

**SB**

**86**

**(FILE 1)**

<TARGET><BILL>SB 86</BILL><SUBJECT>SB 86 (FILE  
1)</SUBJECT><COMM>SJUD27</COMM></TARGET>

## ISSUES FOR SB86

(from the committee hearing and from subsequent discussions with sponsors)

1. Ex-parte Orders for protection of financial assets [language on page 3 at Section 5]:

Language needs to be tightened up to ensure that the vulnerable adult is notified of all ex-parte hearing requests. We should \*consider\* an exception for when telling the vulnerable adult is tantamount to telling the bad actor (e.g., someone who is their principal caretaker) but still require that some rationale be filed with the court for its review. The departments argue that this would not “happen very often” but the fact is that under this provision a large number of 3<sup>rd</sup> parties can potentially file for an emergency ex-parte order – the state, the person’s attorney, a person “interested in the estate, affairs, or welfare of the person”, etc. So, it is entirely possible that adult daughter files for protection against her adult brother, and mom or dad never knows it without some provision to ensure they do). It would also not hurt to look at tightening that list a little, in my opinion, but we should at least make sure that the vulnerable adult is always noticed on the request for a hearing. Scott has provided some suggested language, attached.

At page 4, there was a question as to the standard of evidence for 72 hour hearings. I believe Kelly had said she thought it was “clear and convincing”, but they later reported it is “preponderance of evidence” – this is the same as it is for other exparte orders, but we should probably just clarify it in the committee record.

2. “Undue influence” [throughout the bill starting at page 8] – The department provided an excellent chart showing that as of 1996, 18 states had laws that recognized undue influence in their vulnerable adult statutes. The committee got copies earlier and will get them again today as table copies. Some states use this only in regard to financial exploitation, others use it in the general statutes. This bill proposes the latter, so it could cover other issues where undue influence can come into play – no changes here that I could see, but it may be worthwhile to put this in the record.

3. Reporting law changes:

A. . [At page 8, section 13].The issue of “may” give name and address” and later mandatory reporter “shall” seems to be because while we are amending the list of mandatory reporters there is a later provision for non-mandatory reporters in law (not replicated in this bill) and many voluntary reporters do not want to give their names and contacts

B. [section 16, starting on pg 8]. The issue as to whether the peace officers new duty to report within 24 hours now falls within the "B" misdo penalty was unclear, and did not get any clearer in subsequent conversations. I asked whether there was -- to put it bluntly - any way to make a report after hours or any point to doing so - and found they have a toll free reporting line, so a police officer, given access to phones, could make a call, but it is answered only during work hours, so wouldn't acted on until the next day. So my thought is, we should ensure that no one is in B misdo land for failing to make a call on a weekend when no one will hear it until Monday anyway.

I asked them if OCS has 24 hour reporting at this point, but didn't get an answer yet. I think the house is looking at language "24 hours or at the earliest opportunity" or words to that effect.

C. [section 18, at page 9]. The provision for reckless reporting is a public policy call. This provision for actual damages "suffered by the person who is the subject" of the report does not exist in other reporting laws to my knowledge - I asked them to check the child abuse reporting statutes, as I did not see it there. They did not find it during the meeting, but may have after they left - I didn't hear one way or the other. Actual damages for reputation can be pretty hefty. On the one hand, we certainly don't want people making allegations in reckless disregard of the truth. On the other hand, the reason we have these laws at all is to \*require\* some people to report and to encourage everyone else to do so. There is a provision already in law that gives immunity to people for good faith reporting, but I am not sure what the point of this provision is. I don't think we are exactly being overwhelmed with false reports of elder abuse so that we need to take action to discourage them by explicitly stating it within reporting law.

D. We need to look at an effective date provision for the new reporting requirements - the law takes effect immediately as written, but new reporters and new requirements should need some implementation time.

#### 4. Investigations and access to financial and medical records {Section 25, starting at page 11}:

(a) You had asked why the department would use an ex-parte order rather than a subpoena. I believe from our discussions that the Department has come to agree with you on this point, and is making this change.

(b) I brought up the concern that much of the material being sought has its own confidentiality protections, and asked what OPA and the departments planned to do to ensure that the material continued to be protected or was properly returned or disposed of - they were of the opinion that their files were also confidential and therefore it would not be a problem. I think we should at least make them talk about this on the record. I don't know if they came to an agreement on new language with the house committee on this or not but I know it came up there as well.

Other odds and ends:

5. Fiduciary duty [page 18, line 22]: Scott has proposed replacement language for the definition of "fiduciary duty" which he can explain. It is in his letter, attached.

6. We have general agreement to update the reporting terms that had been in the revisor's bill (this is just changing language to be consistent through the statutes).

7. We should ask them to tell us about any other issues they are aware of, and any other amendment language they'd like us to consider (trying to get as much of the house amendment language in front of us as possible). I had been waiting for that bill but it is still in subcommittee as far as I last heard).

Issue of fraud as separate standard...in testimony the DOL said that if a person who was competent AND a victim of fraud did not want intervention that would not be dispositive. Can we walk through that?

Standard of evidence for 72 hour hearings? Law said clear and convincing but I think Scott told me later it was preponderance of evidence. title 18.66.110(a)

Page 4

Is there circumstances under which the vulnerable adult could be the (unnotified) respondent in an ex-parte order? (In other words, given the no-notice provision, which works fine for others, are there scenarios where the ex-parte order could potentially be issued against the person themselves...could an adult child of someone for instance, use this provision against another adult child \*without\* notice to the person?

OK

Generally, why is undue influence not included in title 13 provisions? It seems it would be a common problem for financial exploitation...

No - all - APS overall statutes

will the placement of this language in title 47 then make the definition applicable to physical or sexual abuse?

Josanne.

Kelly/Josanne

Page 9 Do we have 24 hour reporting <sup>to</sup> OCS at this point? Is there a 24-hour point of contact for these reports? So if a VPSO gets a report on a Friday night, is there a place to report by sat night? Law said she'd double check to ensure that the 24 hour reporting standard was not a criminal penalty as was earlier section 13. Also, Coghill wanted a response to apparent conflict between sections 13 "may" language and section 18 "shall"...Paskvan asked about nominal damages for false reports. HF asked about effective dates (which appear to be immediate)...

Yes  
1884  
#

Kelly

Pages 11-12 Section 25 provisions, again, why not a subpoena?? I know this isn't Scott's area so should I redirect this question to the HSS lawyer?

"under discussion"

Also other

ex parte orders  
subpoenas

Page 18 an example of when fraud make an otherwise competent person unable to meet the person's own needs or to seek help without assistance?

Still looking for a list of states that have exparte orders.

Consider (E)

3/10/11

SB Ob

CS +

① "other protective orders  
(modify) .ies

② Disability Law Center  
modifications

③ Postcard

p 9 "or not taken"  
line 13

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

SB 61

# 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 2, 2011

**SUBJECT:** "Elderly Persons and Disabled Adults" vs. "Vulnerable Adults":  
Inconsistent terminology in AS 08.29.200(b)(2),  
AS 08.63.200(b)(2), and AS 47.24 (SB 61, Work Order No. 27-  
LS0152\B, and SB 86, Work Order No. 27-GS1722\A)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Kathryn L. Kurtz *PK for KK*  
Assistant Revisor

You inquired about the section removed from SB 61 in the Senate State Affairs Committee, and whether it might fit into SB 86. Section 3 of SB 61 substituted the term "vulnerable adult" for "elderly person or disabled adult" in AS 08.29.200(b) to conform that section to the terminology used in AS 47.24.010. It was removed from the bill out of concern that it might involve a substantive change to the law better handled in a substantive bill rather than a bill revising statutes. SB 86 addresses the subject of protection of vulnerable adults, and I believe the changes to AS 08 suggested in the enclosed amendment would fit within that subject.

### **Background**

In the course of reviewing the Alaska Statutes, one of our drafting attorneys noted a discrepancy between the language of AS 08.29.200(b)(2) and AS 47.24. AS 08.29.200 relates to the confidentiality of communications between a licensed professional counselor and a client. Notwithstanding the general requirement of confidentiality, licensed professional counselors are required under this statute to report "incidents of . . . harm or assaults suffered by an elderly person or disabled adult as required by AS 47.24." AS 08.29.200(b)(2). Although AS 47.24 used to address the protection of "elderly persons and disabled adults," AS 47.24, since 1994, has instead used the term "vulnerable adults."

A related issue is presented in AS 08.63.200(b)(2), which imposes a duty on marital and family therapists to report "harm or assaults suffered by an elderly person or disabled

adult as required by AS 47.24." AS 47.24.010 requires licensed professional counselors<sup>1</sup> and marital and family therapists who believe that a vulnerable adult "suffers from abandonment, exploitation, abuse, neglect, or self-neglect" to report that belief to the Department of Health and Social Services.

### **The Issue**

The problem we see in AS 08.29.200(b)(2) and AS 08.63.200(b)(2) is that they refer to a duty imposed under AS 47.24, but they use different terminology than AS 47.24 ("elderly person or disabled adult" vs. "vulnerable adult"). This raises a question as to whether the reporting duty in these two sections is the same as that imposed in AS 47.24 or somehow different in scope.

---

<sup>1</sup> AS 47.24.010(a)(2) specifically requires reporting by:

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

AS 47.30.915(11) defines mental health professional to include licensed professional counselors:

(11) "mental health professional" means a psychiatrist or physician who is licensed by the State Medical Board to practice in this state or is employed by the federal government; a clinical psychologist licensed by the state Board of Psychologist and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologist and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; **a marital and family therapist licensed by the Board of Marital and Family Therapy; a professional counselor licensed by the Board of Professional Counselors;** a clinical social worker licensed by the Board of Social Work Examiners; and a person who

(A) has a master's degree in the field of mental health;

(B) has at least 12 months of post-masters working experience in the field of mental illness; and

(C) is working under the supervision of a type of licensee listed in this paragraph;

(emphasis added).

### **History**

AS 47.24 was amended in 1994, by ch. 103, SLA 1994. Prior to the 1994 amendment, AS 47.24.010 required mental health professionals<sup>2</sup> and marital and family therapists to report harm to elderly persons. "Elderly person" was defined as "a resident of Alaska who is 65 years of age or older." Former AS 47.24.100(6). A separate statute, former AS 47.24.110, required mental health professionals and marital and family therapists to report when they had reasonable cause to believe a disabled adult had been a victim of assault or sexual assault. The term "disabled adult" was defined for purposes of this section as "a person 18 years of age or older who has a physical or mental disability, or physical or mental impairment, as defined in AS 18.80.300."

AS 18.80.300 defines "physical or mental disability" as:

- (14) "physical or mental disability" means
  - (A) a physical or mental impairment that substantially limits one or more major life activities;
  - (B) a history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities;
  - (C) having
    - (i) a physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation;
    - (ii) a physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or
    - (iii) none of the impairments defined in this paragraph but being treated by others as having such an impairment; or
  - (D) a condition that may require the use of a prosthesis, special equipment for mobility, or service animal;

AS 18.80.300 defines "physical or mental impairment" as:

- (15) "physical or mental impairment" means
  - (A) physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including

---

<sup>2</sup> In 2002, marital and family therapists and licensed professional counselors were added to the definition of "mental health professional" in AS 47.30.915(11), which is incorporated into AS 47.24.010(a)(2), establishing the duty to report harm to vulnerable adults. Sec. 1, ch. 73, SLA 2002. Marital and family therapists have been expressly included in AS 47.24.010(a)(2) since 1992. Sec. 10, ch. 129, SLA 1992.

speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(B) mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

The term "vulnerable adult," which replaced "elderly person" and "disabled adult" in AS 47.24 is defined in AS 47.24.900(16) as:

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

This definition is similar to the definition of "disabled adult" but substantially narrower than the definition of "elderly person" previously used in AS 47.24.

#### **Legal Analysis**

AS 08.63.200(b)(2), enacted in 1992, which cites AS 47.24, was not changed in 1994 to reflect the shift in terminology from "elderly persons and disabled adults" to "vulnerable adults" made in AS 47.24 by ch. 129, SLA 1994. It appears that the failure to include a conforming amendment to AS 08.63.200(b)(2) in the 1994 Act was an oversight.

This apparent oversight was carried over into AS 08.29.200(b)(2). That paragraph was enacted in sec. 1, ch. 75, SLA 1998 (HCS CSSB 331(FIN)), an act regulating licensed professional counselors. Committee proceedings relating to SB 331 indicate that those statutes were specifically modeled on the statutes regulating marital and family therapists. This explains why AS 08.29.200(b)(2) does not match what was in AS 47.24 in 1998, when AS 08.29.200(b) was enacted: it was modeled on AS 08.63.200(b)(2), which contained an oversight.

I have spoken with the attorney who was drafting in this area at the time these statutes were enacted, and she believes that this explanation reflects what occurred.

The meaning of the existing AS 08.29.200(b)(2) and AS 08.63.200(b)(2) is not clear; because the terminology ("elderly persons and disabled adults") does not match that used in the statutes cited (AS 47.24, which refers to "vulnerable adults"), it is not clear whether the duty to report imposed in AS 08.63.200(b)(2) and AS 08.29.200(b)(2) is the same as that imposed in AS 47.24.010 or a broader duty (particularly as it relates to elderly persons).

However, both sections refer to AS 47.24, so the plain language suggests that the duty is the same as that imposed in AS 47.24. This interpretation would be consistent with

Senator Hollis French

March 2, 2011

Page 5

treatment of the issue in the statutes regulating psychologists in AS 08.86.200(b)<sup>3</sup> and licensed social workers in AS 08.95.900(b)<sup>4</sup>.

**Conclusion**

The current statutes are not clear. If it is the legislature's intent that the reporting requirements imposed on licensed professional counselors under AS 08.29.200(b)(2) and marital and family therapists under AS 08.63.200(b)(2) line up with the reporting requirements imposed on those professionals under AS 47.24, then the terminology should be made consistent with that in AS 47.24 by replacing "elderly person or disabled adult" with "vulnerable adult." As an added refinement, the reference to AS 47.24 might be changed to AS 47.24.010, which is the section that actually establishes the reporting requirement in AS 47.24. These are the changes included in the enclosed amendment. If the reporting requirements are meant to be different, then the meaning of "elderly person or disabled adult" should be clarified and the reference to AS 47.24 deleted.

If I can be of any further assistance, please let me know.

KLK:plm  
11-123.plm

Enclosures

---

<sup>3</sup> This statute was amended in sec. 1, ch. 129, SLA 1994 to refer to "abuse of a vulnerable adult" rather than "elder abuse." This was the only conforming amendment to AS 08 made in that chapter.

<sup>4</sup> This duty to report was added to AS 08.95.900 in sec. 16, ch. 118, SLA 1998.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 86

1 Page 1, following line 9:

2 Insert new bill sections to read:

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

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

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

7 (2) harm or assaults suffered by **a vulnerable** [AN ELDERLY  
8 PERSON OR DISABLED] adult as required by **AS 47.24.010** [AS 47.24].

9 **\* Sec. 2.** AS 08.63.200(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  
14 PERSON OR DISABLED] adult as required by **AS 47.24.010** [AS 47.24]."

15

16 Page 1, line 10:

17 Delete "**Section 1**"

18 Insert "**Sec. 3**"

19

20 Renumber the following bill sections accordingly.

21

22 Page 20, line 13:

23 Delete "sec. 7"

- 1           Insert "sec. 9"
- 2
- 3   Page 20, line 17:
- 4           Delete "sec. 7"
- 5           Insert "sec. 9"
- 6
- 7   Page 20, line 19:
- 8           Delete "sec. 7"
- 9           Insert "sec. 9"
- 10
- 11   Page 20, line 20:
- 12           Delete "sec. 25"
- 13           Insert "sec. 27"
- 14
- 15   Page 20, line 26:
- 16           Delete "Sections 1, 2, 3, and 42"
- 17           Insert "Sections 3 - 5 and 44"
- 18
- 19   Page 20, line 30:
- 20           Delete "sec. 7"
- 21           Insert "sec. 9"
- 22
- 23   Page 20, line 31:
- 24           Delete "sec. 43(a)"
- 25           Insert "sec. 45(a)"
- 26
- 27   Page 21, line 2:
- 28           Delete "sec. 7"
- 29           Insert "sec. 9"
- 30           Delete "sec. 43(b)"
- 31           Insert "sec. 45(b)"

1

2 Page 21, line 5:

3 Delete "sec. 25"

4 Insert "sec. 27"

5 Delete "sec. 43(c)"

6 Insert "sec. 45(c)"

2.55.100(a)(5), (a)(6), or (e),  
t that the court finds to be

AS 12.63.100.  
lass A misdemeanor. (§ 4 ch

— Section 21(a), ch. 18, SLA 2010,  
2010 amendments to (a) and (c) of  
to offenses committed on or after

story reports. — For governor's  
for ch. 18, SLA 2010 (Senate Bill  
a) and (c) of this section, see 2010  
237 — 1239.

DNA testing. (a) A person  
testing if, when requested by  
provide a blood sample, oral  
lt correctional, probation, or  
person refuses to provide the

a sentence imposed under AS

esting under the provisions of

napper under AS 12.63.

if a blood sample, oral sample,  
egistration system under AS

s C felony. (§ 4 ch 95 SLA 1998;

ndment, effective July 1, 2003, in  
added paragraph (3) and made stylistic  
in subsection (c) substituted "class D  
ss A misdemeanor."

aska's DNA database, he was properly  
olating this section. Nason v. State, 102  
ska Ct. App. 2004).

A person commits the crime of  
without authorization under AS

ion in the deoxyribonucleic acid

or  
samples.

(§ 4 ch 88 SLA 2003; am § 8 ch

**Effect of amendments.** — The 2009 amendment,  
effective June 21, 2009, in (a)(1), added "acid" follow-  
ing "deoxyribonucleic", and made a stylistic change.

**Effective dates.** — Section 16, ch. 88, SLA 2003  
makes this section effective July 1, 2003.

**Sec. 11.56.765. Failure to report a violent crime committed against a child.**

(a) A person, other than the victim, commits the crime of failure to report a violent crime  
committed against a child if the person

- (1) witnesses what the person knows or reasonably should know is
  - (A) the murder or attempted murder of a child by another;
  - (B) the kidnapping or attempted kidnapping of a child by another;
  - (C) the sexual penetration or attempted sexual penetration by another
    - (i) of a child without consent of the child;
    - (ii) of a child that is mentally incapable;
    - (iii) of a child that is incapacitated; or
    - (iv) of a child that is unaware that a sexual act is being committed; or
  - (D) the assault of a child by another causing serious physical injury to the child;
- (2) knows or reasonably should know that the child is under 16 years of age; and
- (3) does not in a timely manner report that crime to a peace officer or law enforcement  
agency.

(b) In a prosecution under this section, it is an affirmative defense that the defendant  
(1) did not report in a timely manner because the defendant reasonably believed that  
doing so would have exposed the defendant or others to a substantial risk of physical  
injury; or

- (2) acted to stop the commission of the crime and stopped
  - (A) the commission of the crime; or
  - (B) the completion of the crime being attempted.
- (c) In this section,
  - (1) "incapacitated" has the meaning given in AS 11.41.470;
  - (2) "mentally incapable" has the meaning given in AS 11.41.470;
  - (3) "sexual act" has the meaning given in AS 11.41.470;
  - (4) "without consent" has the meaning given in AS 11.41.470.

(d) Failure to report a violent crime committed against a child is a class A misde-  
meanor. (§ 1 ch 62 SLA 1999)

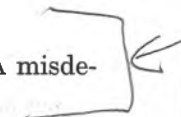
**Sec. 11.56.767. Failure to report a violent crime committed against an adult.**

(a) A person, other than the victim, commits the offense of failure to report a violent  
crime committed against an adult if the person, under circumstances not requiring the  
person to report as required by AS 11.56.765,

- (1) witnesses what the person knows or reasonably should know is
  - (A) the murder or attempted murder of a person by another;
  - (B) the kidnapping or attempted kidnapping of a person by another; or
  - (C) the sexual penetration or attempted sexual penetration by another
    - (i) of a person without consent of the person;
    - (ii) of a person who is mentally incapable;
    - (iii) of a person who is incapacitated; or
    - (iv) of a person who is unaware that a sexual act is being committed; and
- (2) does not, as soon as reasonably practicable, report that crime to a peace officer or  
law enforcement agency.

(b) In a prosecution under this section, it is an affirmative defense that the defendant  
(1) did not report as soon as reasonably practicable because the defendant reasonably  
believed that

- (A) doing so would have exposed the defendant or others to a substantial risk of  
physical injury; or
- (B) effective assistance was already being provided by another person; or



## Cindy Smith

---

**From:** Levitt, Rachel E (DOA) [rachel.levitt@alaska.gov]  
**Sent:** Tuesday, March 08, 2011 10:37 AM  
**To:** Cindy Smith  
**Cc:** Sterling, Scott A (DOA)  
**Subject:** Meeting Today, SB 86

Cindy:

You will be able to reach me and Scott this afternoon at <sup>3</sup>4 p.m. at 707-1749.

Talk to you then.

Thanks,

Rachel

Rachel Levitt  
Acting Director  
Office of Public Advocacy  
900 W. Fifth Avenue, Suite 525  
Anchorage, Alaska 99501  
Tel: (907) 269-3500  
Fax: (907) 269-3987

## Cindy Smith

---

**From:** Levitt, Rachel E (DOA) [rachel.levitt@alaska.gov]  
**Sent:** Tuesday, March 08, 2011 11:25 AM  
**To:** Cindy Smith; Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS)  
**Cc:** Sterling, Scott A (DOA)  
**Subject:** RE: Meeting Today, SB 86

That's fine. Talk to you then.

Rachel Levitt  
Acting Director  
Office of Public Advocacy  
900 W. Fifth Avenue, Suite 525  
Anchorage, Alaska 99501  
Tel: (907) 269-3500  
Fax: (907) 269-3987

---

**From:** Cindy Smith [mailto:Cindy\_Smith@legis.state.ak.us]  
**Sent:** Tuesday, March 08, 2011 11:07 AM  
**To:** Levitt, Rachel E (DOA); Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS)  
**Cc:** Sterling, Scott A (DOA)  
**Subject:** RE: Meeting Today, SB 86

Actually, this is scheduled for 3 p.m. and I will call you then – it may be a few minutes later because we will be moving over to a conference room so that we can talk more comfortably than we can in my office.

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)

---

**From:** Levitt, Rachel E (DOA) [mailto:rachel.levitt@alaska.gov]  
**Sent:** Tuesday, March 08, 2011 10:37 AM  
**To:** Cindy Smith  
**Cc:** Sterling, Scott A (DOA)  
**Subject:** Meeting Today, SB 86

Cindy:

You will be able to reach me and Scott this afternoon at 2 p.m. at 707-1749.

Talk to you then.

Thanks,

Rachel

Rachel Levitt



March 16, 2011

Senator Hollis French  
Chair, Senate Judiciary Committee  
Capitol 120  
Juneau, Alaska 99811

Re: SB 86

Dear Senator French and Members of the Senate Judiciary Committee:

The Disability Law Center is the state-designated Protection and Advocacy organization for Alaska. Thank you very much for the opportunity to comment on SB 86, a bill which would make it possible for more people to be subject to conservatorships and which would create a system for ex parte restraining orders, brought by a person or by someone interested in the person's welfare, against people who might have defrauded the person needing assistance.

This is to endorse the general principles behind SB 86, but to encourage you to do more to protect the rights of those persons who would be newly subject to conservatorships and who would be newly protected by protective orders. The system envisioned by SB 86 would place some significant additional restrictions on these people's liberty interests and, in the case of ex parte protective orders, would give people needing protection only a delayed opportunity to be heard. It would also make it possible for a person to have a conservatorship imposed on him or her, and to have a protective order put in place restricting other people from contacting him or her, simply because that person had been a victim of fraud – regardless of whether the person was generally competent to handle business matters. We'd suggest adding to proposed AS 13.26.209

an opportunity for the person to be protected to seek modification or termination of any ex parte protective order on three days' notice, as is now possible with ex parte domestic violence restraining orders; and to add a provision ensuring that counsel for the person to be protected is appointed immediately in cases involving either temporary conservatorships or ex parte protective orders. Language amending proposed AS 13.26.207 and proposed AS 13.26.209 is attached.

Thank you very much, again, for the opportunity to comment.

Sincerely,

Mark Regan  
Legal Director

Enclosure

### ANCHORAGE

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234  
www.dlcak.org

MEMBER OF THE  
NATIONAL  
DISABILITY  
RIGHTS  
NETWORK

2-02-37

## Cindy Smith

---

**From:** Lila Hobbs  
**Sent:** Wednesday, March 16, 2011 12:53 PM  
**To:** Cindy Smith  
**Subject:** FW: Testimony on SB 86  
**Attachments:** sb 86 testimony.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI

---

**From:** Mark Regan [<mailto:mregan@dlcak.org>]  
**Sent:** Wednesday, March 16, 2011 12:44 PM  
**To:** Sen. Hollis French  
**Subject:** Testimony on SB 86

Attached please find the Disability Law Center's testimony on Senate Bill 86.

Mark Regan  
Legal Director  
Disability Law Center of Alaska  
3330 Arctic Blvd., Suite 103  
Anchorage, Alaska 99503  
(907) 565-1002, 565-1000 (fax)



March 16, 2011

Senator Hollis French  
Chair, Senate Judiciary Committee  
Capitol 120  
Juneau, Alaska 99811

Re: SB 86

Dear Senator French and Members of the Senate Judiciary Committee:

The Disability Law Center is the state-designated Protection and Advocacy organization for Alaska. Thank you very much for the opportunity to comment on SB 86, a bill which would make it possible for more people to be subject to conservatorships and which would create a system for ex parte restraining orders, brought by a person or by someone interested in the person's welfare, against people who might have defrauded the person needing assistance.

This is to endorse the general principles behind SB 86, but to encourage you to do more to protect the rights of those persons who would be newly subject to conservatorships and who would be newly protected by protective orders. The system envisioned by SB 86 would place some significant additional restrictions on these people's liberty interests and, in the case of ex parte protective orders, would give people needing protection only a delayed opportunity to be heard. It would also make it possible for a person to have a conservatorship imposed on him or her, and to have a protective order put in place restricting other people from contacting him or her, simply because that person had been a victim of fraud – regardless of whether the person was generally competent to handle business matters. We'd suggest adding to proposed AS 13.26.209 an opportunity for the person to be protected to seek modification or termination of any ex parte protective order on three days' notice, as is now possible with ex parte domestic violence restraining orders; and to add a provision ensuring that counsel for the person to be protected is appointed immediately in cases involving either temporary conservatorships or ex parte protective orders. Language amending proposed AS 13.26.207 and proposed AS 13.26.209 is attached.

Thank you very much, again, for the opportunity to comment.

Sincerely,

  
Mark Regan  
Legal Director

Enclosure

## ANCHORAGE

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234  
www.dlcak.org

MEMBER OF THE  
NATIONAL  
DISABILITY  
RIGHTS  
NETWORK

\* **Sec. 7.** AS 13.26 is amended by adding new sections to read:

**Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an initial petition for conservatorship, it appears that the respondent is in need of a protective order to protect the respondent against waste or dissipation of funds or property, or to obtain funds that are needed for the immediate support, care, and welfare of the respondent or persons entitled to be supported by the respondent, and the respondent is not capable of protecting the respondent's funds or property or obtaining the funds that are needed to support the respondent or persons whom the respondent is required to support, the petitioner may request the appointment of a temporary conservator to authorize the protection or to obtain the necessary funds. The request shall state the reasons and factual basis for the request. The petitioner shall immediately file the request with the court and serve copies on the respondent and the respondent's attorney. The court shall conduct a hearing within 72 hours after the filing. If an attorney has not already been appointed for the respondent, the court shall appoint a lawyer to represent the person at or before the hearing.

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

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

**Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders; fees.** (a) A person who is allowed to file a petition for a protective order under AS 13.26.180(a) may file a petition for an ex parte protective order against another person. If the court finds that the petition establishes probable cause that the respondent is financially defrauding the petitioner or a person for whose benefit the petitioner filed the petition, and that because of the fraud there has been, or is an immediate threat of, a waste or dissipation of the proposed protected person's funds or other property, the court shall ex parte and without notice to the respondent issue a protective order. The petitioner shall certify to the court in writing any effort that the petitioner made to provide notice to the respondent. The

court shall cause a copy of the protective order to be served on the respondent.

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

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

(c) An ex parte protective order expires 20 days after it is issued, at the end of a six-month extension if granted by the court under (d) of this section, or upon the appointment of a temporary or permanent conservator or dismissal of the petition for the ex parte order. If the petitioner is someone other than the person for whose benefit the petition was filed, the court shall appoint a lawyer to represent the person for whose benefit the petition was filed. If the petitioner is someone other than the person for whose benefit the petition was filed, the person for whose benefit the petition was filed may request modification of the ex parte protective order; the court shall schedule a hearing on three days' notice or such shorter notice as the court may prescribe, and shall hear and rule on the request in an expeditious manner.

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

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

(f) A third party shall comply with a protective order issued under this section. A third party who does not comply with a protective order granted under this section may be liable in a civil action to the protected person or the protected person's heirs, assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees

associated with the failure to comply with the protective order. A third person who does not comply with a protective order granted under this section may also be criminally liable under AS 11.56.740 for violating a protective order.

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

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



**ANCHORAGE**

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234  
www.dlcalak.org

March 16, 2011

Senator Hollis French  
Chair, Senate Judiciary Committee  
Capitol 120  
Juneau, Alaska 99811

Re: SB 86

Dear Senator French and Members of the Senate Judiciary Committee:

The Disability Law Center is the state-designated Protection and Advocacy organization for Alaska. Thank you very much for the opportunity to comment on SB 86, a bill which would make it possible for more people to be subject to conservatorships and which would create a system for ex parte restraining orders, brought by a person or by someone interested in the person's welfare, against people who might have defrauded the person needing assistance.

This is to endorse the general principles behind SB 86, but to encourage you to do more to protect the rights of those persons who would be newly subject to conservatorships and who would be newly protected by protective orders. The system envisioned by SB 86 would place some significant additional restrictions on these people's liberty interests and, in the case of ex parte protective orders, would give people needing protection only a delayed opportunity to be heard. It would also make it possible for a person to have a conservatorship imposed on him or her, and to have a protective order put in place restricting other people from contacting him or her, simply because that person had been a victim of fraud – regardless of whether the person was generally competent to handle business matters. We'd suggest adding to proposed AS 13.26.209 an opportunity for the person to be protected to seek modification or termination of any ex parte protective order on three days' notice, as is now possible with ex parte domestic violence restraining orders; and to add a provision ensuring that counsel for the person to be protected is appointed immediately in cases involving either temporary conservatorships or ex parte protective orders. Language amending proposed AS 13.26.207 and proposed AS 13.26.209 is attached.

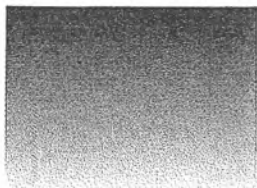
Thank you very much, again, for the opportunity to comment.

Sincerely,

Mark Regan  
Legal Director

Enclosure

MEMBER OF THE  
NATIONAL  
DISABILITY  
RIGHTS  
NETWORK



\* **Sec. 7.** AS 13.26 is amended by adding new sections to read:

**Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an initial petition for conservatorship, it appears that the respondent is in need of a protective order to protect the respondent against waste or dissipation of funds or property, or to obtain funds that are needed for the immediate support, care, and welfare of the respondent or persons entitled to be supported by the respondent, and the respondent is not capable of protecting the respondent's funds or property or obtaining the funds that are needed to support the respondent or persons whom the respondent is required to support, the petitioner may request the appointment of a temporary conservator to authorize the protection or to obtain the necessary funds. The request shall state the reasons and factual basis for the request. The petitioner shall immediately file the request with the court and serve copies on the respondent and the respondent's attorney. The court shall conduct a hearing within 72 hours after the filing. If an attorney has not already been appointed for the respondent, the court shall appoint a lawyer to represent the person at or before the hearing.

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

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

**Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders; fees.** (a) A person who is allowed to file a petition for a protective order under AS 13.26.180(a) may file a petition for an ex parte protective order against another person. If the court finds that the petition establishes probable cause that the respondent is financially defrauding the petitioner or a person for whose benefit the petitioner filed the petition, and that because of the fraud there has been, or is an immediate threat of, a waste or dissipation of the proposed protected person's funds or other property, the court shall ex parte and without notice to the respondent issue a protective order. The petitioner shall certify to the court in writing any effort that the petitioner made to provide notice to the respondent. The

court shall cause a copy of the protective order to be served on the respondent.

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

(1) grant any protection described in AS 13.26.200;

(2) supersede an existing power of attorney;

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

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

(c) An ex parte protective order expires 20 days after it is issued, at the end of a six-month extension if granted by the court under (d) of this section, or upon the appointment of a temporary or permanent conservator or dismissal of the petition for the ex parte order. If the petitioner is someone other than the person for whose benefit the petition was filed, the court shall appoint a lawyer to represent the person for whose benefit the petition was filed. If the petitioner is someone other than the person for whose benefit the petition was filed, the person for whose benefit the petition was filed may request modification of the ex parte protective order; the court shall schedule a hearing on three days' notice or such shorter notice as the court may prescribe, and shall hear and rule on the request in an expeditious manner.

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

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

(f) A third party shall comply with a protective order issued under this section. A third party who does not comply with a protective order granted under this section may be liable in a civil action to the protected person or the protected person's heirs, assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees

associated with the failure to comply with the protective order. A third person who does not comply with a protective order granted under this section may also be criminally liable under AS 11.56.740 for violating a protective order.

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

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

# STATE OF ALASKA

DEPARTMENT OF REVENUE  
Alaska Mental Health  
Trust Authority

SEAN PARNELL, GOVERNOR

Office of the Long Term Care Ombudsman

3745 Community Park Loop, Suite 200  
Anchorage AK 99508  
Phone (907) 334-4480  
Fax (907) 334-4486

February 18, 2011

Senators French, Wielechowski, Paskvan, McGuire, and Coghill  
Alaska State 27<sup>th</sup> Legislature  
State Capitol  
Juneau, AK

Re: SB 86 "Protection of vulnerable adults"

Dear Senators:

The Office of the Long Term Care Ombudsman investigates and resolves complaints made by, or on behalf of, older Alaskans in long term care facilities. In the first seven months of FY 2011, our office received 13 complaints alleging financial exploitation of seniors in assisted living or nursing homes. These cases can involve a family member or caregiver

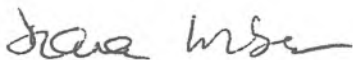
- exerting undue influence over a senior's decision-making to access bank accounts.
- charging the senior for services and goods he or she did not receive.
- failing to provide a senior with needed care, so as to save the "family" inheritance, or
- forcing a senior to sign over deeds on houses or land.

While 13 cases may not seem significant, even a few instances of exploitation of seniors can lead to hundreds of thousands of dollars in lost assets.

The frustrating thing about these cases is that the exploitation happens so quickly that the State cannot step in fast enough to preserve the seniors' assets. Not only is it wrong for seniors to be taken advantage of in this way, but once the seniors' assets are gone, Medicaid or General Relief pick up the cost of the care. The State is essentially footing the bill for these losses.

I support SB 86, especially the provisions for financial protective orders, emergency conservatorships, and the addition of "undue influence" as a reportable harm. I hope you will give your support to this bill and protect our older Alaskans from financial predators.

Sincerely,



Diana Weber, MS  
State of Alaska Long Term Care Ombudsman  
3745 Community Park Loop, Suite 200  
Anchorage, AK 99508

## Cindy Smith

---

**From:** Laughlin, Wilda J (HSS) [wilda.laughlin@alaska.gov]  
**Sent:** Friday, February 18, 2011 1:16 PM  
**To:** Cindy Smith; Sarah Munson  
**Cc:** Brakes, Heather K (GOV); Mayes, Duane G (HSS); Henriksen, Kelly E (LAW); Levitt, Rachel E (DOA); Sterling, Scott A (DOA); Russo, Elizabeth M H (DOA); Gibbens, Joanne C (HSS); Mahlatini, Brenda M (HSS)  
**Subject:** FW: plan for HB 150/SB 86

Cindy/Sarah—

Below is the Administration's plan for presenting SB 86 / HB 150 to the Judiciary committees:

Bill introduction, Duane Mayes, Director of the DHSS Division of Senior & Disabilities Services, in Juneau  
Review of Sectional Analysis, Kelly Henriksen, Dept. of Law, in Juneau

Available for questions:

Rachel Levitt (DOA), Director of the Office of Public Advocacy, location TBA (bill sections 1 through 11),  
Scott Sterling (DOA), supervising attorney for the Office of Elder Fraud and Assistance, in Juneau (bill sections 1 through 11)  
Elizabeth Russo, supervising attorney for the public guardian section, calling in from 227-2343 (bill sections 1 through 11)  
Joanne Gibbens, Deputy Director of the Division of Senior & Disabilities Services, in Juneau (bill sections 12 through 41)  
Brenda Mahlatini, social services program officer for Adult Protective Services, calling in from Anchorage (bill sections 1 through 11)

Brenda, if possible, please send the number you will be calling from to committee aides Cindy Smith and Sarah Munson.  
w.

**Wilda J. Laughlin**  
**Legislative Liaison, Dept. of Health and Social Services**  
**Phone (907) 465-1613**  
**Fax (907) 465-3068**  
**Cell (907) 723-3802**

This e-mail, including attachments, is intended for the use of the person or entity to which it is addressed and may contain CONFIDENTIAL or privileged information that is protected by federal and state regulation. If the reader of this e-mail is not the intended recipient or his or her agent, the reader is notified that any dissemination, distribution or copying of this e-mail is prohibited. If you think you have received this e-mail in error, please advise the sender by reply e-mail and delete this e-mail immediately.

## Cindy Smith

---

**From:** Sterling, Scott A (DOA) [scott.sterling@alaska.gov]  
**Sent:** Wednesday, March 09, 2011 4:56 PM  
**To:** Cindy Smith  
**Subject:** SB 86 Questions re Ex Parte Laws in sister States  
**Attachments:** FINAL MEMORANDUM OF MARCH 9 2011 RE HB 150 SB 86 EX PARTE LAWS IN SISTER STATES.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Cindy. Here you go.....we have all of the statutes and court rules copied etc. I spared you all that. But it's available if you should need it. Let me know if you need anything else, thanks. Scott.



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 9, 2011

#### MEMORANDUM

**FROM:** Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

**TO:** Rachel Levitt, Acting Director, OPA

**AND TO:** HB 150/SB 86 Working Group & Legislative Staff

**RE:** **HB 150/SB 86– Sister States' Laws  
On Ex Parte Protective Orders**

Three sister states—California, Oregon and Washington State—permit ex parte relief from financial exploitation. Following is a brief summary of each state's applicable statutes and court procedures.

#### **A. California**

**Question 1: Does California law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** California authorizes ex parte protective orders pursuant to California Welfare and Institutions Code, §15657.03. Protective orders are permitted for any "elder or dependent adult who has suffered abuse, including financial abuse. The statute treats financial abuse as a form of domestic violence.

The key legal requirements or restrictions are:

March 9, 2011

Rachel Levitt, Acting Director, OPA

Re: SB 86/HB 150 Sister State Ex Parte Laws

Page 2 of 2

- At the "ex parte" hearing temporary orders may be issued by the Court which last until the next "Order to Show Cause" hearing which must be held no more than 21 days from the date the order is issued.
- No order may be granted on an ex parte basis unless it appears from facts shown in the application for the order (or by attached affidavit) that "great or irreparable injury would result to the applicant before the matter can be heard on notice.
- Absent a showing of exceptional circumstances, the applicant must notify all parties no later than 10:00 a.m. of the court day before the ex parte appearance.
- The court must act on the ex parte application--either issuing or denying the requested order--on the same day the application is submitted.
- An appearance by the responding party as a prerequisite to granting the requested order. If the responding party (personally or through counsel) fails to appear at the hearing (or to file an answer/responsive declaration), the requested relief may be entered by default. The ex parte order may issue only if the court finds that:
  - Reasonable grounds have been asserted to believe there is an immediate and present danger of domestic violence (which includes financial abuse); and
  - An emergency protective order is necessary to prevent the occurrence or reoccurrence of domestic violence (which includes financial abuse).

**Question 2: Does California law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: incapacitated/disabled adults may petition through third-party representative**

**Discussion:** Petitioners unable to petition in person for ex parte relief due to incapacity or disability may, through an attorney or third-party representative, move the court to have a guardian ad litem appointed to represent the incapacitated/disabled adult for purposes of the ex parte relief petition. If a guardian or conservator is already in place for the adult then that person may also apply in that capacity.

## **B. Oregon**

**Question 1: Does Oregon law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** Oregon law allows ex parte protection orders for financial abuse or threats of financial abuse of elders and vulnerable adults occurring not more than

March 9, 2011

Rachel Levitt, Acting Director, OPA

Re: SB 86/HB 150 Sister State Ex Parte Laws

Page 2 of 2

180 days prior to the date the petition is filed. Abuse is defined as wrongful taking or appropriating money or property of an elder or subjecting the victim to threats of such abuse. Third-parties, such as social workers, elder fraud investigators, peace officers and direct witnesses may testify in addition to the petitioner him or herself.

An ex parte order must be limited to the relief court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person. Relief can include: directing the respondent to refrain from exercising control over the money or property of the person; requiring the respondent to return custody or control of the money or property of the person to the person; requiring the respondent to follow the instructions of the guardian or conservator of the person; or prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

The ex parte relief is limited to preventing or staying an immediate or urgent exploitation or threatened exploitation. If the victim wishes to have a third-party gain control and management of the victim's financial accounts or property then the victim may petition for a formal, noticed protective proceeding to address the need for expanded or long-term relief.

**Question 2: Does Oregon law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Limited.**

**Discussion:** Oregon law allows the elderly or disabled petitioner to apply for relief through a third-party representative including guardian ad litem, guardian or conservator. It appears that the victim may not use the ex parte procedure to seek relief against the victim's guardian or conservator—to obtain that kind of relief the formal, noticed protective proceeding and/or petition to review guardianship/conservatorship is available.

**Oregon does address the possibility of a third-party representative filing an ex parte petition (“restraining order”) on behalf of a victim where the victim may not agree that he or she actually needs relief.** Thus, if a guardian or guardian ad litem files a petition on behalf of an elderly person or a person with a disability, the elderly person or person with a disability retains the right to be represented by independent counsel; have access to personal records; file objections to the restraining order; request a hearing; and present evidence and cross-examine witnesses at any hearing. Notice must be personally served on the elderly person or person with a disability. Personal service must be made not later than 72 hours after the court issues a restraining order.

**C. Washington State**

**Question 1: Does Washington State law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to restraining the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult and requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources.

A petition must be supported by an affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought.

Washington State law allows the court to issue a "temporary protection order" without written notice to either or both the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard.

A temporary protection order can also be granted upon satisfactory showing to the court that the respondent and vulnerable adult cannot be served with notice, what efforts were made to serve them, and the reasons why prior notice should not be required.

**Question 2: Does Washington State law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Yes.**

**Discussion:** Washington State law specifically provides that a vulnerable adult, or an interested person on behalf of the vulnerable adult, may seek relief from financial exploitation, by filing a petition for an order for protection in superior court. A petition can be filed by the victim, a legal guardian, a legal fiduciary, the Department of Social and Health Services, or, as stated, an "interested person" on behalf of a vulnerable adult. The petition must explain why the petitioner qualifies as an interested person.

Where the elder/vulnerable adult is not him or herself the petitioner then the elder/vulnerable adult must be provided with notice of the petition. The notice form must include language explaining to the vulnerable adult the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

March 9, 2011  
Rachel Levitt, Acting Director, OPA  
Re: SB 86/HB 150 Sister State Ex Parte Laws  
Page 2 of 2

Washington State law also specifically permits the Department of Social and Health Services to seek protective relief from abuse, including financial abuse, for a vulnerable adult, who lacks capacity.

Washington State law includes safeguard provisions when the petitioner is not the vulnerable adult him or herself. When a petition is filed by a third-party notice of the petition and hearing must be personally served upon the vulnerable adult not later than six days before the hearing along with the standard notice form.

The vulnerable adult for whom protection is sought may advise the court at the hearing that he or she does not want all or part of the protection sought in the petition. The court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is order the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

Please let me know if you have any questions.

Scott A. Sterling  
Asst. Public Advocate

## Cindy Smith

---

**From:** Sterling, Scott A (DOA) [scott.sterling@alaska.gov]  
**Sent:** Wednesday, March 09, 2011 11:04 AM  
**To:** Wooliver, Douglas A (ACS)  
**Cc:** Cindy Smith; Gretchen Staff; Sarah Munson; Henriksen, Kelly E (LAW); Levitt, Rachel E (DOA)  
**Subject:** SB 86/HB 150 - Sample Of Court Forms For Obtaining Ex Parte Financial Protective Order  
**Attachments:** DOC001.PDF

Good morning all. Attached is a set of forms as used by the California Superior Court (in this case, for Santa Clara County) for petitioning for relief under that state's ex parte financial protective order laws.

This is informational at this point but I thought it might be helpful to Doug and the court system folks, particularly, to see how that process is formatted by a sister state. Please let me know if you have any questions. Scott Sterling, OPA, Office of Elder Fraud and Assistance.

-----Original Message-----

From: [opa.civil.section@alaska.gov](mailto:opa.civil.section@alaska.gov) [mailto:[opa.civil.section@alaska.gov](mailto:opa.civil.section@alaska.gov)]

Sent: Wednesday, March 09, 2011 11:00 AM  
To: Meade, Jeremy B (DOA); Sterling, Scott A (DOA)  
Subject: EA-100

Scanned Document From OPA. ATTENTION - PLEASE DO NOT REPLY TO THIS EMAIL. This document was scanned and is being sent to you by an employee of the Office of Public Advocacy. This attachment is safe to open.

Sent by: Guest  
Number of Images: 36  
Attachment File Type: PDF

WorkCentre Location: Anchorage Civil Section

The information contained in this email (including any attachments) is confidential and may be privileged.

If you are not the intended recipient, do not read, print, copy, retain, distribute, or disclose its content.

If you have received this email in error or have any questions or concerns, please advise us by calling (907) 269-3500.

## Cindy Smith

---

**From:** Henriksen, Kelly E (LAW) [kelly.henriksen@alaska.gov]  
**Sent:** Monday, March 21, 2011 3:35 PM  
**To:** Sterling, Scott A (DOA); Cindy Smith  
**Cc:** Gibbens, Joanne C (HSS); Laughlin, Wilda J (HSS); Levitt, Rachel E (DOA)  
**Subject:** RE: SB 86

Cindy, I agree with Scott about the CS from HJUD including provisions that will address questions raised by you and at the SJUD work session. There is one legal question you had that may not be addressed in the HJUD CS, and that is whether, in sec. 18(j), "actual damages" includes reputational damages – it does. "Actual damages" is commonly understood to mean all compensatory damages.

Kelly

---

**From:** Sterling, Scott A (DOA)  
**Sent:** Monday, March 21, 2011 2:22 PM  
**To:** Smith, Cindy (LAA)  
**Cc:** Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS); Laughlin, Wilda J (HSS); Levitt, Rachel E (DOA)  
**Subject:** SB 86

Cindy please just let myself or Kelly know of any information or other input that may be needed as the SJUD CS for SB 86 is worked up. The HJUD CS includes some provisions and language that I think will address some of the questions or problems raised at the SB 86 work session. Thanks. Scott.

Scott A. Sterling

Assistant Public Advocate  
State of Alaska  
Office of Elder Fraud and Assistance  
900 West 5<sup>th</sup> Avenue, Suite 525  
Anchorage, Alaska 99501  
Telephone: (907) 334-5932

## Cindy Smith

---

**From:** Henriksen, Kelly E (LAW) [kelly.henriksen@alaska.gov]  
**Sent:** Wednesday, April 06, 2011 3:52 PM  
**To:** Cindy Smith  
**Cc:** Gibbens, Joanne C (HSS)  
**Subject:** CSSB 86

Cindy, as re changing sec. 52 in the CS, it should read "Sections 16 and 20 of this Act...." Those are the two sections that address mandatory reporters and the obligation of peace officers to report to the dept. within 24 hours. (AS 47.24.010(a) and (e)).

Kelly E. Henriksen  
Assistant Attorney General  
Human Services Section

State of Alaska Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300

(907) 465-6726 (direct)  
(907) 465-2539 (fax)

[kelly.henriksen@alaska.gov](mailto:kelly.henriksen@alaska.gov)

+ Kelly's amendment (from

+ deletion of

## Cindy Smith

---

**From:** Henriksen, Kelly E (LAW) [kelly.henriksen@alaska.gov]  
**Sent:** Monday, April 11, 2011 3:17 PM  
**To:** Cindy Smith; Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** RE: SB 86 - Work Order - 27-GS1722X

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Cindy, below are the exact places I think amendments that change the span cite from AS 13.26.165 – 13.26.209 to AS 13.26.207 – 13.26.209 are necessary, following our discussion in SJUD today.

- 1) p. 2, lines 18 and 23.
- 2) p. 6, lines 11, 31
- 3) p. 7, lines 3, 4, 8, 16
- 4) p. 8, lines 16, 23

A committee member asked about the reference to AS 13.26.185 on p. 6, line 16, to which I replied that that reference was appropriate. I was incorrect. The beginning of that paragraph (2) should be deleted, as follow: (2) [a protective order, after notice and a hearing under AS 13.26.185, or]. It should begin with the sentence on line 17, as follows: "(2) a temporary protective order, after notice and a hearing under AS 13.26.208, the court...." The reference to .185 is no longer needed since we are amending out the references to AS 13.26.165, because .185 only applies to .165 protective orders. We make that part clear in sec. 9 of the bill.

That's it. Please let me know what else I can do to move this forward.

Kelly

---

**From:** Cindy Smith [mailto:Cindy\_Smith@legis.state.ak.us]  
**Sent:** Monday, April 11, 2011 8:59 AM  
**To:** Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS)  
**Subject:** FW: SB 86 - Work Order - 27-GS1722X  
**Importance:** High

Here is the CS with the changes we've all been talking about, and a memo that identifies where to find them. Please note that we have a couple of new provisions in modifications but that they just follow existing language on modifications in domestic violence protective orders.

As this is the last week of the session, it is possible that the meeting may be delayed or rescheduled. I will keep you all posted!

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)

## Cindy Smith

---

**From:** Sterling, Scott A (DOA) [scott.sterling@alaska.gov]  
**Sent:** Wednesday, April 13, 2011 8:12 AM  
**To:** Laughlin, Wilda J (HSS); Cindy Smith; Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS); Trimmer, Beth G (DOA); Russo, Elizabeth M H (DOA)  
**Subject:** RE: SB 86 - Work Order - 27-GS1722\X

CSSB86 version "T" looks fine. Sorry I was out of pocket there for a bit my wireless connection didn't work at the Fairbanks airport but my cell, so far as I can tell, hasn't been disconnected for non-payment as yet. That number is 232-3687.

---

**From:** Laughlin, Wilda J (HSS)  
**Sent:** Tuesday, April 12, 2011 2:46 PM  
**To:** Laughlin, Wilda J (HSS); Sterling, Scott A (DOA)  
**Cc:** Trimmer, Beth G (DOA); Henriksen, Kelly E (LAW)  
**Subject:** RE: SB 86 - Work Order - 27-GS1722\X

We can't raise Scott. I am going to give Cindy the OK.

Wilda J. Laughlin  
Legislative Liaison, Dept. of Health and Social Services  
Phone (907) 465-1613  
Fax (907) 465-3068  
Cell (907) 723-3802

This e-mail, including attachments, is intended for the use of the person or entity to which it is addressed and may contain CONFIDENTIAL or privileged information that is protected by federal and state regulation. If the reader of this e-mail is not the intended recipient or his or her agent, the reader is notified that any dissemination, distribution or copying of this e-mail is prohibited. If you think you have received this e-mail in error, please advise the sender by reply e-mail and delete this e-mail immediately.

---

**From:** Laughlin, Wilda J (HSS)  
**Sent:** Tuesday, April 12, 2011 2:15 PM  
**To:** Sterling, Scott A (DOA)  
**Cc:** Trimmer, Beth G (DOA); Henriksen, Kelly E (LAW)  
**Subject:** RE: SB 86 - Work Order - 27-GS1722\X

Hi Scott. We are trying to track you down for your OK of the new CS. The number below is out of order. Do you have a cell?

Beth, can you shed any light on Scott's whereabouts?  
w.

Wilda J. Laughlin  
Legislative Liaison, Dept. of Health and Social Services  
Phone (907) 465-1613  
Fax (907) 465-3068  
Cell (907) 723-3802

This e-mail, including attachments, is intended for the use of the person or entity to which it is addressed and may contain CONFIDENTIAL or privileged information that is protected by federal and state regulation. If the reader of this e-mail is not the intended recipient or his or her agent, the reader is notified that any dissemination, distribution or copying of

this e-mail is prohibited. If you think you have received this e-mail in error, please advise the sender by reply e-mail and delete this e-mail immediately.

---

**From:** Sterling, Scott A (DOA)  
**Sent:** Monday, April 11, 2011 12:28 PM  
**To:** Laughlin, Wilda J (HSS)  
**Cc:** Trimmer, Beth G (DOA)  
**Subject:** RE: SB 86 - Work Order - 27-GS1722\X

I will call in from 907-451-4552 extension 222. That's the phone number for my hotel room here in Fairbanks.

---

**From:** Laughlin, Wilda J (HSS)  
**Sent:** Mon 4/11/2011 10:26 AM  
**To:** Gibbens, Joanne C (HSS); Henriksen, Kelly E (LAW); Mahlatini, Brenda M (HSS); Mayes, Duane G (HSS); Russo, Elizabeth M H (DOA); Sterling, Scott A (DOA); Trimmer, Beth G (DOA)  
**Subject:** FW: SB 86 - Work Order - 27-GS1722\X

Just to be clear—unless you hear otherwise, SB 86 is on the Senate Judiciary schedule today at 1:30. Hopefully it will move out without many questions, but I would like to ask at least Joanne, Kelly, Scott and Brenda to be available. Elizabeth Russo, I will leave it up to you whether to be on line.

Scott/Brenda, can you send me the number you will be calling from?

Brenda—in case you don't have it, the call in number is 855-463-5009.  
w.

Wilda J. Laughlin  
Legislative Liaison, Dept. of Health and Social Services  
Phone (907) 465-1613  
Fax (907) 465-3068  
Cell (907) 723-3802

This e-mail, including attachments, is intended for the use of the person or entity to which it is addressed and may contain CONFIDENTIAL or privileged information that is protected by federal and state regulation. If the reader of this e-mail is not the intended recipient or his or her agent, the reader is notified that any dissemination, distribution or copying of this e-mail is prohibited. If you think you have received this e-mail in error, please advise the sender by reply e-mail and delete this e-mail immediately.

---

**From:** Cindy Smith [[mailto:Cindy\\_Smith@legis.state.ak.us](mailto:Cindy_Smith@legis.state.ak.us)]  
**Sent:** Monday, April 11, 2011 8:59 AM  
**To:** Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Henriksen, Kelly E (LAW); Gibbens, Joanne C (HSS)  
**Subject:** FW: SB 86 - Work Order - 27-GS1722\X  
**Importance:** High

Here is the CS with the changes we've all been talking about, and a memo that identifies where to find them. Please note that we have a couple of new provisions in modifications but that they just follow existing language on modifications in domestic violence protective orders.

As this is the last week of the session, it is possible that the meeting may be delayed or rescheduled. I will keep you all posted!

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)

## Cindy Smith

---

**From:** Gibbens, Joanne C (HSS) [jacob.gibbens@alaska.gov]  
**Sent:** Tuesday, April 12, 2011 12:28 PM  
**To:** Cindy Smith; Henriksen, Kelly E (LAW); Laughlin, Wilda J (HSS); Sterling, Scott A (DOA)  
**Subject:** RE: CSSB86 version T  
**Attachments:** image001.png

Nothing from me, thanks - Joanne

Joanne Gibbens, MSW  
Deputy Director  
Division of Senior & Disabilities Services  
Phone: (907) 465-5481  
Fax: (907) 465-1170



---

**From:** Cindy Smith [mailto:Cindy\_Smith@legis.state.ak.us]  
**Sent:** Tuesday, April 12, 2011 12:27 PM  
**To:** Henriksen, Kelly E (LAW); Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** RE: CSSB86 version T

OK. Anything else? This is last call...

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)

---

**From:** Henriksen, Kelly E (LAW) [mailto:kelly.henriksen@alaska.gov]  
**Sent:** Tuesday, April 12, 2011 12:24 PM  
**To:** Cindy Smith; Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** RE: CSSB86 version T

I do not see any problems that require an amendment. However, I do see a typo, and include it here just in case it matters at this point: p. 22, line 20, following AS 13.26.207, insert a comma.

Kelly

---

**From:** Cindy Smith [mailto:Cindy\_Smith@legis.state.ak.us]  
**Sent:** Tuesday, April 12, 2011 11:14 AM  
**To:** Laughlin, Wilda J (HSS); Henriksen, Kelly E (LAW); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** CSSB86 version T  
**Importance:** High

Attached is the latest draft of SB86. It contains the changes Kelly asked for in her email yesterday.

**Please let me know by 1 p.m. today** if this draft requires any further amendments.

Thanks,

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)

## Cindy Smith

---

**From:** Henriksen, Kelly E (LAW) [kelly.henriksen@alaska.gov]  
**Sent:** Tuesday, April 12, 2011 12:24 PM  
**To:** Cindy Smith; Laughlin, Wilda J (HSS); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** RE: CSSB86 version T

I do not see any problems that require an amendment. However, I do see a typo, and include it here just in case it matters at this point: p. 22, line 20, following AS 13.26.207, insert a comma.

Kelly

---

**From:** Cindy Smith [mailto:Cindy\_Smith@legis.state.ak.us]  
**Sent:** Tuesday, April 12, 2011 11:14 AM  
**To:** Laughlin, Wilda J (HSS); Henriksen, Kelly E (LAW); Sterling, Scott A (DOA); Gibbens, Joanne C (HSS)  
**Subject:** CSSB86 version T  
**Importance:** High

Attached is the latest draft of SB86. It contains the changes Kelly asked for in her email yesterday.

**Please let me know by 1 p.m. today** if this draft requires any further amendments.

Thanks,

Cindy Smith  
Office of Senator Hollis French  
(907) 465-3892  
[www.senate.org](http://www.senate.org)



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 11, 2011

#### MEMORANDUM

FROM: Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

TO: Cindy Smith, Office of Senator Hollis French

RE: **SB 86 – Changes For Consideration**

Sorry this is not in legislative drafting format but following are some proposed changes to certain sections of SB 86 concerning (1) how to ensure that the adult is always given notice of ex parte proceedings, (2) how to ensure that third-parties receive sufficient notice of ex parte orders and (3) a more legally sound definition of fiduciary duty. Please note that these and numerous other changes will likely be considered and incorporated into the final HJUD HB 150 CS. For SB 86 purposes these changes are referenced to the sections of that bill.

Please let me know if you have any questions.

1. At page 4, line 21, SB 86 after the sentence ending with the words "protective order" add **"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.**

2. At page 5, line 16, SB 86 replace current subsection (f) with the following:  
**“(f) 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.**

3. At page 18, line 22, SB 86 replace the existing (18) 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.**



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 9, 2011

#### MEMORANDUM

FROM: Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

TO: Rachel Levitt, Acting Director, OPA

AND TO: HB 150/SB 86 Working Group & Legislative Staff

RE: **HB 150/SB 86– Sister States’ Laws  
On Ex Parte Protective Orders**

Three sister states—California, Oregon and Washington State—permit ex parte relief from financial exploitation. Following is a brief summary of each state’s applicable statutes and court procedures.

#### A. California

**Question 1: Does California law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** California authorizes ex parte protective orders pursuant to California Welfare and Institutions Code, §15657.03. Protective orders are permitted for any “elder or dependent adult who has suffered abuse, including financial abuse. The statute treats financial abuse as a form of domestic violence.

The key legal requirements or restrictions are:

- At the "ex parte" hearing temporary orders may be issued by the Court which last until the next "Order to Show Cause" hearing which must be held no more than 21 days from the date the order is issued.
- No order may be granted on an ex parte basis unless it appears from facts shown in the application for the order (or by attached affidavit) that "great or irreparable injury would result to the applicant before the matter can be heard on notice.
- Absent a showing of exceptional circumstances, the applicant must notify all parties no later than 10:00 a.m. of the court day before the ex parte appearance.
- The court must act on the ex parte application--either issuing or denying the requested order--on the same day the application is submitted.
- An appearance by the responding party as a prerequisite to granting the requested order. If the responding party (personally or through counsel) fails to appear at the hearing (or to file an answer/responsive declaration), the requested relief may be entered by default. The ex parte order may issue only if the court finds that:
  - Reasonable grounds have been asserted to believe there is an immediate and present danger of domestic violence (which includes financial abuse); and
  - An emergency protective order is necessary to prevent the occurrence or reoccurrence of domestic violence (which includes financial abuse).

**Question 2: Does California law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Incapacitated/disabled adults may petition through third-party representative**

**Discussion:** Petitioners unable to petition in person for ex parte relief due to incapacity or disability may, through an attorney or third-party representative, move the court to have a guardian ad litem appointed to represent the incapacitated/disabled adult for purposes of the ex parte relief petition. If a guardian or conservator is already in place for the adult then that person may also apply in that capacity.

**B. Oregon**

**Question 1: Does Oregon law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** Oregon law allows ex parte protection orders for financial abuse or threats of financial abuse of elders and vulnerable adults occurring not more than

180 days prior to the date the petition is filed. Abuse is defined as wrongful taking or appropriating money or property of an elder or subjecting the victim to threats of such abuse. Third-parties, such as social workers, elder fraud investigators, peace officers and direct witnesses may testify in addition to the petitioner him or herself.

An ex parte order must be limited to the relief court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person. Relief can include: directing the respondent to refrain from exercising control over the money or property of the person; requiring the respondent to return custody or control of the money or property of the person to the person; requiring the respondent to follow the instructions of the guardian or conservator of the person; or prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

The ex parte relief is limited to preventing or staying an immediate or urgent exploitation or threatened exploitation. If the victim wishes to have a third-party gain control and management of the victim's financial accounts or property then the victim may petition for a formal, noticed protective proceeding to address the need for expanded or long-term relief.

**Question 2: Does Oregon law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Limited.**

**Discussion:** Oregon law allows the elderly or disabled petitioner to apply for relief through a third-party representative including guardian ad litem, guardian or conservator. It appears that the victim may not use the ex parte procedure to seek relief against the victim's guardian or conservator—to obtain that kind of relief the formal, noticed protective proceeding and/or petition to review guardianship/conservatorship is available.

**Oregon does address the possibility of a third-party representative filing an ex parte petition (“restraining order”) on behalf of a victim where the victim may not agree that he or she actually needs relief.** Thus, if a guardian or guardian ad litem files a petition on behalf of an elderly person or a person with a disability, the elderly person or person with a disability retains the right to be represented by independent counsel; have access to personal records; file objections to the restraining order; request a hearing; and present evidence and cross-examine witnesses at any hearing. Notice must be personally served on the elderly person or person with a disability. Personal service must be made not later than 72 hours after the court issues a restraining order.

**C. Washington State**

**Question 1: Does Washington State law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to restraining the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult and requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources.

A petition must be supported by an affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought.

Washington State law allows the court to issue a "temporary protection order" without written notice to either or both the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard.

A temporary protection order can also be granted upon satisfactory showing to the court that the respondent and vulnerable adult cannot be served with notice, what efforts were made to serve them, and the reasons why prior notice should not be required.

**Question 2: Does Washington State law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Yes.**

**Discussion:** Washington State law specifically provides that a vulnerable adult, or an interested person on behalf of the vulnerable adult, may seek relief from financial exploitation, by filing a petition for an order for protection in superior court. A petition can be filed by the victim, a legal guardian, a legal fiduciary, the Department of Social and Health Services, or, as stated, an "interested person" on behalf of a vulnerable adult. The petition must explain why the petitioner qualifies as an interested person.

Where the elder/vulnerable adult is not him or herself the petitioner then the elder/vulnerable adult must be provided with notice of the petition. The notice form must include language explaining to the vulnerable adult the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

March 9, 2011  
Rachel Levitt, Acting Director, OPA  
Re: SB 86/HB 150 Sister State Ex Parte Laws  
Page 2 of 2

Washington State law also specifically permits the Department of Social and Health Services to seek protective relief from abuse, including financial abuse, for a vulnerable adult, who lacks capacity.

Washington State law includes safeguard provisions when the petitioner is not the vulnerable adult him or herself. When a petition is filed by a third-party notice of the petition and hearing must be personally served upon the vulnerable adult not later than six days before the hearing along with the standard notice form.

The vulnerable adult for whom protection is sought may advise the court at the hearing that he or she does not want all or part of the protection sought in the petition. The court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is order the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

Please let me know if you have any questions.

Scott A. Sterling  
Asst. Public Advocate

16 states @ 1996 -

**UNDUE INFLUENCE: CONTEXT, PROVISIONS, AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE**

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging<sup>1</sup> for the National Center on Elder Abuse<sup>2</sup>

Copyright © American Bar Association Commission on Law and Aging (2007)

Research conducted on Westlaw compliments of West Group

**CAUTION:** Read the explanation of this chart before relying upon the chart. You can find the explanation online at

<http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Hawaii	Financial	For the purpose of this part, 'financial and economic exploitation' means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. 'Financial and economic exploitation' can include but is not limited to: (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property; (B) The unauthorized taking of personal assets; (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance. The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of <b>undue influence</b> . Haw. Rev. Stat. § 346-222(7)
Iowa	Financial Physical	Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of <b>undue influence</b> , harassment, duress, deception, false representation, or false pretenses. Iowa Code Ann. § 235B.2(5)(1)(c)
Kansas	Financial Physical	'Exploitation' means misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person. Kan. Stat. Ann. § 39-1430(d)
Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, §§ 14 – 26 ( <i>applicable to persons who are 60 or older</i> )	Financial	'Financial exploitation', an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, <b>undue influence</b> , coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A. Mass. Gen. Laws Ann. ch. 19A, § 14
Minnesota	Sexual	'Abuse' means: ... For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b> , engages in consensual sexual contact with: (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 2(g)
	Financial	'Financial exploitation' means: ... (b) In the absence of legal authority a person: (1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult; (2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult; (3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of <b>undue influence</b> , harassment, duress, deception, or fraud; or (4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another. Minn. Stat. Ann. § 626.5572, Subd. 9(b)
	Sexual	'Neglect' means: ... (c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that: (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b> , engages in sexual contact with: (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 17(c)
Montana	Financial	'Exploitation' means: (a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b> , or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b> , or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b> , or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property. Mont. Code Ann. § 52-3-803(3)
Nebraska	Financial	<b>Exploitation shall mean the taking of property of vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means. Neb. Rev. Stat. § 28-358</b>
Nevada	Financial	'Exploitation' means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to: (a) Obtain control, through deception, intimidation or <b>undue influence</b> , over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property. As used in this subsection, ' <b>undue influence</b> ' does not include the normal influence that one member of a family has over another. Nev. Rev. Stat. Ann. § 200.5092(2)
New Hampshire	Financial Physical	<b>'Exploitation' means the illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud. N.H. Rev. Stat. Ann. § 161-F:39(IV)</b>

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
North Dakota	Financial	'Financial exploitation' means the taking or misuse of property or resources of a vulnerable adult by means of <b>undue influence</b> , breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. N.D. Cent. Code § 50-25.2-01(7)
Oklahoma	General	'Exploitation' or 'exploit' means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense; Okla. Stat. Ann. tit. 43A, § 10-103 (9)
Rhode Island	Financial	'Exploitation' means an act or process of taking pecuniary advantage of an elderly person by use of <b>undue Influence</b> , harassment, duress, deception, false representation or false pretenses. R.I. Gen. Laws § 42-66-4.1(3)
South Carolina	Financial	(3) 'Exploitation' means: (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) <b>undue influence</b> , (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. S.C. Code Ann. § 43-35-10(3)
Utah	General	'Undue influence' occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult. Utah Code Ann. § 62A-3-301(24)

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Vermont	Financial	<p>'Exploitation' means:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of <b>undue influence</b>, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status. Vt. Stat. Ann. tit. 33, § 6902(6)</p>
Washington	General	<p>'Exploitation' means an act of forcing, compelling, or exerting <b>undue influence</b> over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. Wash. Rev. Code Ann. § 74.34.020(2)(d)</p>
Wyoming	Financial	<p>'Exploitation' means the reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to: (A) obtain control through deception, harassment, intimidation or <b>undue influence</b> over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property; Wyo. Stat. Ann. § 35-20-102(a)(ix)</p>

<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.



## ANCHORAGE

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234  
[www.dlcak.org](http://www.dlcak.org)

March 16, 2011

Senator Hollis French  
Chair, Senate Judiciary Committee  
Capitol 120  
Juneau, Alaska 99811

Re: SB 86

Dear Senator French and Members of the Senate Judiciary Committee:

The Disability Law Center is the state-designated Protection and Advocacy organization for Alaska. Thank you very much for the opportunity to comment on SB 86, a bill which would make it possible for more people to be subject to conservatorships and which would create a system for ex parte restraining orders, brought by a person or by someone interested in the person's welfare, against people who might have defrauded the person needing assistance.

This is to endorse the general principles behind SB 86, but to encourage you to do more to protect the rights of those persons who would be newly subject to conservatorships and who would be newly protected by protective orders. The system envisioned by SB 86 would place some significant additional restrictions on these people's liberty interests and, in the case of ex parte protective orders, would give people needing protection only a delayed opportunity to be heard. It would also make it possible for a person to have a conservatorship imposed on him or her, and to have a protective order put in place restricting other people from contacting him or her, simply because that person had been a victim of fraud – regardless of whether the person was generally competent to handle business matters. We'd suggest adding to proposed AS 13.26.209 an opportunity for the person to be protected to seek modification or termination of any ex parte protective order on three days' notice, as is now possible with ex parte domestic violence restraining orders; and to add a provision ensuring that counsel for the person to be protected is appointed immediately in cases involving either temporary conservatorships or ex parte protective orders. Language amending proposed AS 13.26.207 and proposed AS 13.26.209 is attached.

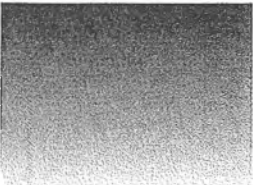
Thank you very much, again, for the opportunity to comment.

Sincerely,

  
Mark Regan  
Legal Director

Enclosure

MEMBER OF THE  
NATIONAL  
DISABILITY  
RIGHTS  
NETWORK



\* **Sec. 7.** AS 13.26 is amended by adding new sections to read:

**Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an initial petition for conservatorship, it appears that the respondent is in need of a protective order to protect the respondent against waste or dissipation of funds or property, or to obtain funds that are needed for the immediate support, care, and welfare of the respondent or persons entitled to be supported by the respondent, and the respondent is not capable of protecting the respondent's funds or property or obtaining the funds that are needed to support the respondent or persons whom the respondent is required to support, the petitioner may request the appointment of a temporary conservator to authorize the protection or to obtain the necessary funds. The request shall state the reasons and factual basis for the request. The petitioner shall immediately file the request with the court and serve copies on the respondent and the respondent's attorney. The court shall conduct a hearing within 72 hours after the filing. If an attorney has not already been appointed for the respondent, the court shall appoint a lawyer to represent the person at or before the hearing.

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

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

**Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders; fees.** (a) A person who is allowed to file a petition for a protective order under AS 13.26.180(a) may file a petition for an ex parte protective order against another person. If the court finds that the petition establishes probable cause that the respondent is financially defrauding the petitioner or a person for whose benefit the petitioner filed the petition, and that because of the fraud there has been, or is an immediate threat of, a waste or dissipation of the proposed protected person's funds or other property, the court shall ex parte and without notice to the respondent issue a protective order. The petitioner shall certify to the court in writing any effort that the petitioner made to provide notice to the respondent. The

court shall cause a copy of the protective order to be served on the respondent.

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

(1) grant any protection described in AS 13.26.200;

(2) supersede an existing power of attorney;

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

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

(c) An ex parte protective order expires 20 days after it is issued, at the end of a six-month extension if granted by the court under (d) of this section, or upon the appointment of a temporary or permanent conservator or dismissal of the petition for the ex parte order. If the petitioner is someone other than the person for whose benefit the petition was filed, the court shall appoint a lawyer to represent the person for whose benefit the petition was filed. If the petitioner is someone other than the person for whose benefit the petition was filed, the person for whose benefit the petition was filed may request modification of the ex parte protective order; the court shall schedule a hearing on three days' notice or such shorter notice as the court may prescribe, and shall hear and rule on the request in an expeditious manner.

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

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

(f) A third party shall comply with a protective order issued under this section. A third party who does not comply with a protective order granted under this section may be liable in a civil action to the protected person or the protected person's heirs, assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees

associated with the failure to comply with the protective order. A third person who does not comply with a protective order granted under this section may also be criminally liable under AS 11.56.740 for violating a protective order.

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

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



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 9, 2011

#### MEMORANDUM

**FROM:** Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

**TO:** Rachel Levitt, Acting Director, OPA

**AND TO:** HB 150/SB 86 Working Group & Legislative Staff

**RE:** **HB 150/SB 86– Sister States’ Laws  
On Ex Parte Protective Orders**

Three sister states—California, Oregon and Washington State—permit ex parte relief from financial exploitation. Following is a brief summary of each state’s applicable statutes and court procedures.

#### **A. California**

**Question 1: Does California law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** California authorizes ex parte protective orders pursuant to California Welfare and Institutions Code, §15657.03. Protective orders are permitted for any “elder or dependent adult who has suffered abuse, including financial abuse. The statute treats financial abuse as a form of domestic violence.

The key legal requirements or restrictions are:

March 9, 2011

Rachel Levitt, Acting Director, OPA

Re: SB 86/HB 150 Sister State Ex Parte Laws

Page 2 of 2

- At the "ex parte" hearing temporary orders may be issued by the Court which last until the next "Order to Show Cause" hearing which must be held no more than 21 days from the date the order is issued.
- No order may be granted on an ex parte basis unless it appears from facts shown in the application for the order (or by attached affidavit) that "great or irreparable injury would result to the applicant before the matter can be heard on notice.
- Absent a showing of exceptional circumstances, the applicant must notify all parties no later than 10:00 a.m. of the court day before the ex parte appearance.
- The court must act on the ex parte application--either issuing or denying the requested order--on the same day the application is submitted.
- An appearance by the responding party as a prerequisite to granting the requested order. If the responding party (personally or through counsel) fails to appear at the hearing (or to file an answer/responsive declaration), the requested relief may be entered by default. The ex parte order may issue only if the court finds that:
  - Reasonable grounds have been asserted to believe there is an immediate and present danger of domestic violence (which includes financial abuse); and
  - An emergency protective order is necessary to prevent the occurrence or reoccurrence of domestic violence (which includes financial abuse).

**Question 2: Does California law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Incapacitated/disabled adults may petition through third-party representative**

**Discussion:** Petitioners unable to petition in person for ex parte relief due to incapacity or disability may, through an attorney or third-party representative, move the court to have a guardian ad litem appointed to represent the incapacitated/disabled adult for purposes of the ex parte relief petition. If a guardian or conservator is already in place for the adult then that person may also apply in that capacity.

## **B. Oregon**

**Question 1: Does Oregon law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** Oregon law allows ex parte protection orders for financial abuse or threats of financial abuse of elders and vulnerable adults occurring not more than

180 days prior to the date the petition is filed. Abuse is defined as wrongful taking or appropriating money or property of an elder or subjecting the victim to threats of such abuse. Third-parties, such as social workers, elder fraud investigators, peace officers and direct witnesses may testify in addition to the petitioner him or herself.

An ex parte order must be limited to the relief court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person. Relief can include: directing the respondent to refrain from exercising control over the money or property of the person; requiring the respondent to return custody or control of the money or property of the person to the person; requiring the respondent to follow the instructions of the guardian or conservator of the person; or prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

The ex parte relief is limited to preventing or staying an immediate or urgent exploitation or threatened exploitation. If the victim wishes to have a third-party gain control and management of the victim's financial accounts or property then the victim may petition for a formal, noticed protective proceeding to address the need for expanded or long-term relief.

**Question 2: Does Oregon law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Limited.**

**Discussion:** Oregon law allows the elderly or disabled petitioner to apply for relief through a third-party representative including guardian ad litem, guardian or conservator. It appears that the victim may not use the ex parte procedure to seek relief against the victim's guardian or conservator—to obtain that kind of relief the formal, noticed protective proceeding and/or petition to review guardianship/conservatorship is available.

**Oregon does address the possibility of a third-party representative filing an ex parte petition (“restraining order”) on behalf of a victim where the victim may not agree that he or she actually needs relief.** Thus, if a guardian or guardian ad litem files a petition on behalf of an elderly person or a person with a disability, the elderly person or person with a disability retains the right to be represented by independent counsel; have access to personal records; file objections to the restraining order; request a hearing; and present evidence and cross-examine witnesses at any hearing. Notice must be personally served on the elderly person or person with a disability. Personal service must be made not later than 72 hours after the court issues a restraining order.

**C. Washington State**

**Question 1: Does Washington State law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to restraining the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult and requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources.

A petition must be supported by an affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought.

Washington State law allows the court to issue a "temporary protection order" without written notice to either or both the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard.

A temporary protection order can also be granted upon satisfactory showing to the court that the respondent and vulnerable adult cannot be served with notice, what efforts were made to serve them, and the reasons why prior notice should not be required.

**Question 2: Does Washington State law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Yes.**

**Discussion:** Washington State law specifically provides that a vulnerable adult, or an interested person on behalf of the vulnerable adult, may seek relief from financial exploitation, by filing a petition for an order for protection in superior court. A petition can be filed by the victim, a legal guardian, a legal fiduciary, the Department of Social and Health Services, or, as stated, an "interested person" on behalf of a vulnerable adult. The petition must explain why the petitioner qualifies as an interested person.

Where the elder/vulnerable adult is not him or herself the petitioner then the elder/vulnerable adult must be provided with notice of the petition. The notice form must include language explaining to the vulnerable adult the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

March 9, 2011  
Rachel Levitt, Acting Director, OPA  
Re: SB 86/HB 150 Sister State Ex Parte Laws  
Page 2 of 2

Washington State law also specifically permits the Department of Social and Health Services to seek protective relief from abuse, including financial abuse, for a vulnerable adult, who lacks capacity.

Washington State law includes safeguard provisions when the petitioner is not the vulnerable adult him or herself. When a petition is filed by a third-party notice of the petition and hearing must be personally served upon the vulnerable adult not later than six days before the hearing along with the standard notice form.

The vulnerable adult for whom protection is sought may advise the court at the hearing that he or she does not want all or part of the protection sought in the petition. The court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is order the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

Please let me know if you have any questions.

Scott A. Sterling  
Asst. Public Advocate

This chart contains the following three columns:

1. **State.** This chart only includes states that have provisions on undue influence.
2. **Context.** The second column identifies the context(s) of the state's provision(s). The context reflects the fact that undue influence is recognized as a method for committing financial or sexual exploitation and not usually defined as a form of elder abuse, or even as a crime. Some state provisions, however, refer to physical abuse rather than sexual abuse, just as some state definitions of the types of elder abuse include sexual abuse within the definition of physical abuse. To gain a better understanding of the state definitions about types of abuse, see the Types of Abuse Defined in Adult Protective Services Statutes charts available online at <http://www.abanet.org/aging/about/elderabuse.shtml>. The context column follows the terminology used in the statutory provision. To provide this context, the APS provisions on undue influence are either:
  - a. Part of a broader definition of financial exploitation or of sexual or physical abuse/exploitation,
  - b. Included as a distinct definition that makes clear that the context relates to one or more types of abuse, or
  - c. Part of a general definition that does not clearly reference financial exploitation or physical or sexual abuse/exploitation.
3. **Statutory Provision(s) and Citation(s).** The pertinent statutory provision(s) and citation(s) are presented in this column. They are copied verbatim from the state laws. If undue influence is part of a broad provision, such as a definition of financial exploitation, then all relevant parts of the provision are provided for context. If a state's law contains multiple provisions, they are separated by a line and a citation is provided for each.

### **III. If You Find an Error**

We strived to be consistent in our interpretation and categorization of the statutes. Despite our best efforts, we may have made errors. It is also possible that APS or other professionals interpret a statute differently than we did or there are state regulations or policies that lead to a different interpretation. Additionally, state laws may have changed since December 31, 2006. If you think we erred or your state has a regulation or policy that leads to a different interpretation, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at [lstiegel@staff.abanet.org](mailto:lstiegel@staff.abanet.org) or 202-662-8692.

---

<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.

<sup>3</sup> The Undue Influence curriculum is available from the National Clearinghouse on Abuse in Later Life (NCALL). See the resource page of the NCALL Web site: [www.ncall.us/resources.html](http://www.ncall.us/resources.html)

## **Explanation of the “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” Chart**

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging<sup>1</sup> for the National Center on Elder Abuse<sup>2</sup>

Copyright © American Bar Association Commission on Law and Aging (2007)

Research conducted on Westlaw compliments of West Group

The chart addresses the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the chart refer to these jurisdictions generically as “state” or “states.”

Unless otherwise indicated, this explanation (1) uses the term “abuse” generally to include abuse, neglect, and exploitation, and (2) uses “elder abuse” to include elder abuse and adult abuse.

**CAUTION:** This chart is based only on the state APS laws; APS regulations were not reviewed. It is important to recognize that there may be other state laws or regulations or federal laws or regulations that address the issue covered by this chart. For example, there may be criminal laws on financial or sexual exploitation or laws related to wills or other financial and property matters that include provisions on undue influence. Additionally, there may be court decisions that define undue influence in the context of elder abuse or other matters.

**NOTE:** A few states have multiple laws. Some of those states have separate elder protective services (EPS) laws and APS laws, and those laws are designated in the chart by following the state abbreviation with “EPS” or “APS”. Some states have more than one APS law, and those laws are designated in the chart by following the state abbreviation with #1 or #2. Unless otherwise indicated in this explanation or the chart, both APS and EPS laws will generally be referred to as APS laws.

### **I. Why We Developed This Chart**

Awareness is growing of undue influence and the role that it may play in cases involving elder abuse. As a result, state and federal legislative staff, other policy makers, program administrators, practitioners, educators, researchers, reporters, victims and their family members, and others often want to know how many states have laws on undue influence and what those laws say. The “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” chart offers that information.

### **II. Detailed Explanation of the “Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State” Chart**

Undue influence is usually not defined as a form of elder abuse, or even as a crime. It is, instead, recognized as a process or method used to commit financial or sexual exploitation. (YWCA of Omaha. (2006). *Undue Influence: The Criminal Justice Response*. Omaha, Neb.: Author.)<sup>3</sup>

## UNDUE INFLUENCE: CONTEXT, PROVISIONS, AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging<sup>1</sup> for the National Center on Elder Abuse<sup>2</sup>

Copyright © American Bar Association Commission on Law and Aging (2007)

Research conducted on Westlaw compliments of West Group

**CAUTION:** Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Hawaii	Financial	For the purpose of this part, 'financial and economic exploitation' means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. 'Financial and economic exploitation' can include but is not limited to: (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property; (B) The unauthorized taking of personal assets; (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance. The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of <b>undue influence</b> . Haw. Rev. Stat. § 346-222(7)
Iowa	Financial Physical	Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of <b>undue influence</b> , harassment, duress, deception, false representation, or false pretenses. Iowa Code Ann. § 235B.2(5)(1)(c)
Kansas	Financial Physical	'Exploitation' means misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person. Kan. Stat. Ann. § 39-1430(d)
Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, §§ 14 – 26 ( <i>applicable to persons who are 60 or older</i> )	Financial	'Financial exploitation', an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, <b>undue influence</b> , coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A. Mass. Gen. Laws Ann. ch. 19A, § 14
Minnesota	Sexual	<p>'Abuse' means: ...</p> <p>For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b>, engages in consensual sexual contact with: (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 2(g)</p>
	Financial	<p>'Financial exploitation' means: ...</p> <p>(b) In the absence of legal authority a person:</p> <p>(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;</p> <p>(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;</p> <p>(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of <b>undue influence</b>, harassment, duress, deception, or fraud; or</p> <p>(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another. Minn. Stat. Ann. § 626.5572, Subd. 9(b)</p>
	Sexual	<p>'Neglect' means: ...</p> <p>(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:</p> <p>(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or <b>undue influence</b>, engages in sexual contact with:</p> <p>(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or</p> <p>(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 17(c)</p>
Montana	Financial	<p>'Exploitation' means:</p> <p>(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the</p>

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		<p>ownership, use, benefit, or possession of or interest in the person's money, assets, or property;</p> <p>(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;</p> <p>(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property. Mont. Code Ann. § 52-3-803(3)</p>
Nebraska	Financial	<p>Exploitation shall mean the taking of property of vulnerable adult by means of <b>undue influence</b>, breach of a fiduciary relationship, deception, or extortion or by any unlawful means. Neb. Rev. Stat. § 28-358</p>
Nevada	Financial	<p>'Exploitation' means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:</p> <p>(a) Obtain control, through deception, intimidation or <b>undue influence</b>, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or</p> <p>(b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property.</p> <p>As used in this subsection, '<b>undue influence</b>' does not include the normal influence that one member of a family has over another. Nev. Rev. Stat. Ann. § 200.5092(2)</p>
New Hampshire	Financial Physical	<p>'Exploitation' means the illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of <b>undue influence</b>, harassment, duress, deception, or fraud. N.H. Rev. Stat. Ann. § 161-F:39(IV)</p>

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
North Dakota	Financial	'Financial exploitation' means the taking or misuse of property or resources of a vulnerable adult by means of <b>undue influence</b> , breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. N.D. Cent. Code § 50-25.2-01(7)
Oklahoma	General	'Exploitation' or 'exploit' means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense; Okla. Stat. Ann. tit. 43A, § 10-103 (9)
Rhode Island	Financial	'Exploitation' means an act or process of taking pecuniary advantage of an elderly person by use of <b>undue Influence</b> , harassment, duress, deception, false representation or false pretenses. R.I. Gen. Laws § 42-66-4.1(3)
South Carolina	Financial	(3) 'Exploitation' means: (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) <b>undue influence</b> , (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. S.C. Code Ann. § 43-35-10(3)
Utah	General	'Undue influence' occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult. Utah Code Ann. § 62A-3-301(24)

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Vermont	Financial	<p>'Exploitation' means:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status. Vt. Stat. Ann. tit. 33, § 6902(6)</p>
Washington	General	<p>'Exploitation' means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. Wash. Rev. Code Ann. § 74.34.020(2)(d)</p>
Wyoming	Financial	<p>'Exploitation' means the reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to: (A) obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property; Wyo. Stat. Ann. § 35-20-102(a)(ix)</p>

<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 11, 2011

#### MEMORANDUM

FROM: Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

TO: Cindy Smith, Office of Senator Hollis French

RE: **SB 86 – Changes For Consideration**

Sorry this is not in legislative drafting format but following are some proposed changes to certain sections of SB 86 concerning (1) how to ensure that the adult is always given notice of ex parte proceedings, (2) how to ensure that third-parties receive sufficient notice of ex parte orders and (3) a more legally sound definition of fiduciary duty. Please note that these and numerous other changes will likely be considered and incorporated into the final HJUD HB 150 CS. For SB 86 purposes these changes are referenced to the sections of that bill.

Please let me know if you have any questions.

1. At page 4, line 21, SB 86 after the sentence ending with the words "protective order" add **"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**

Notice

**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.**

2. At page 5, line 16, SB 86 replace current subsection (f) with the following:  
**“(f) 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.**

—  
what  
about  
damages?

**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.**

3. At page 18, line 22, SB 86 replace the existing (18) with:

**(18) “fiduciary duty” means the duty of a <sup>person</sup> 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.**

Blacks : a duty to act  
for someone else's benefit,  
while subordinating one's personal  
interests to that of the other  
person. It is the highest standard



# STATE OF

# ALASKA

## DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

### OFFICE OF ELDER FRAUD AND ASSISTANCE

Sean Parnell, Governor

Rachel Levitt, Director

900 W. 5<sup>th</sup> Ave., Suite 525  
Anchorage, Alaska  
99501

(907) 334-5989

Telephone

(907) 375-7788

Facsimile

March 9, 2011

#### MEMORANDUM

**FROM:** Scott A. Sterling, Supervising Attorney  
Office of Elder Fraud & Assistance  
Anchorage, Alaska

**TO:** Rachel Levitt, Acting Director, OPA

**AND TO:** HB 150/SB 86 Working Group & Legislative Staff

**RE:** **HB 150/SB 86– Sister States’ Laws  
On Ex Parte Protective Orders**

Three sister states—California, Oregon and Washington State—permit ex parte relief from financial exploitation. Following is a brief summary of each state’s applicable statutes and court procedures.

#### **A. California**

**Question 1: Does California law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** California authorizes ex parte protective orders pursuant to California Welfare and Institutions Code, §15657.03. Protective orders are permitted for any “elder or dependent adult who has suffered abuse, including financial abuse. The statute treats financial abuse as a form of domestic violence.

The key legal requirements or restrictions are:

- At the "ex parte" hearing temporary orders may be issued by the Court which last until the next "Order to Show Cause" hearing which must be held no more than 21 days from the date the order is issued.
- No order may be granted on an ex parte basis unless it appears from facts shown in the application for the order (or by attached affidavit) that "great or irreparable injury would result to the applicant before the matter can be heard on notice.
- Absent a showing of exceptional circumstances, the applicant must notify all parties no later than 10:00 a.m. of the court day before the ex parte appearance.
- The court must act on the ex parte application--either issuing or denying the requested order--on the same day the application is submitted.
- An appearance by the responding party as a prerequisite to granting the requested order. If the responding party (personally or through counsel) fails to appear at the hearing (or to file an answer/responsive declaration), the requested relief may be entered by default. The ex parte order may issue only if the court finds that:
  - Reasonable grounds have been asserted to believe there is an immediate and present danger of domestic violence (which includes financial abuse); and
  - An emergency protective order is necessary to prevent the occurrence or reoccurrence of domestic violence (which includes financial abuse).

**Question 2: Does California law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Incapacitated/disabled adults may petition through third-party representative**

**Discussion:** Petitioners unable to petition in person for ex parte relief due to incapacity or disability may, through an attorney or third-party representative, move the court to have a guardian ad litem appointed to represent the incapacitated/disabled adult for purposes of the ex parte relief petition. If a guardian or conservator is already in place for the adult then that person may also apply in that capacity.

**B. Oregon**

**Question 1: Does Oregon law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** Oregon law allows ex parte protection orders for financial abuse or threats of financial abuse of elders and vulnerable adults occurring not more than

180 days prior to the date the petition is filed. Abuse is defined as wrongful taking or appropriating money or property of an elder or subjecting the victim to threats of such abuse. Third-parties, such as social workers, elder fraud investigators, peace officers and direct witnesses may testify in addition to the petitioner him or herself.

An ex parte order must be limited to the relief court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person. Relief can include: directing the respondent to refrain from exercising control over the money or property of the person; requiring the respondent to return custody or control of the money or property of the person to the person; requiring the respondent to follow the instructions of the guardian or conservator of the person; or prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

The ex parte relief is limited to preventing or staying an immediate or urgent exploitation or threatened exploitation. If the victim wishes to have a third-party gain control and management of the victim's financial accounts or property then the victim may petition for a formal, noticed protective proceeding to address the need for expanded or long-term relief.

**Question 2: Does Oregon law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Limited.**

**Discussion:** Oregon law allows the elderly or disabled petitioner to apply for relief through a third-party representative including guardian ad litem, guardian or conservator. It appears that the victim may not use the ex parte procedure to seek relief against the victim's guardian or conservator—to obtain that kind of relief the formal, noticed protective proceeding and/or petition to review guardianship/conservatorship is available.

**Oregon does address the possibility of a third-party representative filing an ex parte petition (“restraining order”) on behalf of a victim where the victim may not agree that he or she actually needs relief.** Thus, if a guardian or guardian ad litem files a petition on behalf of an elderly person or a person with a disability, the elderly person or person with a disability retains the right to be represented by independent counsel; have access to personal records; file objections to the restraining order; request a hearing; and present evidence and cross-examine witnesses at any hearing. Notice must be personally served on the elderly person or person with a disability. Personal service must be made not later than 72 hours after the court issues a restraining order.

**C. Washington State**

**Question 1: Does Washington State law permit ex parte filings for financial protective orders for elders/vulnerable adults?**

**Answer 1: Yes.**

**Discussion:** The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to restraining the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult and requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources.

A petition must be supported by an affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought.

Washington State law allows the court to issue a "temporary protection order" without written notice to either or both the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard.

A temporary protection order can also be granted upon satisfactory showing to the court that the respondent and vulnerable adult cannot be served with notice, what efforts were made to serve them, and the reasons why prior notice should not be required.

**Question 2: Does Washington State law permit third-parties to petition for ex parte protective order for an elder/vulnerable adult?**

**Answer 2: Yes.**

**Discussion:** Washington State law specifically provides that a vulnerable adult, or an interested person on behalf of the vulnerable adult, may seek relief from financial exploitation, by filing a petition for an order for protection in superior court. A petition can be filed by the victim, a legal guardian, a legal fiduciary, the Department of Social and Health Services, or, as stated, an "interested person" on behalf of a vulnerable adult. The petition must explain why the petitioner qualifies as an interested person.

Where the elder/vulnerable adult is not him or herself the petitioner then the elder/vulnerable adult must be provided with notice of the petition. The notice form must include language explaining to the vulnerable adult the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

March 9, 2011  
Rachel Levitt, Acting Director, OPA  
Re: SB 86/HB 150 Sister State Ex Parte Laws  
Page 2 of 2

Washington State law also specifically permits the Department of Social and Health Services to seek protective relief from abuse, including financial abuse, for a vulnerable adult, who lacks capacity.

Washington State law includes safeguard provisions when the petitioner is not the vulnerable adult him or herself. When a petition is filed by a third-party notice of the petition and hearing must be personally served upon the vulnerable adult not later than six days before the hearing along with the standard notice form.

The vulnerable adult for whom protection is sought may advise the court at the hearing that he or she does not want all or part of the protection sought in the petition. The court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is order the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

Please let me know if you have any questions.

Scott A. Sterling  
Asst. Public Advocate

50 14 states @ 1996 -

## UNDUE INFLUENCE: CONTEXT, PROVISIONS, AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging<sup>1</sup> for the National Center on Elder Abuse<sup>2</sup>

Copyright © American Bar Association Commission on Law and Aging (2007)

Research conducted on Westlaw compliments of West Group

**CAUTION:** Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Hawaii	Financial	For the purpose of this part, 'financial and economic exploitation' means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. 'Financial and economic exploitation' can include but is not limited to: (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property; (B) The unauthorized taking of personal assets; (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance. The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of <b>undue influence</b> . Haw. Rev. Stat. § 346-222(7)
Iowa	Financial Physical	Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of <b>undue influence</b> , harassment, duress, deception, false representation, or false pretenses. Iowa Code Ann. § 235B.2(5)(1)(c)
Kansas	Financial Physical	'Exploitation' means misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person. Kan. Stat. Ann. § 39-1430(d)
Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, §§ 14 – 26 (applicable to persons who are 60 or older)	Financial	'Financial exploitation', an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, <b>undue influence</b> , coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A. Mass. Gen. Laws Ann. ch. 19A, § 14
Minnesota	Sexual	<p>'Abuse' means:</p> <p>For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with: (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 2(g)</p>
	Financial	<p>'Financial exploitation' means: ...</p> <p>(b) In the absence of legal authority a person:</p> <p>(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;</p> <p>(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;</p> <p>(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or</p> <p>(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another. Minn. Stat. Ann. § 626.5572, Subd. 9(b)</p>
	Sexual	<p>'Neglect' means: ...</p> <p>(a) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:</p> <p>(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:</p> <p>(1) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or</p> <p>(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship. Minn. Stat. Ann. § 626.5572, Subd. 17(c)</p>
Montana	Financial	<p>'Exploitation' means:</p> <p>(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the</p>

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
		<p>ownership, use, benefit, or possession of or interest in the person's money, assets, or property;</p> <p>(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;</p> <p>(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, <b>undue influence</b>, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property. Mont. Code Ann. § 52-3-803(3)</p>
Nebraska	Financial	<p><b>Exploitation shall mean the taking of property of vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means. Neb. Rev. Stat. § 28-358</b></p>
Nevada	Financial	<p>'Exploitation' means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:</p> <p>(a) Obtain control, through deception, intimidation or <b>undue influence</b>, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or</p> <p>(b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property.</p> <p>As used in this subsection, '<b>undue influence</b>' does not include the normal influence that one member of a family has over another. Nev. Rev. Stat. Ann. § 200.5092(2)</p>
New Hampshire	Financial Physical	<p><b>'Exploitation' means the illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud. N.H. Rev. Stat. Ann. § 161-F:39(IV)</b></p>

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
North Dakota	Financial	'Financial exploitation' means the taking or misuse of property or resources of a vulnerable adult by means of <b>undue influence</b> , breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. N.D. Cent. Code § 50-25.2-01(7)
Oklahoma	General	'Exploitation' or 'exploit' means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of <b>undue influence</b> , coercion, harassment, duress, deception, false representation or false pretense; Okla. Stat. Ann. tit. 43A, § 10-103 (9)
Rhode Island	Financial	'Exploitation' means an act or process of taking pecuniary advantage of an elderly person by use of <b>undue Influence</b> , harassment, duress, deception, false representation or false pretenses. R.I. Gen. Laws § 42-66-4.1(3)
South Carolina	Financial	(3) 'Exploitation' means: (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) <b>undue influence</b> , (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. S.C. Code Ann. § 43-35-10(3)
Utah	General	'Undue influence' occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult. Utah Code Ann. § 62A-3-301(24)

STATE	CONTEXT	STATUTORY PROVISION(S) AND CITATION(S)
Vermont	Financial	<p>'Exploitation' means:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status. Vt. Stat. Ann. tit. 33, § 6902(6)</p>
Washington	General	<p>'Exploitation' means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. Wash. Rev. Code Ann. § 74.34.020(2)(d)</p>
Wyoming	Financial	<p>'Exploitation' means the reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to: (A) obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property; Wyo. Stat. Ann. § 35-20-102(a)(ix)</p>

<sup>1</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> This document was completed for the National Center on Elder Abuse and supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.

# STATE OF ALASKA

DEPARTMENT OF REVENUE  
Alaska Mental Health  
Trust Authority

SEAN PARNELL, GOVERNOR

Office of the Long Term Care Ombudsman

3745 Community Park Loop, Suite 200  
Anchorage AK 99508  
Phone (907) 334-4480  
Fax (907) 334-4486

February 18, 2011

Senators French, Wielechowski, Paskvan, McGuire, and Coghill  
Alaska State 27<sup>th</sup> Legislature  
State Capitol  
Juneau, AK

Re: SB 86 "Protection of vulnerable adults"

Dear Senators:

The Office of the Long Term Care Ombudsman investigates and resolves complaints made by, or on behalf of, older Alaskans in long term care facilities. In the first seven months of FY 2011, our office received 13 complaints alleging financial exploitation of seniors in assisted living or nursing homes. These cases can involve a family member or caregiver

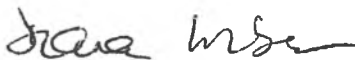
- exerting undue influence over a senior's decision-making to access bank accounts.
- charging the senior for services and goods he or she did not receive.
- failing to provide a senior with needed care, so as to save the "family" inheritance, or
- forcing a senior to sign over deeds on houses or land.

While 13 cases may not seem significant, even a few instances of exploitation of seniors can lead to hundreds of thousands of dollars in lost assets.

The frustrating thing about these cases is that the exploitation happens so quickly that the State cannot step in fast enough to preserve the seniors' assets. Not only is it wrong for seniors to be taken advantage of in this way, but once the seniors' assets are gone, Medicaid or General Relief pick up the cost of the care. The State is essentially footing the bill for these losses.

I support SB 86, especially the provisions for financial protective orders, emergency conservatorships, and the addition of "undue influence" as a reportable harm. I hope you will give your support to this bill and protect our older Alaskans from financial predators.

Sincerely,



Diana Weber, MS  
State of Alaska Long Term Care Ombudsman  
3745 Community Park Loop, Suite 200  
Anchorage, AK 99508