technician or a mobile intensive care
5 paramedic;

6 (14) a caregiver of the vulnerable adult;

7 (15) a certified nurse aide;

8 **(16) an educator or administrative staff member of a public or**
9 **private educational institution.**

10 * **Sec. 16.** AS 47.24.010(b) is amended to read:

11 (b) A report made under this section may include the name and address of the
12 reporting person and must include

13 (1) the name and **contact information** [ADDRESS] of the vulnerable
14 adult;

15 (2) information relating to the nature and extent of the **undue**
16 **influence.** abandonment, exploitation, abuse, neglect, or self-neglect;

17 (3) other information that the reporting person believes might be
18 helpful in an investigation of the case or in providing protection for the vulnerable
19 adult.

20 * **Sec. 17.** AS 47.24.010(c) is amended to read:

21 (c) The department or its designees shall report to the Department of Law any
22 person required by (a) of this section to report who fails to comply with this section. A
23 person listed in (a) of this section who, because of the circumstances, should have had
24 reasonable cause to believe that a vulnerable adult suffers from **undue influence,**
25 abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to
26 comply with this section is guilty of a class B misdemeanor. If a person convicted
27 under this section is a member of a profession or occupation that is licensed, certified,
28 or regulated by the state, the court shall notify the appropriate licensing, certifying, or
29 regulating entity of the conviction.

30 * **Sec. 18.** AS 47.24.010(d) is amended to read:

31 (d) This section does not prohibit a person listed in (a) of this section, or any

1 other person, from reporting cases of **undue influence**, abandonment, exploitation,
2 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's
3 attention **in the person's nonoccupational capacity. This section does not prohibit**
4 **any other person from reporting a harm under this section.**

5 * **Sec. 19.** AS 47.24.010(e) is amended to read:

6 (e) If a person making a report under this section believes that immediate
7 action is necessary to protect the vulnerable adult from imminent risk of serious
8 physical harm due to **undue influence**, abandonment, exploitation, abuse, neglect, or
9 self-neglect and the reporting person cannot immediately contact the department's
10 central information and referral service for vulnerable adults, the reporting person
11 **shall** [MAY] make the report to a police officer or a village public safety officer. The
12 police officer or village public safety officer shall take immediate action to protect the
13 vulnerable adult and shall [,] at the earliest opportunity **within 24 hours after**
14 **receiving the report of harm** [,] notify the department. A person may not bring an
15 action for damages against a police officer, **a** village public safety officer, the state, or
16 a political subdivision of the state based on a decision under this subsection to take or
17 not to take immediate action to protect a vulnerable adult. If a decision is made under
18 this subsection to take immediate action to protect a vulnerable adult, a person may
19 not bring an action for damages based on the protective actions taken unless the
20 protective actions were performed with gross negligence or intentional misconduct;
21 damages awarded in the action may include only direct economic compensatory
22 damages for personal injury.

23 * **Sec. 20.** AS 47.24.010(f) is amended to read:

24 (f) A person listed in (a) of this section who reports to the long term care
25 ombudsman under AS 47.62.015, or to the Department of Health and Social Services,
26 that a vulnerable adult has been **unduly influenced, abandoned,** exploited, abused, or
27 neglected in an out-of-home care facility is considered to have met the duty to report
28 under (a) of this section.

29 * **Sec. 21.** AS 47.24.010 is amended by adding new subsections to read:

30 (i) A person required to report under this section who makes the report to the
31 person's job supervisor or to another individual working for the entity that employs the

1 person is not relieved of the obligation to make the report to the department as
2 required under (a) of this section.

3 (j) A person who recklessly makes a false report under this section is civilly
4 liable for actual damages suffered by the person who is the subject of the report.

5 * **Sec. 22.** AS 47.24.013(a) is amended to read:

6 (a) If a report received under AS 47.24.010 pertains to [REGARDS] the
7 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a
8 vulnerable adult who is 60 years of age or older that is alleged to have been committed
9 by or to have resulted from the negligence of the staff or a volunteer of an out-of-
10 home care facility, including a facility licensed under AS 47.32, in which the
11 vulnerable adult resides, the department shall transfer the report for investigation to
12 the long term care ombudsman under AS 47.62.015.

13 * **Sec. 23.** AS 47.24.013(b) is amended to read:

14 (b) The department shall investigate a report received under AS 47.24.010
15 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
16 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have
17 been committed by or to have resulted from the negligence of the staff or a volunteer
18 of an out-of-home care facility in which the vulnerable adult resides.

19 * **Sec. 24.** AS 47.24.013(c) is amended to read:

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

22 (1) conduct an investigation as appropriate under AS 47.62.015 or this
23 title, respectively;

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

26 (3) provide the results of their actions or investigations to the central
27 information and referral service of the office of the department that handles adult
28 protective services within 60 days after the receipt of the report.

29 * **Sec. 25.** AS 47.24.013(d) is amended to read:

30 (d) If the long term care ombudsman receives directly a report regarding the
31 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a

1 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
2 report, and the results of the ombudsman's actions or investigations regarding the
3 report, to the central information and referral service of the **office of the** department
4 **that handles adult protective services**. The department may investigate the report as
5 described in AS 47.24.015 if the department determines that action is appropriate.

6 * **Sec. 26.** AS 47.24.015(a) is amended to read:

7 (a) Upon the department's receipt of a report under AS 47.24.010 that is not
8 transferred under AS 47.24.013, the department, or its designee, shall promptly initiate
9 an investigation to determine whether the vulnerable adult who is the subject of the
10 report suffers from **undue influence**, abandonment, exploitation, abuse, neglect, or
11 self-neglect. The department, or its designee, shall conduct a face-to-face interview
12 with the subject of the report unless that person is unconscious or the department, or
13 its designee, has determined that a face-to-face interview could further endanger the
14 vulnerable adult.

15 * **Sec. 27.** AS 47.24.015(c) is amended to read:

16 (c) The department[,], or its designee[,], shall immediately terminate an
17 investigation under this section upon the request of the vulnerable adult who is the
18 subject of the report made under AS 47.24.010. However, the department or its
19 designee may not terminate the investigation if the investigation to that point has
20 resulted in probable cause to believe that the vulnerable adult is in need of protective
21 services and the request is made personally by the vulnerable adult and the vulnerable
22 adult is not competent to make the request on the adult's own behalf, or the request is
23 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
24 and that person is the alleged perpetrator of the **undue influence**, abandonment,
25 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
26 this chapter. If the department has probable cause to believe that the vulnerable adult
27 is in need of protective services,

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

29 (2) the department or its designee may refer the report made to the
30 department under AS 47.24.010 to a police officer for criminal investigation; or

31 (3) in cases involving fraud, the department or its designee may refer

1 the report made to the department under AS 47.24.010 to the office of public advocacy
2 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.324
3 [AS 44.21.415].

4 * **Sec. 28.** AS 47.24.015 is amended by adding new subsections to read:

5 (h) In conducting an investigation under this section, the department may issue
6 subpoenas, conduct interviews, and examine any health care or financial records
7 related to a vulnerable adult. The department may seek a court order to enforce a
8 subpoena.

9 (i) A person may not interfere with the department in the performance of its
10 investigation under this section, including interfering with the department's access to
11 the vulnerable adult.

12 (j) Notwithstanding any other provision of law, the office of the department
13 that handles adult protective services shall have access to any information compiled or
14 retained by other divisions in the department, regardless of the nature of the
15 information or whether the information is considered confidential, to assist in
16 administering the provisions of this chapter.

17 (k) The department may audiotape or videotape an interview of a vulnerable
18 adult if the adult has the capacity to consent and gives that consent. The department
19 shall document the consent in its investigative file. The department may not audiotape
20 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

21 (l) The department shall provide for the training of investigators who
22 investigate reports of harm under this section. Training must include instruction in
23 federal, state, and local laws and policies of the department related to vulnerable
24 adults, and in investigative techniques. The department may require other appropriate
25 training.

26 (m) In this section, "financial records" include financial records related to the
27 vulnerable adult that are maintained by any person.

28 * **Sec. 29.** AS 47.24.016(a) is amended to read:

29 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
30 in need of protective services, but the department cannot obtain the vulnerable adult's
31 consent to receive the services because the vulnerable adult is unable to consent or

1 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
2 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
3 the vulnerable adult's surrogate decision maker, the department may select from the
4 following list, in the order of priority listed, an individual who is willing to be the
5 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
6 consent to the vulnerable adult's receipt of protective services:

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

8 [(A) THE VULNERABLE ADULT AND THE SPOUSE
9 HAVE SEPARATE DOMICILES; OR

10 (B)] the vulnerable adult or the spouse have initiated divorce,
11 dissolution, or legal separation proceedings;

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

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

16 (4) a parent of the vulnerable adult;

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

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

21 * **Sec. 30.** AS 47.24.016(b) is amended to read:

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

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

26 (2) there are allegations that individual is a perpetrator of the undue
27 influence, abandonment, exploitation, abuse, or neglect of the vulnerable adult.

28 * **Sec. 31.** AS 47.24.016(d) is amended to read:

29 (d) The department may not continue to provide protective services to a
30 vulnerable adult based on the consent of a surrogate decision maker serving under this
31 section or AS 13.52.030 if the department determines that the vulnerable adult has

1 become able to consent or has regained decision making capacity since the surrogate's
2 consent was given. The department may continue protective services to a vulnerable
3 adult who has become able to consent or has regained decision making capacity only
4 if the vulnerable adult consents.

5 * **Sec. 32.** AS 47.24.017(a) is amended to read:

6 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
7 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
8 adult's guardian, conservator, [OR] attorney-in-fact, trustee, [OR] a surrogate
9 decision maker selected under AS 47.24.016, or a surrogate for health care
10 decisions under AS 13.52.030 consents to receipt of the protective services, and to
11 the extent that resources are available, the department shall ensure that the protective
12 services for the vulnerable adult are provided by the department, or its designee,
13 within 10 working days after the department received the report under AS 47.24.010
14 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
15 neglect of the vulnerable adult. However, if circumstances beyond the control of the
16 department or the department's designee make it impossible to provide the protective
17 services within the 10 working days, the department shall ensure that the services are
18 provided as soon as possible after that time.

19 * **Sec. 33.** AS 47.24.019(c) is amended to read:

20 (c) If a vulnerable adult who has consented to receive protective services, or
21 on whose behalf consent to receive protective services has been given, is prevented by
22 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
23 SURROGATE DECISION MAKER] from receiving those services, the department
24 may petition the superior court for an injunction restraining the person
25 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
26 DECISION MAKER] from interfering with the provision of protective services to the
27 vulnerable adult.

28 * **Sec. 34.** AS 47.24.050 is amended to read:

29 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
30 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
31 neglect of a vulnerable adult filed under this chapter are confidential and are not

1 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
2 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
3 chapter, investigation reports may be used by appropriate agencies or individuals
4 inside and outside the state, in connection with investigations or judicial proceedings
5 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
6 neglect of a vulnerable adult.

7 (b) The department shall disclose a report of the undue influence,
8 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
9 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
10 conservator, attorney-in-fact, trustee, or surrogate decision maker consents in
11 writing. The department may not disclose a report of the undue influence,
12 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the
13 vulnerable adult's guardian, attorney-in-fact, trustee, or surrogate decision maker if
14 that person is an alleged perpetrator of the undue influence, abandonment,
15 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
16 this chapter. The department shall, upon request, disclose the number of verified
17 reports of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect
18 of a vulnerable adult that occurred at an institution that provides care for vulnerable
19 adults or that were the result of actions or inactions of a public home care provider.

20 * **Sec. 35.** AS 47.24.130 is amended to read:

21 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
22 construed to mean that a person is unduly influenced, abused, neglected, self-
23 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
24 emergency or protective services for the sole reason that the person relies on or is
25 being furnished treatment by spiritual means through prayer alone under [IN
26 ACCORDANCE WITH] the tenets and practices of a church or religious
27 denomination of which the person is a member or adherent, if [PROVIDED THAT]
28 the person consents to the treatment through spiritual means only and the treatment is
29 administered by an accredited practitioner of the church or religious denomination. In
30 this section, "church or religious denomination" has the meaning given to "religious
31 organization" in AS 05.15.690.

1 * **Sec. 36.** AS 47.24.900(2) is amended to read:

2 (2) "abuse" means

3 (A) the **knowing** [WILFUL], intentional, or reckless
4 nonaccidental [,] and nontherapeutic infliction of physical pain, injury, [OR]
5 mental **or emotional** distress, **or fear, including coercion and intimidation;**

6 or

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

8 * **Sec. 37.** AS 47.24.900(3) is amended to read:

9 (3) "caregiver" means

10 (A) a person who is providing care to a vulnerable adult as a
11 result of a family relationship, or who has assumed **some or all** responsibility
12 for the care of a vulnerable adult voluntarily, by contract, **as an employee of a**
13 **business that provides care in an adult's home,** or by court order; or

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

16 * **Sec. 38.** AS 47.24.900(4) is amended to read:

17 (4) "decision making capacity" means the ability to understand and
18 appreciate the nature and consequences of a decision and the ability to reach and
19 communicate an informed decision; **in this paragraph, "informed decision"**
20 **includes a decision made by the vulnerable adult that is free from undue**
21 **influence;**

22 * **Sec. 39.** AS 47.24.900(7) is amended to read:

23 (7) "exploitation"

24 (A) means unjust or improper use of another person or another
25 person's resources for one's own profit or advantage, **with or without the**
26 **person's consent; and**

27 (B) **includes acts by a person who stands in a position of**
28 **trust or confidence with a vulnerable adult or who knows or should know**
29 **that the vulnerable adult lacks the capacity to consent that involve**
30 **obtaining profit or advantage through undue influence, deception, fraud,**
31 **intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has**

1 the meaning given in AS 13.26.324(1) and (2):

2 * **Sec. 40.** AS 47.24.900(9) is amended to read:

3 (9) "neglect" means the knowing, intentional, or reckless failure by a
4 caregiver to provide essential care or services or access to essential care or services
5 or to carry out a prescribed treatment plan necessary to maintain the physical and
6 mental health of the vulnerable adult when the vulnerable adult is unable to provide
7 or obtain the essential care or services or to carry out the prescribed treatment
8 plan on the vulnerable adult's own behalf; in this paragraph, "essential care or
9 services" includes food, clothing, shelter, medical care, and supervision:

10 * **Sec. 41.** AS 47.24.900(11) is amended to read:

11 (11) "protective services" means services that are intended to prevent
12 or alleviate harm resulting from undue influence, abandonment, exploitation, abuse,
13 neglect, or self-neglect and that are provided to a vulnerable adult in need of
14 protection; in this paragraph, "services" ["PROTECTIVE SERVICES"] includes

- 15 (A) protective placement;
- 16 (B) applying for or obtaining public benefits;
- 17 (C) obtaining health care services and supplies;
- 18 (D) staying financial transactions;
- 19 (E) petitioning for an ex parte protective order under
- 20 AS 13.26.209;
- 21 (F) assisting with personal hygiene;
- 22 (G) obtaining food and clothing;
- 23 (H) protection from physical and emotional abuse;
- 24 (I) obtaining representative payee services; and
- 25 (J) coordinating protective services;

26 * **Sec. 42.** AS 47.24.900(15) is amended to read:

27 (15) "unable to consent" means refusal to, or inability to, accept
28 services because

- 29 (A) the person is an incapacitated person or apparently is an
- 30 incapacitated person;
- 31 (B) of coercion by or fear of reprisal from the perpetrator of

1 **undue influence**, abandonment, exploitation, abuse, or neglect;

2 (C) of dependency on the perpetrator of **undue influence**,
3 abandonment, exploitation, abuse, or neglect for services, care, or support; or

4 (D) of an inability to perceive that refusal to consent results in
5 an imminent and substantial danger of **loss, waste, or dissipation of income**
6 **or assets, eviction, physical or mental harm to self or others, or** death [OR
7 IRREPARABLE HARM TO SELF OR OTHERS];

8 * **Sec. 43.** AS 47.24.900(16) is amended to read:

9 (16) "vulnerable adult" means a person 18 years of age or older who,
10 because of **incapacity, mental illness, mental deficiency, physical illness or**
11 **disability, advanced age, chronic use of drugs, chronic intoxication, fraud,**
12 **confinement, or disappearance** [PHYSICAL OR MENTAL IMPAIRMENT], is
13 unable to meet the person's own needs or to seek help without assistance.

14 * **Sec. 44.** AS 47.24.900 is amended by adding new paragraphs to read:

15 (17) "deception" means creating, reinforcing, or failing to correct a
16 false impression or preventing another person from acquiring information that would
17 affect the person's judgment regarding a transaction;

18 (18) "fiduciary duty" means the duty of a third party who is in a
19 position of trust or confidence with another person, including a vulnerable adult, with
20 due regard for the benefit and interest of that person;

21 (19) "financial institution" means an institution subject to state or
22 federal banking or financial regulations, including

23 (A) a broker-dealer;

24 (B) a commercial bank;

25 (C) a savings bank;

26 (D) a credit union;

27 (E) a premium finance company;

28 (F) a small loan company;

29 (G) a bank holding company;

30 (H) a financial holding company;

31 (I) a trust company;

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- (J) a savings and loan association;
- (K) a deferred deposit advance licensee;
- (L) an investment bank;
- (M) an insurance company subject to regulation by AS 21;
- (N) a licensee subject to regulation by AS 21; and
- (O) an investment adviser;

(20) "person who stands in a position of trust or confidence" means a person who

- (A) is a relative by blood or marriage;
- (B) is a joint tenant or tenant in common;
- (C) has a legal or fiduciary relationship; or
- (D) is a person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's assets or income;

(21) "undue influence" means the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care.

* **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 12(h), Alaska Rules of Criminal Procedure, is amended to read:

(h) **Continuance of Trial.** A motion for continuance of a trial date will be granted by the court only for cause shown. In determining cause, the court shall consider whether the victim is vulnerable because of advanced age and the effect the delay would have on that person. The court shall place its findings on the record. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

* **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of
3 Criminal Procedure, is amended to read:

4 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
5 placing criminal proceedings upon appropriate calendars. Preference shall be given to
6 criminal proceedings, and the trial of defendants in custody and of cases in which the
7 victim is vulnerable because of advanced age shall be given preference over other
8 criminal cases. Trial dates in criminal cases in the superior court shall be set at the
9 time of arraignment, and if a trial date is thereafter vacated, the trial shall be
10 immediately set for a date certain.

11 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (g), enacted by
14 sec. 9 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,
15 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
16 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
17 financial exploitation.

18 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, has the effect of amending Rule 9,
19 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
20 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 9 of this Act.

21 (c) AS 13.26.207, enacted by sec. 9 of this Act, has the effect of amending Rule 77,
22 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
23 petition for the appointment of a temporary conservator.

24 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. Sections 3 - 5, 45, and 46 of this Act apply to offenses committed
27 on or after the effective date of this Act.

28 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
31 catch line of

1 (1) AS 47.24.010 from "Reports of harm" to "Persons required to report;
2 reports of harm;"

3 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
4 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
5 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
6 out-of-home care facilities."

7 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **CONDITIONAL EFFECT.** (a) AS 13.26.209(a) - (g), enacted by sec. 9 of this Act,
10 take effect only if sec. 47(a) of this Act receives the two-thirds vote of each house required by
11 art. IV, sec. 15, Constitution of the State of Alaska.

12 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, takes effect only if sec. 47(b) of
13 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
14 the State of Alaska.

15 * **Sec. 51.** This Act takes effect July 1, 2011.

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Mischel
3/17/11

CS FOR HOUSE BILL NO. 150(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the protection of property of persons under disability and minors;**
2 **relating to the crime of violating a protective order concerning certain vulnerable**
3 **persons; relating to aggravating factors at sentencing for offenses concerning a victim 65**
4 **years or older; relating to the protection of vulnerable adults; making conforming**
5 **amendments; amending Rules 12(h) and 45(a), Alaska Rules of Criminal Procedure,**
6 **Rule 77, Alaska Rules of Civil Procedure, Rule 17, Alaska Rules of Probate Procedure,**
7 **and Rule 9, Alaska Rules of Administration; and providing for an effective date."**

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

9 *** Section 1.** AS 08.29.200(b) is amended to read:

10 (b) Notwithstanding (a) of this section, a person licensed under this chapter
11 shall report incidents of

12 (1) child abuse or neglect as required by AS 47.17;

13 (2) harm or assaults suffered by a vulnerable [AN ELDERLY

1 PERSON OR DISABLED] adult as required by AS 47.24.

2 * **Sec. 2.** AS 08.63.200(b) is amended to read:

3 (b) Notwithstanding (a) of this section, a person licensed under this chapter
4 shall report incidents of

5 (1) child abuse or neglect as required by AS 47.17;

6 (2) harm or assaults suffered by a vulnerable [AN ELDERLY
7 PERSON OR DISABLED] adult as required by AS 47.24.

8 * **Sec. 3.** AS 11.56.740(a) is amended to read:

9 (a) A person commits the crime of violating a protective order if the person is
10 subject to a protective order

11 (1) issued or filed under AS 18.66 and containing a provision listed in
12 AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
13 reckless disregard that the act violates or would violate a provision of the protective
14 order; [OR]

15 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
16 commits or attempts to commit an act that violates or would violate a provision listed
17 in AS 18.65.850(c)(1) - (3); or

18 (3) issued under AS 13.26.180 or 13.26.209 and knowingly commits
19 or attempts to commit an act with reckless disregard that the act violates or
20 would violate a provision of the protective order.

21 * **Sec. 4.** AS 11.56.740(c) is amended to read:

22 (c) In this section, "protective order" means an order issued or filed under
23 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

24 * **Sec. 5.** AS 12.55.155(c) is amended by adding a new paragraph to read:

25 (35) the defendant knowingly directed the conduct constituting the
26 offense at a victim because that person was 65 years of age or older.

27 * **Sec. 6.** AS 13.26.165 is amended to read:

28 **Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and
29 hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may
30 appoint a conservator or issue another [MAKE OTHER] protective order for cause as
31 follows:

1 (1) appointment of a conservator or other protective order may be
2 made in relation to the estate and affairs of a minor if the court determines that

3 (A) a minor owns money or property that requires management
4 or protection that [WHICH] cannot otherwise be provided;

5 (B) the minor [,] has or may have business affairs that
6 [WHICH] may be jeopardized or prevented by the status of being a minor; [,]
7 or

8 (C) [THAT] funds are needed for the minor's support and
9 education and [THAT] protection is necessary or desirable to obtain or provide
10 funds;

11 (2) appointment of a conservator or other protective order may be
12 made in relation to the estate and affairs of a person if the court determines that

13 (A) the person is unable to manage the person's property and
14 affairs effectively for reasons such as mental illness, mental deficiency,
15 physical illness or disability, advanced age, chronic use of drugs, chronic
16 intoxication, fraud, confinement, detention by a foreign power, or
17 disappearance; and

18 (B) the person has property that [WHICH] will be wasted or
19 dissipated unless proper management is provided, or that funds are needed for
20 the support, care, and welfare of the person or those entitled to be supported by
21 the person and [THAT] protection is necessary or desirable to obtain or
22 provide funds.

23 * Sec. 7. AS 13.26.180(a) is amended to read:

24 (a) The person to be protected, a person's attorney or other legal
25 representative, any person who is interested in the estate, affairs, or welfare of the
26 person to be protected, including a parent, guardian, [OR] custodian, or caregiver, the
27 Department of Health and Social Services, or any person who would be adversely
28 affected by lack of effective management of the property and affairs of the person to
29 be protected, may petition for the appointment of a conservator or for other
30 appropriate protective order.

31 * Sec. 8. AS 13.26.180 is amended by adding a new subsection to read:

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.207 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26 is amended by adding new sections to read:

7 **Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an
8 initial petition for conservatorship, it appears that the respondent is in need of a
9 protective order to protect the respondent against waste or dissipation of funds or
10 property, or to obtain funds that are needed for the immediate support, care, and
11 welfare of the respondent or persons entitled to be supported by the respondent, and
12 the respondent is not capable of protecting the respondent's funds or property or
13 obtaining the funds that are needed to support the respondent or persons whom the
14 respondent is required to support, the petitioner may request the appointment of a
15 temporary conservator to authorize the protection or to obtain the necessary funds. The
16 request must state the reasons and factual basis for the request. The petitioner shall
17 immediately file the request with the court and serve copies on the respondent and the
18 respondent's attorney and other persons as ordered by the court. The court shall
19 conduct a hearing within 72 hours after the filing.

20 (b) If the court determines that a temporary conservator should be appointed,
21 it shall make the appointment and grant to the temporary conservator only the
22 authority that is least restrictive upon the liberty of the respondent and that enables the
23 temporary conservator to provide the protection or authority necessary to protect the
24 respondent from waste or dissipation of funds or property or to obtain the funds
25 necessary for support.

26 (c) The temporary conservatorship expires at the time of the appointment of a
27 full or partial conservator or on the dismissal of the petition for conservatorship.

28 **Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders;**
29 **fees.** (a) A person who is allowed to file a petition for a protective order under
30 AS 13.26.180(a) may file a petition for an ex parte protective order against another
31 person. A petition filed on behalf of a protected person by another person must be

1 accompanied by proof of service of the petition on the protected person or the person's
2 attorney unless service would cause an immediate threat of harm to the best interests
3 of the protected person and the petition includes a written explanation of the harm. If
4 the court finds that the petition establishes probable cause that the respondent is
5 financially defrauding the petitioner or a person for whose benefit the petitioner filed
6 the petition and that, because of the fraud, there has been or is an immediate threat of a
7 waste or dissipation of the proposed protected person's funds or other property, the
8 court shall ex parte and without notice to the respondent issue a protective order. The
9 petitioner shall certify to the court in writing any effort that the petitioner made to
10 provide notice to the respondent. The court shall cause a copy of the protective order,
11 any related orders, and a scheduling order, if any, to be served on the respondent and
12 the protected person.

13 (b) An ex parte protective order under this section may

- 14 (1) grant any protection described in AS 13.26.200;
15 (2) supersede an existing power of attorney;
16 (3) prohibit the respondent from having any direct or indirect contact
17 with the petitioner or other person for whose benefit the petitioner filed the petition;
18 and
19 (4) prohibit the respondent from taking any act with respect to the
20 funds or other property of the petitioner or other person for whose benefit the
21 petitioner filed the petition.

22 (c) An ex parte protective order expires 20 days after it is issued, at the end of
23 a six-month extension if granted by the court under (d) of this section, or on the
24 appointment of a temporary or permanent conservator or dismissal of the petition for
25 the ex parte order.

26 (d) On application filed with the court before the expiration of the 20-day ex
27 parte protective order, the court shall schedule a hearing on whether to extend the
28 protective order for up to six months. The court shall provide to the protected person
29 and the respondent at least 10 days' notice of the hearing and the respondent's right to
30 appear and be heard. If the court finds by a preponderance of the evidence that the
31 respondent has committed fraud against the petitioner or the person for whose benefit

1 the petition was filed, regardless of whether the respondent appears at the hearing, the
2 court may extend the ex parte protective order for up to six months.

3 (e) A protective order issued under this section is in addition to any other civil
4 or criminal remedy.

5 (f) A third party that has received actual or legal notice of a protective order
6 issued under this section shall comply with the order. A third party who does not
7 comply with a protective order granted under this section may be liable in a civil
8 action to the protected person or the protected person's heirs, assigns, or estate for a
9 civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees associated
10 with the failure to comply with the protective order. A third party who does not
11 comply with a protective order granted under this section may also be criminally liable
12 under AS 11.56.740 for violating a protective order. As used in this section, "actual or
13 legal notice" means delivery by mail or facsimile at the most recently known place of
14 residence or business of the third party or registering with the Department of Public
15 Safety.

16 (g) The Alaska Court System, after consulting with the Department of Health
17 and Social Services, the office of public advocacy, the office of elder fraud and
18 assistance, the long term care ombudsman, and other interested persons and
19 organizations, shall prepare forms for petitions and protective orders and instructions
20 for use of the forms by a person seeking a protective order under this section. The
21 forms must conform to the Alaska Rules of Probate Procedure and Alaska Rules of
22 Civil Procedure, except that information on the forms may be filled in by legible
23 handwriting. The office of the clerk of each superior and district court shall make
24 available to the public the forms a person seeking a protective order under this section
25 may need and instructions for the use of the forms. The clerk shall provide assistance
26 in completing and filing the forms.

27 (h) Filing fees may not be charged for a petition under this section.

28 * **Sec. 10.** AS 13.26 is amended by adding a new section to article 4 to read:

29 **Sec. 13.26.324. Definitions.** In AS 13.26.165 - 13.26.324, unless the context
30 requires otherwise, "fraud" means

31 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;

- 1 (2) offenses against property under AS 11.46.100 - 11.46.740; or
- 2 (3) exploitation of another person or another person's resources for
- 3 personal profit or advantage if no significant benefit accrues to the person who is
- 4 exploited.

5 * **Sec. 11.** AS 18.65.530(a) is amended to read:

6 (a) Except as provided in (b) or (c) of this section, a peace officer, with or

7 without a warrant, shall arrest a person if the officer has probable cause to believe the

8 person has, either in or outside the presence of the officer, within the previous 12

9 hours,

- 10 (1) committed domestic violence, except an offense under
- 11 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;
- 12 (2) committed the crime of violating a protective order in violation of
- 13 AS 11.56.740(a)(1) or (2) [AS 11.56.740];
- 14 (3) violated a condition of release imposed under AS 12.30.016(e) or
- 15 (f) or 12.30.027.

16 * **Sec. 12.** AS 18.65.540(a) is amended to read:

17 (a) The Department of Public Safety shall maintain a central registry of

18 protective orders issued by or filed with a court of this state under AS 13.26.180,

19 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must

20 include, for each protective order, the names of the petitioner and respondent, their

21 dates of birth, and the conditions and duration of the order. The registry shall retain a

22 record of the protective order after it has expired.

23 * **Sec. 13.** AS 18.65.540(b) is amended to read:

24 (b) A peace officer receiving a protective order from a court under

25 AS 13.26.180, 13.26.209, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a

26 modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a

27 protective order shall [, MUST] take reasonable steps to ensure that the order,

28 modified order, or dismissal is entered into the central registry within 24 hours after

29 being received.

30 * **Sec. 14.** AS 44.21.415(g) is amended to read:

31 (g) In this section,

- 1 (1) "fraud" means
2 (A) robbery, extortion, and coercion under AS 11.41.500 -
3 11.41.530;
4 (B) [THEFT AND RELATED] offenses against property
5 under AS 11.46.100 - 11.46.740; or
6 (C) exploitation of another person or another person's resources
7 for personal profit or advantage with no significant benefit accruing to the
8 person who is exploited;

9 (2) "older Alaskan" means a person residing in the state who is 60
10 years of age or older.

11 * **Sec. 15.** AS 47.24.010(a) is amended to read:

12 (a) Except as provided in (e) and (f) of this section, the following persons
13 who, in the performance of their professional duties, have reasonable cause to believe
14 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
15 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
16 the belief, report the belief to the department's central information and referral service
17 for vulnerable adults in the office of the department that handles adult protective
18 services:

- 19 (1) a physician or other licensed health care provider;
20 (2) a mental health professional as defined in AS 47.30.915(11) and
21 including a marital and family therapist licensed under AS 08.63;
22 (3) a pharmacist;
23 (4) an administrator or employee of a nursing home, residential care,
24 or health care facility;
25 (5) a guardian or conservator;
26 (6) a police officer;
27 (7) a village public safety officer;
28 (8) a village health aide;
29 (9) a social worker;
30 (10) a member of the clergy;
31 (11) a staff employee of a project funded by the Department of

1 Administration for the provision of services to older Alaskans, the Department of
2 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;

3 (12) an employee of a personal care or home health aide program;

4 (13) an emergency medical technician or a mobile intensive care
5 paramedic;

6 (14) a caregiver of the vulnerable adult;

7 (15) a certified nurse aide;

8 **(16) an educator or administrative staff member of a public or**
9 **private educational institution.**

10 * **Sec. 16.** AS 47.24.010(b) is amended to read:

11 (b) A report made under this section may include the name and address of the
12 reporting person and must include

13 (1) the name and **contact information** [ADDRESS] of the vulnerable
14 adult;

15 (2) information relating to the nature and extent of the **undue**
16 **influence**, abandonment, exploitation, abuse, neglect, or self-neglect;

17 (3) other information that the reporting person believes might be
18 helpful in an investigation of the case or in providing protection for the vulnerable
19 adult.

20 * **Sec. 17.** AS 47.24.010(c) is amended to read:

21 (c) The department or its designees shall report to the Department of Law any
22 person required by (a) of this section to report who fails to comply with this section. A
23 person listed in (a) of this section who, because of the circumstances, should have had
24 reasonable cause to believe that a vulnerable adult suffers from **undue influence**,
25 abandonment, exploitation, abuse, neglect, or self-neglect but who knowingly fails to
26 comply with this section is guilty of a class B misdemeanor. If a person convicted
27 under this section is a member of a profession or occupation that is licensed, certified,
28 or regulated by the state, the court shall notify the appropriate licensing, certifying, or
29 regulating entity of the conviction.

30 * **Sec. 18.** AS 47.24.010(d) is amended to read:

31 (d) This section does not prohibit a person listed in (a) of this section, or any

1 other person, from reporting cases of **undue influence**, abandonment, exploitation,
2 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's
3 attention **in the person's nonoccupational capacity. This section does not prohibit**
4 **any other person from reporting a harm under this section.**

5 * **Sec. 19.** AS 47.24.010(e) is amended to read:

6 (e) If a person making a report under this section believes that immediate
7 action is necessary to protect the vulnerable adult from imminent risk of serious
8 physical harm due to **undue influence**, abandonment, exploitation, abuse, neglect, or
9 self-neglect and the reporting person cannot immediately contact the department's
10 central information and referral service for vulnerable adults, the reporting person
11 **shall** [MAY] make the report to a police officer or a village public safety officer. The
12 police officer or village public safety officer shall take immediate action to protect the
13 vulnerable adult and shall [,] at the earliest opportunity **within 24 hours after**
14 **receiving the report of harm** [,] notify the department. A person may not bring an
15 action for damages against a police officer, a village public safety officer, the state, or
16 a political subdivision of the state based on a decision under this subsection to take or
17 not to take immediate action to protect a vulnerable adult. If a decision is made under
18 this subsection to take immediate action to protect a vulnerable adult, a person may
19 not bring an action for damages based on the protective actions taken unless the
20 protective actions were performed with gross negligence or intentional misconduct;
21 damages awarded in the action may include only direct economic compensatory
22 damages for personal injury.

23 * **Sec. 20.** AS 47.24.010(f) is amended to read:

24 (f) A person listed in (a) of this section who reports to the long term care
25 ombudsman under AS 47.62.015, or to the Department of Health and Social Services,
26 that a vulnerable adult has been **unduly influenced, abandoned,** exploited, abused, or
27 neglected in an out-of-home care facility is considered to have met the duty to report
28 under (a) of this section.

29 * **Sec. 21.** AS 47.24.010 is amended by adding new subsections to read:

30 (i) A person required to report under this section who
31 makes the report to the person's job supervisor or to another individual

1 working for the entity that employs the person is not relieved of the
2 obligation to make the report to the department as required under (a) of
3 this section.

4 (j) A person who recklessly makes a false report under this section is civilly
5 liable for actual damages suffered by the person who is the subject of the report.

6 * **Sec. 22.** AS 47.24.013(a) is amended to read:

7 (a) If a report received under AS 47.24.010 **pertains to** [REGARDS] the
8 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
9 vulnerable adult who is 60 years of age or older that is alleged to have been committed
10 by or to have resulted from the negligence of the staff or a volunteer of an out-of-
11 home care facility, including a facility licensed under AS 47.32, in which the
12 vulnerable adult resides, the department shall transfer the report for investigation to
13 the long term care ombudsman under AS 47.62.015.

14 * **Sec. 23.** AS 47.24.013(b) is amended to read:

15 (b) The department shall investigate a report received under AS 47.24.010
16 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
17 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have
18 been committed by or to have resulted from the negligence of the staff or a volunteer
19 of an out-of-home care facility in which the vulnerable adult resides.

20 * **Sec. 24.** AS 47.24.013(c) is amended to read:

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

23 (1) conduct an investigation as appropriate under AS 47.62.015 or this
24 title, respectively;

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

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

30 * **Sec. 25.** AS 47.24.013(d) is amended to read:

31 (d) If the long term care ombudsman receives directly a report regarding the

1 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
2 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
3 report, and the results of the ombudsman's actions or investigations regarding the
4 report, to the central information and referral service of the **office of the** department
5 **that handles adult protective services**. The department may investigate the report as
6 described in AS 47.24.015 if the department determines that action is appropriate.

7 * **Sec. 26.** AS 47.24.015(a) is amended to read:

8 (a) Upon the department's receipt of a report under AS 47.24.010 that is not
9 transferred under AS 47.24.013, the department, or its designee, shall promptly initiate
10 an investigation to determine whether the vulnerable adult who is the subject of the
11 report suffers from **undue influence**, abandonment, exploitation, abuse, neglect, or
12 self-neglect. The department, or its designee, shall conduct a face-to-face interview
13 with the subject of the report unless that person is unconscious or the department, or
14 its designee, has determined that a face-to-face interview could further endanger the
15 vulnerable adult.

16 * **Sec. 27.** AS 47.24.015(c) is amended to read:

17 (c) The department[,] or its designee[,] shall immediately terminate an
18 investigation under this section upon the request of the vulnerable adult who is the
19 subject of the report made under AS 47.24.010. However, the department or its
20 designee may not terminate the investigation if the investigation to that point has
21 resulted in probable cause to believe that the vulnerable adult is in need of protective
22 services and the request is made personally by the vulnerable adult and the vulnerable
23 adult is not competent to make the request on the adult's own behalf, or the request is
24 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
25 and that person is the alleged perpetrator of the **undue influence**, abandonment,
26 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
27 this chapter. If the department has probable cause to believe that the vulnerable adult
28 is in need of protective services,

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

30 (2) the department or its designee may refer the report made to the
31 department under AS 47.24.010 to a police officer for criminal investigation; or

1 (3) in cases involving fraud, the department or its designee may refer
2 the report made to the department under AS 47.24.010 to the office of public advocacy
3 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.324
4 [AS 44.21.415].

5 * **Sec. 28.** AS 47.24.015 is amended by adding new subsections to read:

6 (h) In conducting an investigation under this section, the department may issue
7 subpoenas, conduct interviews, and examine any health care or financial records
8 related to a vulnerable adult. The department may seek a court order to enforce a
9 subpoena.

10 (i) A person may not interfere with the department in the performance of its
11 investigation under this section, including interfering with the department's access to
12 the vulnerable adult.

13 (j) Notwithstanding any other provision of law, the office of the department
14 that handles adult protective services shall have access to any information compiled or
15 retained by other divisions in the department, regardless of the nature of the
16 information or whether the information is considered confidential, to assist in
17 administering the provisions of this chapter.

18 (k) The department may audiotape or videotape an interview of a vulnerable
19 adult if the adult has the capacity to consent and gives that consent. The department
20 shall document the consent in its investigative file. The department may not audiotape
21 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

22 (l) The department shall provide for the training of investigators who
23 investigate reports of harm under this section. Training must include instruction in
24 federal, state, and local laws and policies of the department related to vulnerable
25 adults, and in investigative techniques. The department may require other appropriate
26 training.

27 (m) In this section, "financial records" include financial records related to the
28 vulnerable adult that are maintained by any person.

29 * **Sec. 29.** AS 47.24.016(a) is amended to read:

30 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
31 in need of protective services, but the department cannot obtain the vulnerable adult's

1 consent to receive the services because the vulnerable adult is unable to consent or
2 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
3 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
4 the vulnerable adult's surrogate decision maker, the department may select from the
5 following list, in the order of priority listed, an individual who is willing to be the
6 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
7 consent to the vulnerable adult's receipt of protective services:

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

9 [(A) THE VULNERABLE ADULT AND THE SPOUSE
10 HAVE SEPARATE DOMICILES; OR

11 (B)] the vulnerable adult or the spouse have initiated divorce,
12 [OR] dissolution, or legal separation proceedings;

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

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

17 (4) a parent of the vulnerable adult;

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

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

22 * **Sec. 30.** AS 47.24.016(b) is amended to read:

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

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

27 (2) there are allegations that individual is a perpetrator of the undue
28 influence, abandonment, exploitation, abuse, or neglect of the vulnerable adult.

29 * **Sec. 31.** AS 47.24.016(d) is amended to read:

30 (d) The department may not continue to provide protective services to a
31 vulnerable adult based on the consent of a surrogate decision maker serving under this

1 section or AS 13.52.030 if the department determines that the vulnerable adult has
2 become able to consent or has regained decision making capacity since the surrogate's
3 consent was given. The department may continue protective services to a vulnerable
4 adult who has become able to consent or has regained decision making capacity only
5 if the vulnerable adult consents.

6 * **Sec. 32.** AS 47.24.017(a) is amended to read:

7 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
8 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
9 adult's guardian, conservator, [OR] attorney-in-fact, trustee, [OR] a surrogate
10 decision maker selected under AS 47.24.016, or a surrogate for health care
11 decisions under AS 13.52.030 consents to receipt of the protective services, and to
12 the extent that resources are available, the department shall ensure that the protective
13 services for the vulnerable adult are provided by the department, or its designee,
14 within 10 working days after the department received the report under AS 47.24.010
15 regarding the undue influence, abandonment, exploitation, abuse, neglect, or self-
16 neglect of the vulnerable adult. However, if circumstances beyond the control of the
17 department or the department's designee make it impossible to provide the protective
18 services within the 10 working days, the department shall ensure that the services are
19 provided as soon as possible after that time.

20 * **Sec. 33.** AS 47.24.019(c) is amended to read:

21 (c) If a vulnerable adult who has consented to receive protective services, or
22 on whose behalf consent to receive protective services has been given, is prevented by
23 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
24 SURROGATE DECISION MAKER] from receiving those services, the department
25 may petition the superior court for an injunction restraining the person
26 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
27 DECISION MAKER] from interfering with the provision of protective services to the
28 vulnerable adult.

29 * **Sec. 34.** AS 47.24.050 is amended to read:

30 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
31 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-

1 neglect of a vulnerable adult filed under this chapter are confidential and are not
2 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
3 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
4 chapter, investigation reports may be used by appropriate agencies or individuals
5 inside and outside the state, in connection with investigations or judicial proceedings
6 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
7 neglect of a vulnerable adult.

8 (b) The department shall disclose a report of the undue influence,
9 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
10 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
11 conservator, attorney-in-fact, trustee, or surrogate decision maker consents in
12 writing. The department may not disclose a report of the undue influence,
13 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the
14 vulnerable adult's guardian, attorney-in-fact, trustee, or surrogate decision maker if
15 that person is an alleged perpetrator of the undue influence, abandonment,
16 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
17 this chapter. The department shall, upon request, disclose the number of verified
18 reports of undue influence, abandonment, exploitation, abuse, neglect, or self-neglect
19 of a vulnerable adult that occurred at an institution that provides care for vulnerable
20 adults or that were the result of actions or inactions of a public home care provider.

21 * **Sec. 35.** AS 47.24.130 is amended to read:

22 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
23 construed to mean that a person is unduly influenced, abused, neglected, self-
24 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
25 emergency or protective services for the sole reason that the person relies on or is
26 being furnished treatment by spiritual means through prayer alone under [IN
27 ACCORDANCE WITH] the tenets and practices of a church or religious
28 denomination of which the person is a member or adherent, if [PROVIDED THAT]
29 the person consents to the treatment through spiritual means only and the treatment is
30 administered by an accredited practitioner of the church or religious denomination. In
31 this section, "church or religious denomination" has the meaning given to "religious

1 organization" in AS 05.15.690.

2 * **Sec. 36.** AS 47.24.900(2) is amended to read:

3 (2) "abuse" means

4 (A) the [WILFUL,] intentional, knowing, or reckless
5 nonaccidental [,] and nontherapeutic infliction of physical pain, injury, [OR]
6 mental or emotional distress, or fear, including coercion and intimidation;

7 or

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

9 * **Sec. 37.** AS 47.24.900(3) is amended to read:

10 (3) "caregiver" means

11 (A) a person who is providing care to a vulnerable adult as a
12 result of a family relationship, or who has assumed some or all responsibility
13 for the care of a vulnerable adult voluntarily, by contract, as an employee of a
14 business that provides care in an adult's home, or by court order; or

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

17 * **Sec. 38.** AS 47.24.900(4) is amended to read:

18 (4) "decision making capacity" means the ability to understand and
19 appreciate the nature and consequences of a decision and the ability to reach and
20 communicate an informed decision; in this paragraph, "informed decision"
21 includes a decision made by the vulnerable adult that is free from undue
22 influence;

23 * **Sec. 39.** AS 47.24.900(7) is amended to read:

24 (7) "exploitation"

25 (A) means unjust or improper use of another person or another
26 person's resources for one's own profit or advantage, with or without the
27 person's consent; and

28 (B) includes acts by a person who stands in a position of
29 trust or confidence with a vulnerable adult or who knows or should know
30 that the vulnerable adult lacks the capacity to consent that involve
31 obtaining profit or advantage through undue influence, deception, fraud,

1 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has
2 the meaning given in AS 13.26.324(1) and (2):

3 * Sec. 40. AS 47.24.900(9) is amended to read:

4 (9) "neglect" means the intentional, knowing, or reckless failure by a
5 caregiver to provide essential care or services or access to essential care or services
6 or to carry out a prescribed treatment plan necessary to maintain the physical and
7 mental health of the vulnerable adult when the vulnerable adult is unable to provide
8 or obtain the essential care or services or to carry out the prescribed treatment
9 plan on the vulnerable adult's own behalf; in this paragraph, "essential care or
10 services" includes food, clothing, shelter, medical care, and supervision;

11 * Sec. 41. AS 47.24.900(11) is amended to read:

12 (11) "protective services" means services that are intended to prevent
13 or alleviate harm resulting from undue influence, abandonment, exploitation, abuse,
14 neglect, or self-neglect and that are provided to a vulnerable adult in need of
15 protection; in this paragraph, "services" ["PROTECTIVE SERVICES"] includes

- 16 (A) protective placement;
- 17 (B) applying for or obtaining public benefits;
- 18 (C) obtaining health care services and supplies;
- 19 (D) staying financial transactions;
- 20 (E) petitioning for an ex parte protective order under
- 21 AS 13.26.209;
- 22 (F) assisting with personal hygiene;
- 23 (G) obtaining food and clothing;
- 24 (H) protection from physical and emotional abuse;
- 25 (I) obtaining representative payee services; and
- 26 (J) coordinating protective services;

27 * Sec. 42. AS 47.24.900(15) is amended to read:

28 (15) "unable to consent" means refusal to, or inability to, accept
29 services because

- 30 (A) the person is an incapacitated person or apparently is an
- 31 incapacitated person;

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

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

(D) of an inability to perceive that refusal to consent results in an imminent and substantial danger of loss, waste, or dissipation of income or assets, eviction, physical or mental harm to self or others, or death [OR IRREPARABLE HARM TO SELF OR OTHERS];

* Sec. 43. AS 47.24.900(16) is amended to read:

(16) "vulnerable adult" means a person 18 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance [PHYSICAL OR MENTAL IMPAIRMENT], is unable to meet the person's own needs or to seek help without assistance.

* Sec. 44. AS 47.24.900 is amended by adding new paragraphs to read:

(17) "deception" means creating, reinforcing, or failing to correct a false impression or preventing another person from acquiring information that would affect the person's judgment regarding a transaction;

(18) "fiduciary duty" means the duty of a third party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act with due regard for the benefit and interest of that person;

(19) "financial institution" means an institution subject to state or federal banking or financial regulations, including

- (A) a broker-dealer;
- (B) a commercial bank;
- (C) a savings bank;
- (D) a credit union;
- (E) a premium finance company;
- (F) a small loan company;
- (G) a bank holding company;
- (H) a financial holding company;

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- (I) a trust company;
- (J) a savings and loan association;
- (K) a deferred deposit advance licensee;
- (L) an investment bank;
- (M) an insurance company subject to regulation by AS 21;
- (N) a licensee subject to regulation by AS 21; and
- (O) an investment adviser;

(20) "person who stands in a position of trust or confidence" means a person who

- (A) is a relative by blood or marriage;
- (B) is a joint tenant or tenant in common;
- (C) has a legal or fiduciary relationship; or
- (D) is a person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's assets or income;

(21) "undue influence" means the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care.

* **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 12(h), Alaska Rules of Criminal Procedure, is amended to read:

(h) **Continuance of Trial.** A motion for continuance of a trial date will be granted by the court only for cause shown. In deciding whether to grant the motion, the court shall consider the victim's circumstances and the effect the delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

1 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of
4 Criminal Procedure, is amended to read:

5 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
6 placing criminal proceedings upon appropriate calendars. Preference shall be given to
7 criminal proceedings and the trial of defendants in custody shall be given preference
8 over other criminal cases. **The court shall consider the circumstances of the victim,**
9 **particularly a victim of advanced age or extreme youth, in setting the trial date.**

10 Trial dates in criminal cases in the superior court shall be set at the time of
11 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
12 for a date certain.

13 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (g), enacted by
16 sec. 9 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,
17 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
18 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
19 financial exploitation.

20 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, has the effect of amending Rule 9,
21 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
22 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 9 of this Act.

23 (c) AS 13.26.207, enacted by sec. 9 of this Act, has the effect of amending Rule 77,
24 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
25 petition for the appointment of a temporary conservator.

26 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 APPLICABILITY. Sections 3 - 5, 45, and 46 of this Act apply to offenses committed
29 on or after the effective date of this Act.

30 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
2 catch line of

3 (1) AS 47.24.010 from "Reports of harm" to "Persons required to report;
4 reports of harm";

5 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
6 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
7 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
8 out-of-home care facilities."

9 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **CONDITIONAL EFFECT.** (a) AS 13.26.209(a) - (g), enacted by sec. 9 of this Act,
12 take effect only if sec. 47(a) of this Act receives the two-thirds vote of each house required by
13 art. IV, sec. 15, Constitution of the State of Alaska.

14 (b) AS 13.26.209(h), enacted by sec. 9 of this Act, takes effect only if sec. 47(b) of
15 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
16 the State of Alaska.

17 * **Sec. 51.** This Act takes effect July 1, 2011.

Gretchen Staff

From: Sterling, Scott A (DOA) [scott.sterling@alaska.gov]
Sent: Thursday, March 17, 2011 12:47 PM
To: Sarah Munson; Gretchen Staff; Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS); Levitt, Rachel E (DOA); Laughlin, Wilda J (HSS)
Subject: Fiduciary Duty Definition Case Citation
Attachments: image001.jpg

The case citation for the definition of fiduciary duty is *Paskvan v. Mesich*, 455 P.2d 229, 232 and fn.5 (Alaska 1969). The relevant portion reads as follows:

"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." [FN5] *Twelve Hundred 'L' St. Corp. v. Inlet Co.*, 438 P.2d 708, 709 (Alaska 1968); *Swenson v. Wintercorn*, 92 Ill.App.2d 88, 234 N.E.2d 91, 97 (1968).

Please let me know of any questions thanks. Scott

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▷

Supreme Court of Alaska.
Thomas J. PASKVAN, Jr., Appellant,
v.
Drago MESICH et al., Appellees.
Drago MESICH et al., Appellants,
v.
Paul DRAZENOVICH, Appellee.

Nos. 913, 921.
June 4, 1969.

Will contest in which appeals were taken from a decision of the Superior Court, Fourth Judicial District, Warren William Taylor, J. The Supreme Court, Dimond, J., held, inter alia, that evidence required finding that at time of execution of 1952 will testator did not have sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act, and finding to the contrary was clearly erroneous.

Affirmed in part, reversed and remanded for further proceedings in part.

West Headnotes

[1] Appeal and Error 30 ↪ 1008.1(5)

30 Appeal and Error

30XVI Review

30XVI(1) Questions of Fact, Verdicts, and Findings

30XVI(1)3 Findings of Court

30k1008 Conclusiveness in General

30k1008.1 In General

30k1008.1(5) k. Clearly erroneous findings. Most Cited Cases
(Formerly 30k1008(1))

Clear error will not be found unless reviewing court is convinced on whole record that mistake has been committed. Rules of Civil Procedure, rule 52(a).

[2] Fraud 184 ↪ 7

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k5 Elements of Constructive Fraud

184k7 k. Fiduciary or confidential relations.

Most Cited Cases

A "confidential or fiduciary relationship" exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to interests of the one imposing the confidence.

[3] Wills 409 ↪ 166(2)

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k162 Evidence

409k166 Weight and Sufficiency

409k166(2) k. Personal, confidential, or fiduciary relations in general. Most Cited Cases

Evidence supported finding that a confidential relationship existed between testator and his business partner where, inter alia, testator gave partner power of attorney so that partner could act and speak for testator, testator executed his will in favor of partner so that there would be a basis for their partnership venture, and testator conveyed a one-half interest in restaurant and bar to partner.

[4] Wills 409 ↪ 163(2)

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k162 Evidence

409k163 Presumptions and Burden of Proof

409k163(2) k. Personal, confidential, or fiduciary relations in general. Most Cited Cases

Initial burden is on will contestant to establish undue influence, and existence of a confidential rela-

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tionship alone does not suffice to raise a presumption that undue influence was present.

[5] Wills 409 ↪163(4)

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k162 Evidence

409k163 Presumptions and Burden of

Proof

409k163(4) k. Devise or bequest to person drawing or assisting in execution of will. Most Cited Cases

When the principal or sole beneficiary under a will, who had a confidential relationship with testator, participated in drafting of will, a presumption of undue influence arises which requires beneficiary to come forward with a satisfactory explanation for his actions.

[6] Wills 409 ↪400

409 Wills

409V Probate or Contest of Will

409V(P) Review

409k393 Review of Decisions in Actions

Relating to Wills or Probate

409k400 k. Scope and mode of review.

Most Cited Cases

Finding that testator's 1946 will, executed in favor of his business partner, was a product of undue influence was not clearly erroneous where confidential relationship existed between testator and his partner, partner participated in procurement of the will, he became sole beneficiary under the will, he possessed will after its execution, and will seemed to have been executed so that partner could utilize it in order to obtain a real estate loan.

[7] Wills 409 ↪43

409 Wills

409II Testamentary Capacity

409k43 k. Use and effect of drugs. Most Cited

Cases

Wills 409 ↪44

409 Wills

409II Testamentary Capacity

409k44 k. Intoxication and delirium tremens.

Most Cited Cases

Wills 409 ↪45

409 Wills

409II Testamentary Capacity

409k45 k. Illness or debility. Most Cited Cases

Wills 409 ↪50

409 Wills

409II Testamentary Capacity

409k50 k. Sufficiency of testator's understanding as to his property, persons to whom it may be given, and mode of disposition. Most Cited Cases

Disease, great weakness, use of alcohol and drugs, and approaching death do not alone render testator incompetent to make will; question is always whether in spite of these things he had sufficient mental capacity to understand nature and extent of his property, natural or proper objects of his bounty, and nature of his testamentary act.

[8] Wills 409 ↪400

409 Wills

409V Probate or Contest of Will

409V(P) Review

409k393 Review of Decisions in Actions

Relating to Wills or Probate

409k400 k. Scope and mode of review.

Most Cited Cases

Trial court's decision as to testamentary capacity will not be reversed unless reviewing court finds it to be clearly erroneous.

[9] Wills 409 ↪35

409 Wills

409II Testamentary Capacity

409k33 Insane Persons

409k35 k. Effect of adjudications as to mental incapacity and guardianship. Most Cited Cases

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Incompetency to make will is not necessarily established by fact that one has been adjudged an incompetent in a guardianship proceeding, but such fact is evidence to be considered, along with other evidence on issue of testamentary capacity.

[10] Wills 409 ⚡52(1)

409 Wills

409II Testamentary Capacity

409k51 Evidence

409k52 Presumptions and Burden of Proof

409k52(1) k. In general. Most Cited

Cases

Will contestant has burden of showing lack of testamentary capacity.

[11] Wills 409 ⚡52(1)

409 Wills

409II Testamentary Capacity

409k51 Evidence

409k52 Presumptions and Burden of Proof

409k52(1) k. In general. Most Cited

Cases

Statement of witness under oath that will was signed by testator in her presence and in presence of other subscribing witnesses, that testator declared the instrument was his last will and testament, and that at time of execution testator was of sound and disposing mind and not acting under duress, menace, fraud and undue influence or misrepresentation, established a prima facie case of testamentary capacity, after which burden was cast upon contestants to show that testamentary capacity was lacking.

[12] Appeal and Error 30 ⚡994(1)

30 Appeal and Error

30XVI Review

30XVI(I) Questions of Fact, Verdicts, and Findings

30XVI(I)1 In General

30k994 Credibility of Witnesses

30k994(1) k. In general. Most Cited

Cases

Credibility of witnesses is for trier of fact, and reviewing court may not reverse decision thereon unless it is clearly erroneous.

[13] Appeal and Error 30 ⚡1008.3(3.1)

30 Appeal and Error

30XVI Review

30XVI(I) Questions of Fact, Verdicts, and Findings

30XVI(I)3 Findings of Court

30k1008 Conclusiveness in General

30k1008.3 Where Evidence Was in

Writing

30k1008.3(3) Particular Writings

30k1008.3(3.1) k. In general.

Most Cited Cases

(Formerly 30k1008.3(3), 30k1008(3))

Where none of several witnesses testifying on testamentary capacity testified before lower court, trial judge had no greater opportunity than reviewing court to judge their credibility, since his only contact with such witnesses was through typed transcript of their testimony before probate master, and in such situation reviewing court was in as good a position as trial judge to make a determination of fact based upon such testimony.

[14] Wills 409 ⚡55(1)

409 Wills

409II Testamentary Capacity

409k51 Evidence

409k55 Weight and Sufficiency

409k55(1) k. In general. Most Cited

Cases

Wills 409 ⚡400

409 Wills

409V Probate or Contest of Will

409V(P) Review

409k393 Review of Decisions in Actions Relating to Wills or Probate

409k400 k. Scope and mode of review.

Most Cited Cases

Evidence required finding that at time of execution of 1952 will testator did not have sufficient

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mental capacity to understand the nature and extent of his property, the natural or proper object of his bounty, and the nature of his testamentary act, and finding to the contrary was clearly erroneous. Rules of Civil Procedure, rules 52(a), 53(d) (2).

*231 Millard F. Ingraham, Fairbanks, for Thomas J. Paskvan, Jr.

Mike Stepovich, Fairbanks, Peter A. Schwabe, Portland, Or., for Drago Mesich, and another.

Sherman A. Noyes, Fairbanks, for Paul Drazenovich.

Before NESBETT, C. J., and DIMOND and RABINOWITZ, JJ.

DIMOND, Justice.

This is a dispute among three parties over a dead man's property.

Thomas Paskvan, Jr. claims the property as sole beneficiary under a will executed by decedent, Pete Mesich, on September 18, 1946. The probate master, after a hearing, found that this will was a product of undue influence exercised by Paskvan and was not entitled to probate, a finding which was concurred in by the superior court on appeal from the master's findings. Paskvan has appealed to this court from the superior court's order rejecting the 1946 will.

Paul Drazenovich claims the property as sole beneficiary under a will executed by decedent on August 25, 1952. The probate master found that decedent was incompetent at the time of the execution of this will and that it was not entitled to probate as decedent's last will and testament. The master's findings were rejected by the superior court. After a hearing at which evidence was introduced, the superior court found that decedent was competent to make the 1952 will, that there was no proof of undue influence in connection with its execution, and that it was entitled to be admitted to probate.

Certain relatives of decedent, consisting of five nieces and two grandnephews, claim the property as decedent's heirs, such claim being based on the contention that neither of the two wills was valid and that decedent died intestate. The heirs, Drago Mesich, et al, have appealed from the superior court's judgment

recognizing as valid and admitting to probate the will of August 25, 1952.

The Paskvan Will.

The probate master found that a confidential relationship existed between Paskvan and Mesich, that the evidence raised an inference that Mesich's will of September 18, 1946 leaving all his property to Paskvan was a product of undue influence exercised by the latter, and that Paskvan had not produced evidence sufficient to overcome that inference. The superior court accepted and adopted these findings of the master.^[FN1]

^{FN1.} Civ.R. 53(d)(2) provides in part:

In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

*232 [1] Since the findings of a master, to the extent that the superior court adopts them, are considered as findings of the court,^[FN2] Civil Rule 52(a) applies and we may not set aside such findings unless we determine them to be clearly erroneous.^[FN3] Clear error will not be found unless we are convinced on the whole record that a mistake has been committed.^[FN4]

^{FN2.} Civ.R. 52(a) provides in part:

The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

^{FN3.} Civ.R. 52(a) provides in part:

Findings of fact shall not be set aside unless clearly erroneous * * *.

^{2B} Barron & Holtzoff, Federal Practice and Procedure ss 1136, 1170, at 555, 607 (1961).

^{FN4.} Knox v. Pickles, 451 P.2d 347, 349 (Alaska 1969).

[2] A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests

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of the one imposing the confidence.[FN5]

FN5. Twelve Hundred 'L' St. Corp. v. Inlet Co., 438 P.2d 708, 709 (Alaska 1968); Swenson v. Wintercorn, 92 Ill.App.2d 88, 234 N.E.2d 91, 97 (1968).

Mesich was the owner of the Arctic Hotel in Fairbanks. In the spring of 1946 he and Paskvan formed a partnership for the operation of the hotel, with Paskvan to get 50 percent of the revenue from the hotel. There is no evidence that Paskvan invested any money in this enterprise. On the same day the will was executed September 18, 1946, Mesich executed a general power of attorney in favor of Paskvan. Paskvan testified that the purpose of the power of attorney was to enable him to handle Mesich's affairs as to the Arctic Hotel-to 'act for him' and 'to speak for him and everything'. Paskvan was the managing partner.

Also in the spring of 1946 Paskvan and Mesich decided to develop some property on Second Avenue in Fairbanks where they built a combination restaurant and bar called the Elbow Room. Paskvan invested \$10,000 in the venture which he had obtained as a loan from the Veteran's Administration. Mesich worked on the project and invested several thousand dollars in it. Mesich's contribution came in part from his share of the revenues from the operation of the Arctic Hotel.

Mesich's will, leaving all his estate to Paskvan, was executed in September 1946. Paskvan testified that the will was executed 'so that we could go ahead and develop this property (the Elbow Room property on Second Avenue) so that there would be * * * some basis for starting the the (sic) business partnership.' The property belonged to Mesich. Paskvan used the will as evidence of his interest in the property when he attempted to secure a veteran's loan with respect to the property, but he was told that the will was not the answer to being able to borrow money. He was told that he had to be a part owner of the property in order to borrow money on it. Paskvan then went to Mesich and had him convey to Paskvan a half interest in the property by deed. After this conveyance, Paskvan obtained a veteran's loan on the property.

[3] In the light of these facts we cannot say that the probate master was mistaken in finding that a confidential relationship existed between Mesich and Paskvan. Mesich's actions in making Paskvan the

managing partner in the Arctic Hotel enterprise, in giving Paskvan his power of attorney so that Paskvan could act and speak for Mesich, in executing his will in favor of Paskvan so that there would be a basis for their partnership venture, and in conveying to Paskvan a one-half interest in the Elbow Room property shows quite clearly that Mesich trusted Paskvan and reposed confidence in him-that he relied upon Paskvan to act in Mesich's best interests in handling his affairs.

[4][5] The remaining question is whether the probate master was clearly mistaken in finding that, because of the confidential relationship and other factors, the will was a product of undue influence exercised by Paskvan. The initial burden is on the contestant of a will to establish undue influence, and the existence of a confidential relationship alone does not suffice to raise a presumption that undue influence was present.[FN6] But when the principal or sole beneficiary under a will, who had a confidential relationship with the testator, participated in the drafting of the will, then a presumption of undue influence arises. It requires the beneficiary to come forward with a satisfactory explanation for his actions. He must show that he did not take advantage of the confidential relationship in influencing the testator to execute the will in his favor.[FN7]

FN6. Yribar v. Fitzpatrick, 91 Idaho 105, 416 P.2d 164, 166 (1966).

FN7. Cline v. Larson, 234 Or. 384, 383 P.2d 74, 85 (1963); Hummer v. Betenbough, 75 N.M. 274, 404 P.2d 110, 115 (1965).

Such a presumption arises in this case. A fiduciary or confidential relationship existed between Mesich and Paskvan, and the evidence shows that Paskvan participated in the execution of the will. Paskvan testified that the will was prepared by an attorney, that it took about three days conferring with the attorney to get the will prepared, that at several meetings in the attorney's office Paskvan was present with Mesich, and that Paskvan was present when the will was executed. Paskvan indicated his interest in having the will made at one point by saying, in answer to the question of why he had gone to the attorney's office with Mesich: 'Well, Pete (Mesich) was the one that uh wanted to draw this thing up, because we had planned on developing this property * * *.' (Emphasis added.) At another point in his testimony Paskvan

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said:

Well, I suppose we uh-I know we both went up there and uh told him exactly what uh we wanted, and Mr. Hurley took his notes down in-in longhand * *

*. (Emphasis added.)

The presumption that undue influence existed is strengthened by other factors. Mesich was a Croatian who emigrated to the United States in 1902. At the time he executed the Paskvan will in 1946 he was 65 years old. He was unable to read or write the English language and spoke English with a heavy Slavic accent. In 1942 he was attacked by an unknown assailant who hit him on the head with a heavy instrument, inflicting serious wounds. He was required to be hospitalized for 42 days during much of which time he was unconscious or semiconscious. There was considerable testimony that after this blow to his head Mesich deteriorated mentally, had difficulty communicating with people, did not seem aware of what was going on around him, and was not competent to handle his business affairs.

Paskvan did not carry his burden of overcoming the presumption of undue influence. It is true that he testified that Mesich had made the will in his favor as a reward for Paskvan's willingness to help Mesich-because Mesich was happy with the way Paskvan did things and thought Paskvan was worthy of his consideration. But this was not enough. The presumption of undue influence was a strong one because of the age and mental condition of Mesich, the fiduciary or confidential relationship that existed between Mesich and Paskvan, Paskvan's opportunity to exercise undue influence because of his partner', the fact that Paskvan appeared to be the dominant party in their partner', the fact that Paskvan appeared relationship, Paskvan's participation in the procurement of the will, the fact that Paskvan became the sole beneficiary under the will, [FN8] Paskvan's possession of the will after its execution, and the fact that the will seemed to have been executed so that Paskvan could utilize it in order to obtain a real estate loan.

[FN8]. See Dean v. Jordan, 194 Wash. 661, 79 P.2d 331, 336 (1938).

*234 [6] The totality of these circumstances points to a situation where Paskvan took advantage of a trust and confidence that Mesich had in him in order

to acquire all of Mesich's property upon his death. Paskvan had no satisfactory explanation for his actions in this regard. He did not show that in regard to the confidential relationship between him and Mesich he had acted with entire good faith and with due regard to the interests of Mesich. In the absence of such a showing, the presumption of undue influence prevails, and therefore the probate master and the superior court were not clearly erroneous in finding that the 1946 will was a product of undue influence.

The only other time we have had occasion to consider the subject of undue influence as it pertains to the execution of a will was in 1962 when we decided the case of In re Estate of Kraft. [FN9] We said there:

[FN9]. 374 P.2d 413, 417 (Alaska 1962).

Appellant has failed to sustain her burden of proving that by reason of influence exercised by another, the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes.

In that case we approached that problem from the standpoint of the testator's freedom of will. We thought in terms of coercion and duress which would act as a dominating power over the mind and act of a testator, because in that case it had been argued that the testator had been induced to execute a last will and testament which in reality was not his will but another person's will substituted for that of the testator. Here we are not concerned with whether there have been acts to overbear the will of a testator. Unlike the situation in Kraft, we are concerned here with whether the beneficiary under a will has by his conduct and his relationship with the testator taken advantage of the latter by means which reasonable and moral men would regard as improper, in order to obtain some benefit or profit. [FN10] If he has, the will is a product of undue influence even in the absence of coercion and duress acting as a dominating power over the mind and act of the testator.

[FN10]. In re Estate of Reddaway, 214 Or. 410, 329 P.2d 886, 890 (1958).

The Drazenovich Will.

On August 25, 1952 Mesich executed a will leaving all his property to Paul Drazenovich. The probate master found that Mesich was not competent to make this will. He based this holding on what he

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determined to be a presumption of incompetency arising from the appointment of a guardian of the estate and property of Mesich on April 9, 1951, which presumption the probate master held was not rebutted. The superior court rejected the master's findings and heard testimony regarding Mesich's competency to execute the 1952 will. The court found that at the time of execution Mesich knew the nature and extent of his property, was aware of the natural objects of his bounty, knew that he was making a will, and was aware of the nature and consequences of his act. The court also found that the will was executed voluntarily and was not the product of undue influence, and that it was entitled to probate.

[7][8] In the case of *In re Estate of Kraft*[FN11] we spoke on the subject of testamentary capacity as follows:

FN11. Id. at 415-416.

Disease, great weakness, the use of alcohol and drugs, and approaching death do not alone render a testator incompetent to make a will. The question is always whether, in spite of these things, he had sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act.

We also said in that case that the trial court's decision as to testamentary capacity would not be reversed unless we found it *235 to be clearly erroneous. [FN12] That is the question here—whether the superior court's finding that Mesich possessed testamentary capacity when he executed the 1952 will was or was not clearly erroneous. In order to make this determination, we must consider the evidence that touches upon the testamentary capacity of Mesich in 1952.

FN12. Id. at 416.

Mrs. Dorothy Clark, one of the two subscribing witnesses to the 1952 will, testified that she never had any difficulty communicating with Mesich before, at or after the witnessing of the will, that Mesich appeared to know what he was doing, and that she never had any reason to think that Mesich was not of sound mind. On the other hand, when Mrs. Clark was asked whether she could say that she had any reason to believe that Mesich was of sound mind in her limited relations with him, she answered: 'Well, I don't know

why I should say whether he's sane or insane. I mean, who am I to judge?' Mrs. Clark described her relationship with Mesich as a casual acquaintance.

The other subscribing witness to the will, Charles Burtchin, who was then Mrs. Clark's husband, did not testify in person. In answer to interrogatories he said: 'The testator, Pete Mesich, as far as my recollection goes was quite normal and appeared to know what he was doing in signing the will.' Drazenovich owned the property where Mrs. Clark and Burtchin were living at the time.

Other witnesses who appeared on behalf of Drazenovich, most of whom had had business contacts with Mesich from time to time, testified varyingly that Mesich was 'probably as normal as most of us', that there was no trouble in understanding Mesich and that he appeared to be rational, that it was no more difficult to understand Mesich after 1942, the year he suffered the blow to his head, than it was before that year, that Mesich seemed rational, not abnormal and capable of carrying on his business, that there was no noticeable change in his personality, that in conversations with Mesich he appeared to understand what the other person was talking about, that Mesich engaged in conversations with people and recognized them, and that Mesich never performed any antisocial acts.

Of these witnesses for Drazenovich, eight in number, one testified that he had 'very limited contact' with Mesich and that his memories were 'quite vague' about the business relationships he had had with Mesich. Another testified that she did not recall Mesich very clearly, and that her relationship with Mesich ended in 1948—four years prior to the execution of the Drazenovich will. Another testified that he never saw Mesich after 1951. Another testified that she saw Mesich only once or twice a year and that the conversations with him were very casual. Another witness admitted that her acquaintance with Mesich was a very casual one, and another said that she really could not have a conversation with Mesich because of his broken English.

Dr. Jack Petajan, a neurologist, testified on behalf of Drazenovich. He had not examined Mesich. But he testified, on the basis of certain assumptions posed in a hypothetical question, that recent memory loss alone would not be a sufficient basis to say that judgment was impaired, that he thought that Mesich would

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know his relatives and whom he wished to favor, that Mesich could probably have remembered what property he had owned for a long time prior to his memory loss, and that Mesich probably would have had at least an understanding that a will conveyed away property.

However, Dr. Petajan did not have an opinion to a reasonable medical certainty as to whether Mesich had been competent at the time he executed the will. In addition, it is questionable as to whether all of the assumptions in the hypothetical question were supported by the evidence. For example, one of the assumptions made in the hypothetical question was that in 1951 a *236 guardian had been appointed for Mesich on the ground that he could not read and write the English language. There is nothing in the record to show whether a guardian had been appointed for that reason or because Mesich simply was not competent to handle his own affairs. Another assumption was that Mesich had properly executed the 1952 will 'before witnesses of his own choice.' The evidence shows that the witnesses to the execution of his will were chosen by Drazenovich. Another assumption was that Mesich had had no record of unusual social responses or an unsteady course of behavior. There was evidence, which we shall refer to in more detail, from witnesses who appeared on behalf of Mesich's heirs who were contesting the will, that Mesich's course of behavior may well have been unsteady and his social responses unusual. Finally, although Dr. Petajan testified that Mesich would have been able to remember property he had owned for a long time prior to his memory loss, he probably would not be able to give a detailed account of property he had acquired recently after the memory loss.

There was other evidence relating to Mesich's competency to make the 1952 will. Blazo Bigovich was appointed guardian of Mesich's estate in 1951. Bigovich testified that Mesich could not talk about any business matters, that he 'didn't understand' even when Bigovich spoke to Mesich in his own Slavic language, that Mesich did not know what property he had 'deeded away', that 'he would sign his own death certificate, he didn't know any different', that Bigovich tried to explain business matters to Mesich but he could not figure out how things had happened, that Mesich seemed to have very little understanding about things if any, that during a law suit where Mesich was involved 'he didn't know what was happening any more than the man in the moon', and that this was

Mesich's condition from the time Bigovich was appointed his guardian until about 1953 when Mesich had a stroke.

A Fairbanks attorney, Warren Taylor, had done legal work for Mesich from 1945 up to the 1950's. Taylor testified that he never could get a lucid story out of Mesich at an interview or on the witness stand in court, that during most of the time he knew Mesich his mind was so confused that he could not grasp the significance of questions even when put to him in his native language, and that in a law suit involving some of Mesich's property, Mesich was almost of no help in determining how much property he owned.

Andrew Miscovich testified that after the 1942 blow to Mesich's head, he could not remember present things, could not carry on a conversation, was unable to carry on his business, and was easily influenced. However, Miscovich on cross-examination stated that his conclusions about Mesich being easily influenced were based on things he had been told. In addition, Miscovich said that he had only seen Mesich during the winters about once a month.

George Bojanich testified that he first met Mesich in 1912 and maintained contact until 1915, and then did not renew the acquaintance again until 1941. He said that in 1945 he was called to be an interpreter in a law suit where Mesich was the defendant. Bojanich attempted to speak Slav to Mesich but was unable to even make Mesich understand the questions. This witness was not cross-examined.

Arthur Nerland testified that he knew Mesich because he supplied paint and other materials for him. He described Mesich as being a quiet kind of man prior to 1942. He said that after 1942 Mesich became even more quiet, impossible to communicate with, and he seemed to get worse over the years. Nerland testified that he did not think that Mesich was competent to handle his business affairs, and based his testimony on seeing Mesich about once a month over the years.

Everett Russell testified that he first met Mesich in 1937, saw him until 1941, and that after he had come back from the service in 1947 he saw Mesich occasionally until 1951. Russell said that after 1947 Mesich appeared irrational, that he did not recognize Russell, and that Russell *237 had been unable to conduct a conversation with Mesich. Russell also

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testified that in May or June of 1952 he saw Mesich six or eight times, and that Mesich was not aware of what was transpiring in the conversations around him. Russell also said that Mesich would always say 'hello' if anyone else said 'hello', but in Russell's opinion Mesich did not recognize anybody.

John Butrovich testified that he first met Mesich in 1941. He said that after the 1942 blow to Mesich's head he slowed down and that he shuffled around after that time. Butrovich said that he was unable to communicate with Mesich after he had suffered the blow to his head and he described Mesich as a 'vegetable'. Butrovich did not feel that Mesich was competent to handle his business after 1942. Finally Butrovich testified that he felt that Mesich did not know what was going on when he spoke to him in English after that time. The cross-examination of Butrovich was very brief.

Robert Lavery first met Mesich in the late 1930's when Mesich came into his grocery and meat market. Lavery testified that after 1942 he did not think that Mesich recognized anybody, and that he just said 'hello', 'hi', or made a grunting sound. Lavery did not think that Mesich was capable of handling his business affairs after 1942. He said that he made many attempts to engage Mesich in conversation from the period 1943 to 1954 but was unable to do so.

Louis Krize said that he first met Mesich in 1940 and that at that time Mesich was asked many questions which he handled very well. Krize contacted Mesich again in 1943 and described him then as changed, unable to carry on a conversation, and unable to recognize Krize. Krize stressed the fact that from 1940 to 1943 the mental condition of Mesich continued to get worse. Krize was asked only one question on cross-examination.

Dr. Arthur Schaible treated Mesich for the 1942 blow to his head. Dr. Schaible described Mesich's injury and condition. He said that he had opportunities to observe Mesich over a 10 year period from 1942 to 1953, and that he thought that Mesich's mental condition deteriorated during that time. He noticed disorientation and lapse of memory at times. It was Dr. Schaible's impression that Mesich was incompetent and that he would have a hard time taking care of his daily affairs. He said that by 'certain standards' Mesich was not mentally competent.

Dr. Paul Haggland also treated Mesich for the 1942 injury. Dr. Haggland said he saw Mesich again in 1951 when he was brought in to have his competency determined. The doctor read into evidence the report he made at the time. In this report he stated that Mesich could not supply him with a satisfactory history of himself, that he had a definite pathology in his brain, resulting from the 1942 injury to his head, and that his memory for old events was good but for recent events was poor. Dr. Haggland testified that it was his belief at the time he examined Mesich that he should have a guardian.

Paul Drazenovich, the proponent of and beneficiary under the 1952 will, testified at the master's hearing but not at the hearing held by the superior court. On the issue of testamentary capacity Drazenovich said that Mesich knew what he was doing when he executed the will, that Mesich was 'all right in (the) mind', that there was never a time when Mesich did not recognize Drazenovich, that Mesich's '(m)ind was perfect', and that when he and Mesich went to see an attorney to have the will drawn up Mesich did most of the talking.

Drazenovich's testimony is of questionable value. Under cross-examination it was brought out that in 1953 Drazenovich had appeared as a witness in the suit brought in the Territorial District Court by Mesich, through his guardian, against the father of Thomas Paskvan, Jr. Drazenovich had testified as a witness for the plaintiff, Mesich. It is apparent from *238 the following excerpts from Drazenovich's 1953 testimony in the district court that he did not at that time believe that Mesich was mentally competent. He was asked for his opinion of Mesich's condition after he had suffered the blow to his head in 1942:

Q. How was Pete's condition after he got out of the hospital? How has it been since then?

A. Sometimes he don't hardly recognize me. Sometimes he comes to see me at my cabin and sometimes when I go to see him in the cabin he said, 'Get out.' I say, 'What is the matter, Pete?' Then he comes and starts kissing me. 'I am sorry,' he said. 'I thought it was somebody else.' He does that right along, so far as I know.

Q. How does he talk?

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A. Talk, sometimes tells what was happening most in childhood. He can stay all night telling me the same story over and over, but whatever is happening now he can tell me nothing.

Q. Do you know whether he is mentally competent?

A. I know he isn't.

Q. You know he isn't?

A. Sure.

Q. Did you see Pete in the summer or fall of 1949?

A. I seen him, sure.

Q. Did he know what he was talking about then? Did he act rationally in 1949?

A. He didn't act right no time since he got hurt. So far as I know, he didn't act right.

Q. Didn't you say sometimes his mind is clear and sometimes it isn't? Isn't that the way it is?

A. No, so far as I can see I would ask him something and he can't remember nothing and then he tries to tell me old story over and over what happened in childhood.

Q. Don't ramble. Isn't it true that sometimes his mind is working all right and sometimes it isn't?

A. Not very much of the time.

Q. Not very much?

A. So far as I can see, no. I feel so because I know him pretty well, before he talk nice to me, advice and everything, but now it is different entirely.

Q. He give you advice?

A. Before he got hurt he gave me advice but now

he doesn't know nothing * * *.

In that case the district court made a specific finding that at all time since the 1942 injury to Mesich's head he was mentally incompetent to attend to his business affairs.[FN13]

FN13. The district court entered judgment in favor of Mesich and against Paskvan, Sr. which judgment was affirmed on appeal. Paskvan v. Mesich, 227 F.2d 646, 16 Alaska 1, (9th Cir. 1955).

[9] Finally, on the issue of testamentary capacity, there was the appointment of a guardian for Mesich in 1951. Since the proceedings relating to the appointment of the guardian were not included in the record on appeal, we do not know specifically on what basis the guardian was appointed. But we do know, from the statute relating to the appointment of guardians, that at least it must have been found that Mesich was 'incapable of conducting his affairs.' [FN14] We recognize the rule that incompetency to make a will is not necessarily established by the fact that one has been adjudged an incompetent in *239 a guardianship proceeding.[FN15] But this fact is evidence to be considered, along with other evidence, on the issue of testamentary capacity. [FN16]

FN14. AS 20.05.080 provides:

The court may appoint a guardian to take care, custody, and management of the estate of an insane person and any other person who is incapable of conducting his affairs and maintaining his family and the education of his children.

FN15. In re Estate of Jamison, 41 Cal.2d 1, 256 P.2d 984, 990 (1953); In re Estate of Bottger, 14 Wash.2d 676, 129 P.2d 518, 526-527 (1942); 1 Page on Wills s 12.42, at 651 (Bowe-Parker ed. 1960).

FN16. Lynn v. ADA Lodge No. 146 of Ind. Order of Odd Fellows, 398 P.2d 491, 496 (Okl.1965); In re Estate of Wolf, 174 Cal.App.2d 144, 344 P.2d 37, 40 (1959); Succession of Schmidt, 219 La. 675, 53 So.2d 834, 837 (1951).

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[10] As to the burden of proof on testamentary capacity there is divergence of authority. Some courts hold that the proponent of the will has the burden of establishing that the testator possessed testamentary capacity at the time he executed his will.[FN17] Other courts, and apparently the majority, hold that the contestant of a will has the burden of showing lack of testamentary capacity.[FN18] We adopt this latter view.

FN17. In re Estate of Andersen, 192 Or. 441, 235 P.2d 869, 871 (1951); Houghton v. Jones, 418 S.W.2d 32, 39 (Mo.1967).

FN18. In re Estate of O'Connor, 74 Ariz. 248, 246 P.2d 1063, 1069 (1952); In re Estate of Goetz, 253 Cal.App.2d 107, 61 Cal.Rptr. 181, 185 (1967); In re Estate of Perez, 206 So.2d 58, 59 (Fla.App.1968); In re Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725, 730 (1966); Succession of Papa, 192 So.2d 854, 858 (La.App.1966); In re Estate of Jeruzal, 269 Minn. 183, 130 N.W.2d 473, 482 (1964); In re Estate of Lacy, 431 P.2d 366, 368 (Okla.1967); In re Estate of Ekker, 19 Utah 2d 414, 432 P.2d 45, 47 (1967); In re Estate of Morton, 428 P.2d 725, 729 (Wyo.1967).

[11] Along with the petition for probate of the 1952 will Drazenovich filed the affidavit of Mrs. Clark, one of the subscribing witnesses to the will. This witness stated under oath that the will was signed by Mesich in her presence and the presence of the other subscribing witness, the Mesich then declared that the instrument was his last will and testament, and that at the time of execution of the will Mesich was of sound and disposing mind and was not acting under duress, menace, fraud, undue influence or misrepresentation. This was evidence that established a prima facie case of testamentary capacity; the burden was then cast upon the contestants of the will to show that testamentary capacity was lacking.[FN19] The question here is whether Mesich's heirs, as contestants of the 1952 will, met that burden.

FN19. In re Estate of Lacy, 431 P.2d 366, 368 (Okla.1967). See cases cited in note 18 supra.

[12] Most of the witnesses testifying both for and

against testamentary capacity, who were seen and heard by the superior court, had only casual contacts with Mesich and had not been associated with him on any sustained basis. If the testimony of these witnesses were all that had to be considered, we would not reverse the court's determination that Mesich possessed testamentary capacity because of our duty to give due regard to the court's function in determining the credibility of witnesses. As we said in *In re Estate of Kraft*:[FN20]

FN20. 374 P.2d 413, 416 (Alaska 1962).

A decision of the issue as to testamentary capacity depended largely, if not entirely, on oral testimony given by witnesses seen and heard by the trial judge. It was his province to judge their credibility, and we may not reverse his decision unless we find it to be clearly erroneous.

But there were other witnesses, not seen and heard by the trial judge, whose testimony on the issue of testamentary capacity was of greater value because of the nature and extent of their association with Mesich. Attorney Taylor, who had done legal work for Mesich from 1945 up to the 1950's, testified that he never could get a lucid story out of Mesich at an interview or on the witness stand in court, that during most of the time he knew Mesich the latter's mind was so confused that he could not grasp the significance of questions even when put to him in his native language, and that in a law suit involving *240 some of Mesich's property, Mesich was almost of no help in determining how much property he owned.

Blazo Bigovich, who was appointed guardian of Mesich's estate in 1951, testified that Mesich could not talk about any business matters, that he did not understand even when Bigovich spoke to him in his own Slavic language, the Mesich did not know what property he had deeded away, that Mesich could not figure out how things had happened, that he seemed to have very little understanding about things, that during a law suit where Mesich was involved Mesich 'didn't know what was happening any more than the man in the moon', and that this was Mesich's condition from the time Bigovich was appointed guardian in 1951 until about 1953 when Mesich had a stroke.

Dr. Schaible, who had treated Mesich for the 1942 injury to his head, and who had observed Misich

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over a 10 year period from 1942 to 1953, said that he thought that Mesich's mental condition deteriorated during that time, that he had lapses of memory and was disoriented, and that he was not mentally competent.

George Bojanich, who was called to be an interpreter for Mesich in a law suit where Mesich was the defendant, said that he attempted to speak the Slavic language to Mesich, but was unable to make Mesich understand the questions.

Finally, there was the testimony of Drazenovich in the 1953 suit in the Territorial District Court, which we have already referred to, where Drazenovich made it clear that in his opinion Mesich was mentally incompetent after he suffered the 1942 injury to his head.

[13] None of these witnesses were seen or heard by the trial judge. They had testified only before the probate master and not at the hearing held by the superior court. The superior court judge had no greater opportunity than we to judge their credibility, since his only contacts with these witnesses was through the typed transcript of their testimony before the probate master. In this situation we are in as good a position as the trial judge to make a determination of fact based upon such testimony.[FN21]

FN21. Fairbanks Publishing Co. v. Pitka,
445 P.2d 685, 687-688 (Alaska 1968).

[14] We consider this evidence more important than the testimony of the other witnesses that the trial judge did see and hear. From such evidence in particular, and along with other evidence in the record, we are left with the definite and firm conviction that the trial judge was mistaken in finding that Mesich possessed testamentary capacity at the time of the execution of the 1952 will. It is our determination that at that time Mesich did not have sufficient mental capacity to understand the nature and extent of his property, the natural or proper objects of his bounty, and the nature of his testamentary act.[FN22] Our conviction that such a mistake has been made means that the trial judge's finding that the testamentary capacity existed in 1952 is clearly erroneous.[FN23] In view of this determination it is unnecessary for us to pass upon the court's finding that this will was not the product of undue influence.

FN22. In re Estate of Kraft, 374 P.2d 413,
415-416 (Alaska 1962).

FN23. Fairbanks Publishing Co. v. Pitka,
445 P.2d 685, 687-688 (Alaska 1968); Per-
kins v. Willacy, 431 P.2d 141, 142 (Alaska
1967).

The judgment of the superior court rejecting and denying probate of the Paskvan will of September 18, 1946 is affirmed. The judgment admitting to probate the Drazenovich will of August 25, 1952 is reversed. The case is remanded to the superior court for further proceedings not inconsistent with the views expressed in this opinion.

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February 22, 2011

The Honorable Carl Gatto, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, AK. 99801-1182

RE: HB 150 (Governor Parnell)--Support

Dear Chair Gatto:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support HB 150, sponsored by the House Rules Committee at the request of Governor Parnell.

The aging of Alaska's population, particularly the growth in the numbers of our citizens over age 75, presents unique challenges for our criminal justice system.

The National Center on Elder Abuse indicates that 23.4% of substantiated reports of mistreatment of older adults were financial exploitation, another 17% was physical abuse, and 32.5% was caregiver neglect. Emotional/verbal/psychological abuse accounted for 23.6% of the substantiated reports and sexual abuse/other accounted for 3.6%.

Elder abuse occurs without reference to race, religion, income, education, place of residence, or living arrangement. It is real and, unfortunately, all too common.

Detecting and preventing elder abuse involves increasing awareness among the general public and professionals.

Although HB 150 addresses the problems of abuse and exploitation on minors, we will focus on the benefits that we perceive will help older Alaskans.

The bill identifies "mandated reporters." This is very significant and will undoubtedly stop people from "looking the other way" and will also protect them from reporting incidents that might involve supervisory staff over them.

HB 150 also creates vehicles for new emergency procedures to allow courts to immediately protect individuals from financial abuse with temporary conservators and financial protective orders.

Unfortunately there are incidents of trusted advisors like guardians, agents under durable power of attorney, and other fiduciaries who have also committed elder abuse. Adding the concept of "undue influence" should help address this issue.

HB 150 also requires cooperation with Adult Protective Services, DHSS training of investigators, and mandates release of relevant financial and health records necessary for an investigation.

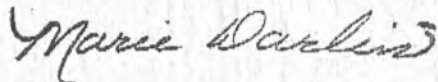
Will HB 150 prevent all elder abuse? No. But it will go a long way in preventing it and punishing those who commit it. It's a strong bill that will help vulnerable older Alaskans, younger Alaskans with disabilities, and minors.

AARP requests an "AYE" vote on HB 150.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
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Representative Lance Pruitt
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Representative Lindsey Holmes
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