

SB

86

(FILE 3)

<TARGET><BILL>SB 86</BILL><SUBJECT>SB 86 (FILE
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Mischel
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CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **(3) issued under AS 13.26.207 - 13.26.209 and knowingly commits**
19 **or attempts to commit an act with reckless disregard that the act violates or**
20 **would violate a provision of the protective order.**

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

22 (c) In this section, "protective order" means an order issued or filed under
23 **AS 13.26.207 - 13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.207 or a temporary protective order filed under
9 AS 13.26.208.

10 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
12 initial petition for conservatorship, it appears that the respondent is in need of a
13 protective order to protect the respondent against waste or dissipation of funds or
14 property, or to obtain funds that are needed for the immediate support, care, and
15 welfare of the respondent or persons entitled to be supported by the respondent, and
16 the respondent is not capable of protecting the respondent's funds or property or
17 obtaining the funds that are needed to support the respondent or persons whom the
18 respondent is required to support, the petitioner may request the appointment of a
19 temporary conservator to authorize the protection or to obtain the necessary funds. The
20 request must state the reasons and factual basis for the request. The petitioner shall
21 immediately file the request with the court and serve copies on the respondent and the
22 respondent's attorney and other persons as ordered by the court. The court shall
23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
4 ex parte protective order against a person other than the protected person. A petition
5 filed on behalf of a protected person by a person other than the protected person must
6 be accompanied by proof of service of the petition on the protected person or the
7 person's attorney unless service would cause an immediate threat of harm to the best
8 interests of the protected person and the petition includes a written explanation of the
9 harm. If the court finds that the petition establishes probable cause that the respondent
10 is financially defrauding the petitioner or a person for whose benefit the petitioner
11 filed the petition and that, because of the fraud, there has been or is an immediate
12 threat of a waste or dissipation of the proposed protected person's funds or other
13 property, the court shall ex parte and without notice to the respondent issue a
14 protective order. The petitioner shall certify to the court in writing any effort that the
15 petitioner made to provide notice to the respondent.

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

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

18 (2) supersede an existing power of attorney;

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

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
26 dissolved earlier by the court at the request of the petitioner or respondent and after
27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
30 filed with the court before the expiration of a 20-day ex parte protective order issued
31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

1 protective order to a temporary order effective for up to six months. The court shall
2 provide to the protected person and the respondent at least 10 days' notice of the
3 hearing and the respondent's right to appear and be heard. If the court finds by a
4 preponderance of the evidence that the respondent has committed fraud against the
5 petitioner or the person for whose benefit the petition was filed, regardless of whether
6 the respondent appears at the hearing, the court may convert the ex parte protective
7 order to a temporary protective order effective for up to six months.

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
10 is a vulnerable adult, may request modification of a protective order issued under
11 AS 13.26.207 - 13.26.209. Except as provided in (b) of this section, if a request is
12 made for modification of

13 (1) an ex parte protective order issued under AS 13.26.207, the court
14 shall schedule a hearing on three days' notice or on shorter notice as the court may
15 prescribe; or

16 (2) a temporary protective order, after notice and hearing under
17 ¹⁸⁵ AS 13.26.208, the court shall schedule a hearing within 20 days after the date the
18 request is made, except that, if the court finds that the request is meritless on its face,
19 the court may deny the request without a hearing.

20 (b) If a request for a modification is made under this section and the
21 respondent raises an issue not raised by the petitioner, the court may allow the
22 petitioner additional time to respond.

23 (c) If the court modifies a protective order, the court shall issue a modified
24 order and shall make reasonable efforts to ensure that the order is understood by the
25 petitioner, the respondent, and the protected person who are present at the hearing.

26 (d) The court shall cause a copy of a protective order, any related orders, and a
27 scheduling order, if any, to be served on the respondent and the protected person and
28 have a protective order and any related order delivered to the appropriate local law
29 enforcement agency for expedited entry in the central registry under AS 18.65.540.

30 (e) A protective order issued under AS 13.26.207 - 13.26.209 is in addition to
31 any other civil or criminal remedy.

1 (f) A third party that has received actual or legal notice of a protective order
2 issued under AS 13.26.207 - 13.26.209 shall comply with the order. A third party who
3 does not comply with a protective order granted under AS 13.26.207 - 13.26.209 may
4 be liable in a civil action to the protected person or the protected person's heirs,
5 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
6 costs, and fees associated with the failure to comply with the protective order. A third
7 party who does not comply with a protective order granted under AS 13.26.207 -
8 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
9 order. As used in this section, "actual or legal notice" means delivery by mail or
10 facsimile at the most recently known place of residence or business of the third party.

11 (g) The Alaska Court System, after consulting with the Department of Health
12 and Social Services, the office of public advocacy, the office of elder fraud and
13 assistance, the long term care ombudsman, and other interested persons and
14 organizations, shall prepare forms for petitions and protective orders and instructions
15 for use of the forms by a person seeking a protective order under AS 13.26.207 -
16 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
17 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
18 by legible handwriting. The office of the clerk of each superior and district court shall
19 make available to the public the forms a person seeking a protective order may need
20 and instructions for the use of the forms. The clerk shall provide assistance in
21 completing and filing the forms.

22 (h) Filing fees may not be charged for a petition under AS 13.26.207, for an
23 application under AS 13.26.208, or for a request for modification of a protective order
24 under AS 13.26.209(a).

25 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

- 28 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
29 (2) offenses against property under AS 11.46.100 - 11.46.740; or
30 (3) exploitation of another person or another person's resources for
31 personal profit or advantage if no significant benefit accrues to the person who is

1 exploited.

2 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

14 (a) The Department of Public Safety shall maintain a central registry of
15 protective orders issued by or filed with a court of this state under AS 13.26.207 -
16 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
17 include, for each protective order, the names of the petitioner and respondent, their
18 dates of birth, and the conditions and duration of the order. The registry shall retain a
19 record of the protective order after it has expired.

20 * **Sec. 14.** AS 18.65.540(b) is amended to read:

21 (b) A peace officer receiving a protective order from a court under
22 AS 13.26.207, 13.26.208, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
23 modified order issued under AS 13.26.209, AS 18.65.860, or AS 18.66.120, or an
24 order dismissing a protective order shall [, MUST] take reasonable steps to ensure that
25 the order, modified order, or dismissal is entered into the central registry within 24
26 hours after being received.

27 * **Sec. 15.** AS 44.21.415(g) is amended to read:

28 (g) In this section,

29 (1) "fraud" means

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

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

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

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

8 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

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

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

19 (3) a pharmacist;

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

22 (5) a guardian or conservator;

23 (6) a police officer;

24 (7) a village public safety officer;

25 (8) a village health aide;

26 (9) a social worker;

27 (10) a member of the clergy;

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

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

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

3 (14) a caregiver of the vulnerable adult;

4 (15) a certified nurse aide;

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

7 * **Sec. 17.** AS 47.24.010(b) is amended to read:

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

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

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

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

17 * **Sec. 18.** AS 47.24.010(c) is amended to read:

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

27 * **Sec. 19.** AS 47.24.010(d) is amended to read:

28 (d) This section does not prohibit a person listed in (a) of this section, or any
29 other person, from reporting cases of **undue influence,** abandonment, exploitation,
30 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's
31 attention **in the person's nonoccupational capacity. This section does not prohibit**

1 **any other person from reporting a harm under this section.**

2 * **Sec. 20.** AS 47.24.010(e) is amended to read:

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

20 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

26 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

31 (j) A person who recklessly makes a false report under this section is civilly

1 liable for actual damages suffered by the person who is the subject of the report.

2 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

10 * **Sec. 24.** AS 47.24.013(b) is amended to read:

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

16 * **Sec. 25.** AS 47.24.013(c) is amended to read:

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

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

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

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

26 * **Sec. 26.** AS 47.24.013(d) is amended to read:

27 (d) If the long term care ombudsman receives directly a report regarding the
28 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
29 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
30 report, and the results of the ombudsman's actions or investigations regarding the
31 report, to the central information and referral service of the **office of the** department

1 **that handles adult protective services.** The department may investigate the report as
2 described in AS 47.24.015 if the department determines that action is appropriate.

3 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

12 * **Sec. 28.** AS 47.24.015(c) is amended to read:

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

- 25 (1) the department may petition the court as set out in AS 47.24.019;
- 26 (2) the department or its designee may refer the report made to the
27 department under AS 47.24.010 to a police officer for criminal investigation; or
- 28 (3) in cases involving fraud, the department or its designee may refer
29 the report made to the department under AS 47.24.010 to the office of public advocacy
30 for investigation; in this paragraph, "fraud" has the meaning given in **AS 13.26.324**
31 [**AS 44.21.415**].

1 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

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

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

25 * **Sec. 30.** AS 47.24.016(a) is amended to read:

26 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
27 in need of protective services, but the department cannot obtain the vulnerable adult's
28 consent to receive the services because the vulnerable adult is unable to consent or
29 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
30 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
31 the vulnerable adult's surrogate decision maker, the department may select from the

1 following list, in the order of priority listed, an individual who is willing to be the
2 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
3 consent to the vulnerable adult's receipt of protective services:

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

5 [(A) THE VULNERABLE ADULT AND THE SPOUSE
6 HAVE SEPARATE DOMICILES; OR

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

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

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

13 (4) a parent of the vulnerable adult;

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

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

18 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

25 * **Sec. 32.** AS 47.24.016(d) is amended to read:

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

1 if the vulnerable adult consents.

2 * **Sec. 33.** AS 47.24.017(a) is amended to read:

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

16 * **Sec. 34.** AS 47.24.019(c) is amended to read:

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

25 * **Sec. 35.** AS 47.24.050 is amended to read:

26 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
27 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
28 neglect of a vulnerable adult filed under this chapter are confidential and are not
29 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
30 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
31 chapter, investigation reports may be used by appropriate agencies or individuals

1 inside and outside the state, in connection with investigations or judicial proceedings
2 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
3 neglect of a vulnerable adult.

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

18 * **Sec. 36.** AS 47.24.130 is amended to read:

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

30 * **Sec. 37.** AS 47.24.900(2) is amended to read:

31 (2) "abuse" means

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

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

6 * **Sec. 38.** AS 47.24.900(3) is amended to read:

7 (3) "caregiver" means

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

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

14 * **Sec. 39.** AS 47.24.900(4) is amended to read:

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

20 * **Sec. 40.** AS 47.24.900(7) is amended to read:

21 (7) "exploitation"

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

25 (B) **includes acts by a person who stands in a position of**
26 **trust or confidence with a vulnerable adult or who knows or should know**
27 **that the vulnerable adult lacks the capacity to consent that involve**
28 **obtaining profit or advantage through undue influence, deception, fraud,**
29 **intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has**
30 **the meaning given in AS 13.26.324(1) and (2)**;

31 * **Sec. 41.** AS 47.24.900(9) is amended to read:

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

8 * Sec. 42. AS 47.24.900(11) is amended to read:

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

13 (A) protective placement;

14 (B) applying for or obtaining public benefits;

15 (C) obtaining health care services and supplies;

16 (D) staying financial transactions;

17 (E) petitioning for a protective order under AS 13.26.165 -

18 13.26.209;

19 (F) assisting with personal hygiene;

20 (G) obtaining food and clothing;

21 (H) protection from physical and emotional abuse;

22 (I) obtaining representative payee services; and

23 (J) coordinating protective services;

24 * Sec. 43. AS 47.24.900(15) is amended to read:

25 (15) "unable to consent" means refusal to, or inability to, accept
26 services because

27 (A) the person is an incapacitated person or apparently is an
28 incapacitated person;

29 (B) of coercion by or fear of reprisal from the perpetrator of
30 undue influence, abandonment, exploitation, abuse, or neglect;

31 (C) of dependency on the perpetrator of undue influence.

1 abandonment, exploitation, abuse, or neglect for services, care, or support; or
2 (D) of an inability to perceive that refusal to consent results in
3 an imminent and substantial danger of **loss, waste, or dissipation of income**
4 **or assets, eviction, physical or mental harm to self or others, or** death [OR
5 **IRREPARABLE HARM TO SELF OR OTHERS**];

6 * **Sec. 44.** AS 47.24.900(16) is amended to read:

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

12 * **Sec. 45.** AS 47.24.900 is amended by adding new paragraphs to read:

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

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

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

- 21 (A) a broker-dealer;
22 (B) a commercial bank;
23 (C) a savings bank;
24 (D) a credit union;
25 (E) a premium finance company;
26 (F) a small loan company;
27 (G) a bank holding company;
28 (H) a financial holding company;
29 (I) a trust company;
30 (J) a savings and loan association;
31 (K) a deferred deposit advance licensee;

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- (L) an investment bank;
- (M) an insurance company subject to regulation by AS 21;
- (N) a licensee subject to regulation by AS 21; and
- (O) an investment adviser;

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

- (A) is a relative by blood or marriage;
- (B) is a joint tenant or tenant in common;
- (C) has a legal or fiduciary relationship; or
- (D) is a person who has been entrusted with or has assumed

responsibility for the use or management of the vulnerable adult's assets or income;

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

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

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

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

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

DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
3 placing criminal proceedings upon appropriate calendars. Preference shall be given to
4 criminal proceedings and the trial of defendants in custody shall be given preference
5 over other criminal cases. The court shall consider the circumstances of the victim,
6 particularly a victim of advanced age or extreme youth, in setting the trial date.

7 Trial dates in criminal cases in the superior court shall be set at the time of
8 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
9 for a date certain.

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

12 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.207, 13.26.208, and
13 13.26.209(a) - (g), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska
14 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
15 allowing ex parte and temporary orders and modifications of orders to be issued related to
16 protecting the assets of a person otherwise subject to AS 13.26.165 from financial
17 exploitation.

18 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, has the effect of amending Rule
19 9, Alaska Rules of Administration, by requiring that filing fees may not be charged for a
20 petition for an ex parte protective order under AS 13.26.207 for an application for a temporary
21 order under AS 13.26.208, or for modification of a protective order under AS 13.26.209(a),
22 enacted by sec. 10 of this Act.

23 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
24 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
25 petition for the appointment of a temporary conservator.

26 (d) AS 13.26.208, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
27 Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary
28 protective order on 10 days' notice.

29 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, have the effect of
30 amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on a request
31 for modification of a protective order on 20 days' notice and for modification of an ex parte

1 protective order on three days' notice.

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

4 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
5 on or after the effective date of secs. 3 - 5 of this Act.

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

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

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

12 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
13 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
14 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
15 out-of-home care facilities."

16 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 CONDITIONAL EFFECT. (a) AS 13.26.207 and 13.26.209(a) - (g), enacted by sec.
19 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each
20 house required by art. IV, sec. 15, Constitution of the State of Alaska.

21 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
22 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
23 the State of Alaska.

24 (c) AS 13.26.206, enacted by sec. 10 of this Act, takes effect only if sec. 48(c) of this
25 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
26 State of Alaska.

27 (d) AS 13.26.208, enacted by sec. 10 of this Act, takes effect only if sec. 48(a) and (d)
28 of this Act receive the two-thirds vote of each house required by art. IV, sec. 15, Constitution
29 of the State of Alaska.

30 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, take effect only if sec.
31 48(e) of this Act receive the two-thirds vote of each house required by art. IV, sec. 15,

1 Constitution of the State of Alaska.

2 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.

3 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

April 7, 2011

TO: Jean Mischel, Leg Legal

FROM: Cindy Smith

RE: new CS for SB86 Protection of Vulnerable Adults/Minors (GS1722\B)

Please prepare a new CS for SB 86 Protection of Vulnerable Adults/Minors with the following changes to the \B version.

1. In section 13.26.209 (starting on page 5), having to do with protective orders, there is some confusion in the original drafting by the Department of Law that needs to be cleared up. The section addresses both ex-parte orders, which are orders at which the respondent may be excluded from notice requirements, and also 6 month protective orders, which require that all parties receive notice and have the opportunity to be present. The bill as drafted has not separated references to the two different orders and in fact is referring to them inaccurately at times as "a six-month extension" of the ex-parte order. Please look at this section and separate out and correct references to these two different orders. It may be useful to look at domestic violence restraining orders for formatting.

Also in this section, in the current (c) on page 5, and also in reference to the 6-month protective order, please add language that states expiration dates followed by the "unless dissolved earlier by the court".

2. On page 10, at line 24, delete the language "at the earliest opportunity" and reinstate the commas if appropriate.
3. Restrict Section 52 on page 22 to apply to sections 16 and 20 only.

27-GS1722\B
Mischel
4/5/11

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.209.

9 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

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

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

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

1 **Sec. 13.26.209. Ex parte protective orders; modification; forms for**
 2 **petitions and orders; fees.** (a) A person who is allowed to file a petition for a
 3 protective order under AS 13.26.180(a) may file a petition for an ex parte protective
 4 order against another person. A petition filed on behalf of a protected person by
 5 another person must be accompanied by proof of service of the petition on the
 6 protected person or the person's attorney unless service would cause an immediate
 7 threat of harm to the best interests of the protected person and the petition includes a
 8 written explanation of the harm. If the court finds that the petition establishes probable
 9 cause that the respondent is financially defrauding the petitioner or a person for whose
 10 benefit the petitioner filed the petition and that, because of the fraud, there has been or
 11 is an immediate threat of a waste or dissipation of the proposed protected person's
 12 funds or other property, the court shall ex parte and without notice to the respondent
 13 issue a protective order. The petitioner shall certify to the court in writing any effort
 14 that the petitioner made to provide notice to the respondent. The court shall cause a
 15 copy of the protective order, any related orders, and a scheduling order, if any, to be
 16 served on the respondent and the protected person.

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

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

19 (2) supersede an existing power of attorney;

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

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

26 (c) An ex parte protective order expires 20 days after it is issued, [at the end of
 27 a six-month extension if granted by the court under (d) of this section, ~~or~~ on the
 28 appointment of a temporary or permanent conservator or dismissal of the petition for
 29 the ex parte order. "unless dissolved . . ."

30 (d) On application filed with the court before the expiration of the 20-day ex
 31 parte protective order, the court shall schedule a hearing on whether to extend the

1 protective order for up to six months. The court shall provide to the protected person
2 and the respondent at least 10 days' notice of the hearing and the respondent's right to
3 appear and be heard. If the court finds by a preponderance of the evidence that the
4 respondent has committed fraud against the petitioner or the person for whose benefit
5 the petition was filed, regardless of whether the respondent appears at the hearing, the
6 court may extend the ~~ex parte~~ protective order for up to six months. ?

7 (e) The petitioner, respondent, or protected person, if the protected person is a
8 vulnerable adult, may request modification of a protective order issued under this
9 section. If a request is made for modification of a protective order, the court shall
10 schedule a hearing on three days' notice or on shorter notice as the court may
11 prescribe. If the court modifies a protective order under this section, the court shall
12 issue a modified order and shall make reasonable efforts to ensure that the order is
13 understood by the petitioner, the respondent, and the protected person, if the protected
14 person is a vulnerable adult, if present at the hearing.

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

17 (g) A third party that has received actual or legal notice of a protective order
18 issued under this section shall comply with the order. A third party who does not
19 comply with a protective order granted under this section may be liable in a civil
20 action to the protected person or the protected person's heirs, assigns, or estate for a
21 civil penalty not to exceed \$1,000, plus the actual damages, costs, and fees associated
22 with the failure to comply with the protective order. A third party who does not
23 comply with a protective order granted under this section may also be criminally liable
24 under AS 11.56.740 for violating a protective order. As used in this section, "actual or
25 legal notice" means delivery by mail or facsimile at the most recently known place of
26 residence or business of the third party.

27 (h) The Alaska Court System, after consulting with the Department of Health
28 and Social Services, the office of public advocacy, the office of elder fraud and
29 assistance, the long term care ombudsman, and other interested persons and
30 organizations, shall prepare forms for petitions and protective orders and instructions
31 for use of the forms by a person seeking a protective order under this section. The

1 forms must conform to the Alaska Rules of Probate Procedure and Alaska Rules of
2 Civil Procedure, except that information on the forms may be filled in by legible
3 handwriting. The office of the clerk of each superior and district court shall make
4 available to the public the forms a person seeking a protective order under this section
5 may need and instructions for the use of the forms. The clerk shall provide assistance
6 in completing and filing the forms.

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

8 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

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

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

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

16 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

28 (a) The Department of Public Safety shall maintain a central registry of
29 protective orders issued by or filed with a court of this state under AS 13.26.180,
30 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
31 include, for each protective order, the names of the petitioner and respondent, their

1 dates of birth, and the conditions and duration of the order. The registry shall retain a
2 record of the protective order after it has expired.

3 * **Sec. 14.** AS 18.65.540(b) is amended to read:

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

10 * **Sec. 15.** AS 44.21.415(g) is amended to read:

11 (g) In this section,

12 (1) "fraud" means

13 (A) robbery, extortion, and coercion under AS 11.41.500 -
14 11.41.530;

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

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

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

22 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

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

31 (2) a mental health professional as defined in AS 47.30.915(11) and

1 including a marital and family therapist licensed under AS 08.63;

2 (3) a pharmacist;

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

5 (5) a guardian or conservator;

6 (6) a police officer;

7 (7) a village public safety officer;

8 (8) a village health aide;

9 (9) a social worker;

10 (10) a member of the clergy;

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

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

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

17 (14) a caregiver of the vulnerable adult;

18 (15) a certified nurse aide;

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

21 * **Sec. 17.** AS 47.24.010(b) is amended to read:

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

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

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

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

31 * **Sec. 18.** AS 47.24.010(c) is amended to read:

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

10 * **Sec. 19.** AS 47.24.010(d) is amended to read:

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

16 * **Sec. 20.** AS 47.24.010(e) is amended to read:

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

1 damages awarded in the action may include only direct economic compensatory
2 damages for personal injury.

3 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

9 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

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

16 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

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

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

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

31 (c) Upon receipt of a report under (a) or (b) of this section, the long term care

1 ombudsman and the department shall

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

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

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

9 * **Sec. 26.** AS 47.24.013(d) is amended to read:

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

17 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

26 * **Sec. 28.** AS 47.24.015(c) is amended to read:

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

1 services and the request is made personally by the vulnerable adult and the vulnerable
2 adult is not competent to make the request on the adult's own behalf, or the request is
3 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
4 and that person is the alleged perpetrator of the undue influence, abandonment,
5 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
6 this chapter. If the department has probable cause to believe that the vulnerable adult
7 is in need of protective services,

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

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

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

15 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

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

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

8 * **Sec. 30.** AS 47.24.016(a) is amended to read:

9 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
10 in need of protective services, but the department cannot obtain the vulnerable adult's
11 consent to receive the services because the vulnerable adult is unable to consent or
12 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
13 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
14 the vulnerable adult's surrogate decision maker, the department may select from the
15 following list, in the order of priority listed, an individual who is willing to be the
16 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
17 consent to the vulnerable adult's receipt of protective services:

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

19 [(A) THE VULNERABLE ADULT AND THE SPOUSE
20 HAVE SEPARATE DOMICILES; OR

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

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

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

27 (4) a parent of the vulnerable adult;

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

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

1 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

8 * **Sec. 32.** AS 47.24.016(d) is amended to read:

9 (d) The department may not continue to provide protective services to a
10 vulnerable adult based on the consent of a surrogate decision maker serving under this
11 section **or AS 13.52.030** if the department determines that the vulnerable adult has
12 become able to consent or has regained decision making capacity since the surrogate's
13 consent was given. The department may continue protective services to a vulnerable
14 adult who has become able to consent or has regained decision making capacity only
15 if the vulnerable adult consents.

16 * **Sec. 33.** AS 47.24.017(a) is amended to read:

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

30 * **Sec. 34.** AS 47.24.019(c) is amended to read:

31 (c) If a vulnerable adult who has consented to receive protective services, or

1 on whose behalf consent to receive protective services has been given, is prevented by
2 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
3 SURROGATE DECISION MAKER] from receiving those services, the department
4 may petition the superior court for an injunction restraining the person
5 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
6 DECISION MAKER] from interfering with the provision of protective services to the
7 vulnerable adult.

8 * **Sec. 35.** AS 47.24.050 is amended to read:

9 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
10 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
11 neglect of a vulnerable adult filed under this chapter are confidential and are not
12 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
13 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
14 chapter, investigation reports may be used by appropriate agencies or individuals
15 inside and outside the state, in connection with investigations or judicial proceedings
16 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
17 neglect of a vulnerable adult.

18 (b) The department shall disclose a report of the undue influence,
19 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
20 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
21 conservator, attorney-in-fact, trustee, or surrogate decision maker consents in
22 writing. The department may not disclose a report of the undue influence,
23 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the
24 vulnerable adult's guardian, conservator, attorney-in-fact, trustee, or surrogate
25 decision maker if that person is an alleged perpetrator of the undue influence,
26 abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being
27 investigated under this chapter. The department shall, upon request, disclose the
28 number of verified reports of undue influence, abandonment, exploitation, abuse,
29 neglect, or self-neglect of a vulnerable adult that occurred at an institution that
30 provides care for vulnerable adults or that were the result of actions or inactions of a
31 public home care provider.

1 * **Sec. 36.** AS 47.24.130 is amended to read:

2 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
3 construed to mean that a person is unduly influenced, abused, neglected, self-
4 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
5 emergency or protective services for the sole reason that the person relies on or is
6 being furnished treatment by spiritual means through prayer alone under [IN
7 ACCORDANCE WITH] the tenets and practices of a church or religious
8 denomination of which the person is a member or adherent, if [PROVIDED THAT]
9 the person consents to the treatment through spiritual means only and the treatment is
10 administered by an accredited practitioner of the church or religious denomination. In
11 this section, "church or religious denomination" has the meaning given to "religious
12 organization" in AS 05.15.690.

13 * **Sec. 37.** AS 47.24.900(2) is amended to read:

14 (2) "abuse" means

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

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

20 * **Sec. 38.** AS 47.24.900(3) is amended to read:

21 (3) "caregiver" means

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

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

28 * **Sec. 39.** AS 47.24.900(4) is amended to read:

29 (4) "decision making capacity" means the ability to understand and
30 appreciate the nature and consequences of a decision and the ability to reach and
31 communicate an informed decision; in this paragraph, "informed decision"

1 includes a decision made by the vulnerable adult that is free from undue
2 influence;

3 * **Sec. 40.** AS 47.24.900(7) is amended to read:

4 (7) "exploitation"

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

8 (B) includes acts by a person who stands in a position of
9 trust or confidence with a vulnerable adult or who knows or should know
10 that the vulnerable adult lacks the capacity to consent that involve
11 obtaining profit or advantage through undue influence, deception, fraud,
12 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has
13 the meaning given in AS 13.26.324(1) and (2);

14 * **Sec. 41.** AS 47.24.900(9) is amended to read:

15 (9) "neglect" means the intentional, knowing, or reckless failure by a
16 caregiver to provide essential care or services or access to essential care or services
17 or to carry out a prescribed treatment plan necessary to maintain the physical and
18 mental health of the vulnerable adult when the vulnerable adult is unable to provide
19 or obtain the essential care or services or to carry out the prescribed treatment
20 plan on the vulnerable adult's own behalf; in this paragraph, "essential care or
21 services" includes food, clothing, shelter, medical care, and supervision;

22 * **Sec. 42.** AS 47.24.900(11) is amended to read:

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

27 (A) protective placement;

28 (B) applying for or obtaining public benefits;

29 (C) obtaining health care services and supplies;

30 (D) staying financial transactions;

31 (E) petitioning for an ex parte protective order under

AS 13.26.209;

(F) assisting with personal hygiene;

(G) obtaining food and clothing;

(H) protection from physical and emotional abuse;

(I) obtaining representative payee services; and

(J) coordinating protective services;

* Sec. 43. AS 47.24.900(15) is amended to read:

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

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

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

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

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

* Sec. 44. AS 47.24.900(16) is amended to read:

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

* Sec. 45. AS 47.24.900 is amended by adding new paragraphs to read:

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

(18) "fiduciary duty" means the duty of a third party who stands in a position of trust or confidence with another person, including a vulnerable adult, to act

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with due regard for the benefit and interest of that person;

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

- (A) a broker-dealer;
- (B) a commercial bank;
- (C) a savings bank;
- (D) a credit union;
- (E) a premium finance company;
- (F) a small loan company;
- (G) a bank holding company;
- (H) a financial holding company;
- (I) a trust company;
- (J) a savings and loan association;
- (K) a deferred deposit advance licensee;
- (L) an investment bank;
- (M) an insurance company subject to regulation by AS 21;
- (N) a licensee subject to regulation by AS 21; and
- (O) an investment adviser;

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

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

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

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

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

5 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
6 granted by the court only for cause shown. In deciding whether to grant the motion,
7 the court shall consider the victim's circumstances and the effect the delay would
8 have on the victim, particularly a victim of advanced age or extreme youth. The
9 court shall place its findings on the record. The presiding judge of a judicial district
10 may require that a visiting or pro tem judge obtain approval from the presiding judge
11 before granting any continuance of trial.

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

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

16 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
17 placing criminal proceedings upon appropriate calendars. Preference shall be given to
18 criminal proceedings and the trial of defendants in custody shall be given preference
19 over other criminal cases. The court shall consider the circumstances of the victim,
20 particularly a victim of advanced age or extreme youth, in setting the trial date.

21 Trial dates in criminal cases in the superior court shall be set at the time of
22 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
23 for a date certain.

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

26 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (h), enacted by
27 sec. 10 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,
28 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
29 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
30 financial exploitation.

31 (b) AS 13.26.209(i), enacted by sec. 10 of this Act, has the effect of amending Rule 9,

1 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
2 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 10 of this Act.

3 (c) AS 13.26.207, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
4 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
5 petition for the appointment of a temporary conservator.

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

8 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
9 on or after the effective date of this Act.

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

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

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

16 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
17 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
18 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
19 out-of-home care facilities."

20 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 CONDITIONAL EFFECT. (a) AS 13.26.209(a) - (h), enacted by sec. 10 of this Act,
23 take effect only if sec. 48(a) of this Act receives the two-thirds vote of each house required by
24 art. IV, sec. 15, Constitution of the State of Alaska.

25 (b) AS 13.26.209(i), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
26 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
27 the State of Alaska.

28 * **Sec. 52.** Sections 16 - 28 of this Act take effect September 1, 2011.

29 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

Changes to CSSB86 (JUD) from Version "B" to Version "X":

Protective Orders: Page 2, and Pages 5 through 8:

Provisions regarding ex parte protective orders, 6-month protective orders and permanent protective orders are restructured into separate sections and the sections are renumbered. Permanent protective orders (already in statute) are referenced and amended in AS 13.26.165 (page 2). Ex-parte order provisions are now in 13.26.207 (page 5); temporary protective order provisions (6-month orders) are in 13.26.208 (pages 5-6), while modifications, compliance, and forms and fees provisions are in 13.26.209 (pages 6-7). Definitions are listed in 13.26.324 (pages 7-8).

Please note that language in Section 13.26.209 (page 6) dealing with modifications was redrafted to follow similar provisions for modifications in domestic violence protective order statutes.

Conforming amendments have been made throughout the bill to these newly renumbered sections as necessary.

Reporting requirements: on Page 11, at lines 11-12:

The phrase "at the earliest opportunity" has been deleted to provide a clear deadline, since failure to report for police officers and village public safety officers is a chargeable offense under section 18 of this bill.

Effective Dates: Section 52, on page 24, at line 3:

The September effective date applies only to sections 16 and 20 of the bill (new reporters and new police reporting requirements), per the committee's discussion.

27-GS1722X
Mischel
4/9/11

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **(3) issued under AS 13.26.165 - 13.26.209 and knowingly commits**
19 **or attempts to commit an act with reckless disregard that the act violates or**
20 **would violate a provision of the protective order.**

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

22 (c) In this section, "protective order" means an order issued or filed under
23 **AS 13.26.165 - 13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.207 or a temporary protective order filed under
9 AS 13.26.208.

10 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
12 initial petition for conservatorship, it appears that the respondent is in need of a
13 protective order to protect the respondent against waste or dissipation of funds or
14 property, or to obtain funds that are needed for the immediate support, care, and
15 welfare of the respondent or persons entitled to be supported by the respondent, and
16 the respondent is not capable of protecting the respondent's funds or property or
17 obtaining the funds that are needed to support the respondent or persons whom the
18 respondent is required to support, the petitioner may request the appointment of a
19 temporary conservator to authorize the protection or to obtain the necessary funds. The
20 request must state the reasons and factual basis for the request. The petitioner shall
21 immediately file the request with the court and serve copies on the respondent and the
22 respondent's attorney and other persons as ordered by the court. The court shall
23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
4 ex parte protective order against a person other than the protected person. A petition
5 filed on behalf of a protected person by a person other than the protected person must
6 be accompanied by proof of service of the petition on the protected person or the
7 person's attorney unless service would cause an immediate threat of harm to the best
8 interests of the protected person and the petition includes a written explanation of the
9 harm. If the court finds that the petition establishes probable cause that the respondent
10 is financially defrauding the petitioner or a person for whose benefit the petitioner
11 filed the petition and that, because of the fraud, there has been or is an immediate
12 threat of a waste or dissipation of the proposed protected person's funds or other
13 property, the court shall ex parte and without notice to the respondent issue a
14 protective order. The petitioner shall certify to the court in writing any effort that the
15 petitioner made to provide notice to the respondent.

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

17 (1) grant any protection described in AS 13.26.200;
18 (2) supersede an existing power of attorney;
19 (3) prohibit the respondent from having any direct or indirect contact
20 with the petitioner or other person for whose benefit the petitioner filed the petition;
21 and

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
26 dissolved earlier by the court at the request of the petitioner or respondent and after
27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
30 filed with the court before the expiration of a 20-day ex parte protective order issued
31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

1 protective order to a temporary order effective for up to six months. The court shall
2 provide to the protected person and the respondent at least 10 days' notice of the
3 hearing and the respondent's right to appear and be heard. If the court finds by a
4 preponderance of the evidence that the respondent has committed fraud against the
5 petitioner or the person for whose benefit the petition was filed, regardless of whether
6 the respondent appears at the hearing, the court may convert the ex parte protective
7 order to a temporary protective order effective for up to six months.

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
10 is a vulnerable adult, may request modification of a protective order issued under
11 AS 13.26.165 - 13.26.209. Except as provided in (b) of this section, if a request is
12 made for modification of

13 (1) an ex parte protective order issued under AS 13.26.207, the court
14 shall schedule a hearing on three days' notice or on shorter notice as the court may
15 prescribe; or

16 (2) a protective order, after notice and hearing under AS 13.26.185, or
17 a temporary protective order, after notice and hearing under AS 13.26.208, the court
18 shall schedule a hearing within 20 days after the date the request is made, except that,
19 if the court finds that the request is meritless on its face, the court may deny the
20 request without a hearing.

21 (b) If a request for a modification is made under this section and the
22 respondent raises an issue not raised by the petitioner, the court may allow the
23 petitioner additional time to respond.

24 (c) If the court modifies a protective order, the court shall issue a modified
25 order and shall make reasonable efforts to ensure that the order is understood by the
26 petitioner, the respondent, and the protected person who are present at the hearing.

27 (d) The court shall cause a copy of a protective order, any related orders, and a
28 scheduling order, if any, to be served on the respondent and the protected person and
29 have a protective order and any related order delivered to the appropriate local law
30 enforcement agency for expedited entry in the central registry under AS 18.65.540.

31 (e) A protective order issued under AS 13.26.165 - 13.26.209 is in addition to

1 any other civil or criminal remedy.

2 (f) A third party that has received actual or legal notice of a protective order
3 issued under AS 13.26.165 - 13.26.209 shall comply with the order. A third party who
4 does not comply with a protective order granted under AS 13.26.165 - 13.26.209 may
5 be liable in a civil action to the protected person or the protected person's heirs,
6 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
7 costs, and fees associated with the failure to comply with the protective order. A third
8 party who does not comply with a protective order granted under AS 13.26.165 -
9 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
10 order. As used in this section, "actual or legal notice" means delivery by mail or
11 facsimile at the most recently known place of residence or business of the third party.

12 (g) The Alaska Court System, after consulting with the Department of Health
13 and Social Services, the office of public advocacy, the office of elder fraud and
14 assistance, the long term care ombudsman, and other interested persons and
15 organizations, shall prepare forms for petitions and protective orders and instructions
16 for use of the forms by a person seeking a protective order under AS 13.26.165 -
17 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
18 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
19 by legible handwriting. The office of the clerk of each superior and district court shall
20 make available to the public the forms a person seeking a protective order may need
21 and instructions for the use of the forms. The clerk shall provide assistance in
22 completing and filing the forms.

23 (h) Filing fees may not be charged for a petition under AS 13.26.207, for an
24 application under AS 13.26.208, or for a request for modification of a protective order
25 under AS 13.26.209(a).

26 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

- 29 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
30 (2) offenses against property under AS 11.46.100 - 11.46.740; or
31 (3) exploitation of another person or another person's resources for

1 personal profit or advantage if no significant benefit accrues to the person who is
2 exploited.

3 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

15 (a) The Department of Public Safety shall maintain a central registry of
16 protective orders issued by or filed with a court of this state under AS 13.26.165 -
17 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
18 include, for each protective order, the names of the petitioner and respondent, their
19 dates of birth, and the conditions and duration of the order. The registry shall retain a
20 record of the protective order after it has expired.

21 * **Sec. 14.** AS 18.65.540(b) is amended to read:

22 (b) A peace officer receiving a protective order from a court under
23 AS 13.26.165 - 13.26.208, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
24 modified order issued under AS 13.26.209, AS 18.65.860, or AS 18.66.120, or an
25 order dismissing a protective order shall [, MUST] take reasonable steps to ensure that
26 the order, modified order, or dismissal is entered into the central registry within 24
27 hours after being received.

28 * **Sec. 15.** AS 44.21.415(g) is amended to read:

29 (g) In this section,

30 (1) "fraud" means

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

1 11.41.530;

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

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

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

9 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

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

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

20 (3) a pharmacist;

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

23 (5) a guardian or conservator;

24 (6) a police officer;

25 (7) a village public safety officer;

26 (8) a village health aide;

27 (9) a social worker;

28 (10) a member of the clergy;

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

- 1 (12) an employee of a personal care or home health aide program;
- 2 (13) an emergency medical technician or a mobile intensive care
- 3 paramedic;
- 4 (14) a caregiver of the vulnerable adult;
- 5 (15) a certified nurse aide;
- 6 **(16) an educator or administrative staff member of a public or**
- 7 **private educational institution.**

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

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

- 11 (1) the name and **contact information** [ADDRESS] of the vulnerable
- 12 adult;
- 13 (2) information relating to the nature and extent of the **undue**
- 14 **influence**, abandonment, exploitation, abuse, neglect, or self-neglect;
- 15 (3) other information that the reporting person believes might be
- 16 helpful in an investigation of the case or in providing protection for the vulnerable
- 17 adult.

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

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

28 * **Sec. 19.** AS 47.24.010(d) is amended to read:

29 (d) This section does not prohibit a person listed in (a) of this section, or any
30 other person, from reporting cases of **undue influence**, abandonment, exploitation,
31 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's

1 attention in the person's nonoccupational capacity. This section does not prohibit
2 any other person from reporting a harm under this section.

3 * **Sec. 20.** AS 47.24.010(e) is amended to read:

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

21 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

27 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

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

3 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

11 * **Sec. 24.** AS 47.24.013(b) is amended to read:

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

17 * **Sec. 25.** AS 47.24.013(c) is amended to read:

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

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

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

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

27 * **Sec. 26.** AS 47.24.013(d) is amended to read:

28 (d) If the long term care ombudsman receives directly a report regarding the
29 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a
30 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
31 report, and the results of the ombudsman's actions or investigations regarding the

1 report, to the central information and referral service of the office of the department
2 that handles adult protective services. The department may investigate the report as
3 described in AS 47.24.015 if the department determines that action is appropriate.

4 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

13 * **Sec. 28.** AS 47.24.015(c) is amended to read:

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

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

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

29 (3) in cases involving fraud, the department or its designee may refer
30 the report made to the department under AS 47.24.010 to the office of public advocacy
31 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.324

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[AS 44.21.415].

* **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

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

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

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

(a) If the department determines under AS 47.24.015 that a vulnerable adult is in need of protective services, but the department cannot obtain the vulnerable adult's consent to receive the services because the vulnerable adult is unable to consent or lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as

1 the vulnerable adult's surrogate decision maker, the department may select from the
2 following list, in the order of priority listed, an individual who is willing to be the
3 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
4 consent to the vulnerable adult's receipt of protective services:

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

6 [(A) THE VULNERABLE ADULT AND THE SPOUSE
7 HAVE SEPARATE DOMICILES; OR

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

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

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

14 (4) a parent of the vulnerable adult;

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

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

19 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

26 * **Sec. 32.** AS 47.24.016(d) is amended to read:

27 (d) The department may not continue to provide protective services to a
28 vulnerable adult based on the consent of a surrogate decision maker serving under this
29 section or AS 13.52.030 if the department determines that the vulnerable adult has
30 become able to consent or has regained decision making capacity since the surrogate's
31 consent was given. The department may continue protective services to a vulnerable

1 adult who has become able to consent or has regained decision making capacity only
2 if the vulnerable adult consents.

3 * **Sec. 33.** AS 47.24.017(a) is amended to read:

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

17 * **Sec. 34.** AS 47.24.019(c) is amended to read:

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

26 * **Sec. 35.** AS 47.24.050 is amended to read:

27 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
28 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
29 neglect of a vulnerable adult filed under this chapter are confidential and are not
30 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
31 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this

1 chapter, investigation reports may be used by appropriate agencies or individuals
2 inside and outside the state, in connection with investigations or judicial proceedings
3 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
4 neglect of a vulnerable adult.

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

19 * **Sec. 36.** AS 47.24.130 is amended to read:

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

31 * **Sec. 37.** AS 47.24.900(2) is amended to read:

1 (2) "abuse" means

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

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

7 * Sec. 38. AS 47.24.900(3) is amended to read:

8 (3) "caregiver" means

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

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

15 * Sec. 39. AS 47.24.900(4) is amended to read:

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

21 * Sec. 40. AS 47.24.900(7) is amended to read:

22 (7) "exploitation"

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

26 (B) includes acts by a person who stands in a position of
27 trust or confidence with a vulnerable adult or who knows or should know
28 that the vulnerable adult lacks the capacity to consent that involve
29 obtaining profit or advantage through undue influence, deception, fraud,
30 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has
31 the meaning given in AS 13.26.324(1) and (2);

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* **Sec. 41.** AS 47.24.900(9) is amended to read:

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

* **Sec. 42.** AS 47.24.900(11) is amended to read:

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

- (A) protective placement;
- (B) applying for or obtaining public benefits;
- (C) obtaining health care services and supplies;
- (D) staying financial transactions;
- (E) petitioning for a protective order under AS 13.26.165 -
13.26.209;
- (F) assisting with personal hygiene;
- (G) obtaining food and clothing;
- (H) protection from physical and emotional abuse;
- (I) obtaining representative payee services; and
- (J) coordinating protective services;

* **Sec. 43.** AS 47.24.900(15) is amended to read:

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

- (A) the person is an incapacitated person or apparently is an incapacitated person;
- (B) of coercion by or fear of reprisal from the perpetrator of undue influence, abandonment, exploitation, abuse, or neglect;

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

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

7 * Sec. 44. AS 47.24.900(16) is amended to read:

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

13 * Sec. 45. AS 47.24.900 is amended by adding new paragraphs to read:

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

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

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

22 (A) a broker-dealer;

23 (B) a commercial bank;

24 (C) a savings bank;

25 (D) a credit union;

26 (E) a premium finance company;

27 (F) a small loan company;

28 (G) a bank holding company;

29 (H) a financial holding company;

30 (I) a trust company;

31 (J) a savings and loan association;

- 1 (K) a deferred deposit advance licensee;
- 2 (L) an investment bank;
- 3 (M) an insurance company subject to regulation by AS 21;
- 4 (N) a licensee subject to regulation by AS 21; and
- 5 (O) an investment adviser;

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

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

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

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

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

23 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
 24 granted by the court only for cause shown. In deciding whether to grant the motion,
 25 the court shall consider the victim's circumstances and the effect the delay would
 26 have on the victim, particularly a victim of advanced age or extreme youth. The
 27 court shall place its findings on the record. The presiding judge of a judicial district
 28 may require that a visiting or pro tem judge obtain approval from the presiding judge
 29 before granting any continuance of trial.

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

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

3 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
4 placing criminal proceedings upon appropriate calendars. Preference shall be given to
5 criminal proceedings and the trial of defendants in custody shall be given preference
6 over other criminal cases. The court shall consider the circumstances of the victim,
7 particularly a victim of advanced age or extreme youth, in setting the trial date.

8 Trial dates in criminal cases in the superior court shall be set at the time of
9 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
10 for a date certain.

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

13 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.207, 13.26.208, and
14 13.26.209(a) - (g), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska
15 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
16 allowing ex parte and temporary orders and modifications of orders to be issued related to
17 protecting the assets of a person otherwise subject to AS 13.26.165 from financial
18 exploitation.

19 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, has the effect of amending Rule
20 9, Alaska Rules of Administration, by requiring that filing fees may not be charged for a
21 petition for an ex parte protective order under AS 13.26.207 for an application for a temporary
22 order under AS 13.26.208, or for modification of a protective order under AS 13.26.209(a),
23 enacted by sec. 10 of this Act.

24 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
25 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
26 petition for the appointment of a temporary conservator.

27 (d) AS 13.26.208, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
28 Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary
29 protective order on 10 days' notice.

30 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, have the effect of
31 amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on a request

1 for modification of a protective order on 20 days' notice and for modification of an ex parte
2 protective order on three days' notice.

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

5 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
6 on or after the effective date of secs. 3 - 5 of this Act.

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

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

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

13 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
14 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
15 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
16 out-of-home care facilities."

17 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 CONDITIONAL EFFECT. (a) AS 13.26.207 and 13.26.209(a) - (g), enacted by sec.
20 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each
21 house required by art. IV, sec. 15, Constitution of the State of Alaska.

22 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
23 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
24 the State of Alaska.

25 (c) AS 13.26.206, enacted by sec. 10 of this Act, takes effect only if sec. 48(c) of this
26 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
27 State of Alaska.

28 (d) AS 13.26.208, enacted by sec. 10 of this Act, takes effect only if sec. 48(a) and (d)
29 of this Act receive the two-thirds vote of each house required by art. IV, sec. 15, Constitution
30 of the State of Alaska.

31 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, take effect only if sec.

1 48(e) of this Act receive the two-thirds vote of each house required by art. IV, sec. 15,
2 Constitution of the State of Alaska.

3 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.

4 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

27-GS1722Æ
Mischel
4/9/11

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **(3) issued under AS 13.26.165 - 13.26.209 and knowingly commits**
19 **or attempts to commit an act with reckless disregard that the act violates or**
20 **would violate a provision of the protective order.**

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

22 (c) In this section, "protective order" means an order issued or filed under
23 **AS 13.26.165 - 13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.207 or a temporary protective order filed under
9 AS 13.26.208.

10 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
12 initial petition for conservatorship, it appears that the respondent is in need of a
13 protective order to protect the respondent against waste or dissipation of funds or
14 property, or to obtain funds that are needed for the immediate support, care, and
15 welfare of the respondent or persons entitled to be supported by the respondent, and
16 the respondent is not capable of protecting the respondent's funds or property or
17 obtaining the funds that are needed to support the respondent or persons whom the
18 respondent is required to support, the petitioner may request the appointment of a
19 temporary conservator to authorize the protection or to obtain the necessary funds. The
20 request must state the reasons and factual basis for the request. The petitioner shall
21 immediately file the request with the court and serve copies on the respondent and the
22 respondent's attorney and other persons as ordered by the court. The court shall
23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
4 ex parte protective order against a person other than the protected person. A petition
5 filed on behalf of a protected person by a person other than the protected person must
6 be accompanied by proof of service of the petition on the protected person or the
7 person's attorney unless service would cause an immediate threat of harm to the best
8 interests of the protected person and the petition includes a written explanation of the
9 harm. If the court finds that the petition establishes probable cause that the respondent
10 is financially defrauding the petitioner or a person for whose benefit the petitioner
11 filed the petition and that, because of the fraud, there has been or is an immediate
12 threat of a waste or dissipation of the proposed protected person's funds or other
13 property, the court shall ex parte and without notice to the respondent issue a
14 protective order. The petitioner shall certify to the court in writing any effort that the
15 petitioner made to provide notice to the respondent.

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

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

18 (2) supersede an existing power of attorney;

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

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
26 dissolved earlier by the court at the request of the petitioner or respondent and after
27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
30 filed with the court before the expiration of a 20-day ex parte protective order issued
31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

1 protective order to a temporary order effective for up to six months. The court shall
2 provide to the protected person and the respondent at least 10 days' notice of the
3 hearing and the respondent's right to appear and be heard. If the court finds by a
4 preponderance of the evidence that the respondent has committed fraud against the
5 petitioner or the person for whose benefit the petition was filed, regardless of whether
6 the respondent appears at the hearing, the court may convert the ex parte protective
7 order to a temporary protective order effective for up to six months.

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
10 is a vulnerable adult, may request modification of a protective order issued under
11 AS 13.26.165 - 13.26.209. Except as provided in (b) of this section, if a request is
12 made for modification of

13 (1) a protective order, the court shall schedule a hearing on three days'
14 notice or on shorter notice as the court may prescribe; or

15 (2) a protective order, after notice and hearing under AS 13.26.185, or
16 a temporary protective order, after notice and hearing under AS 13.26.208, the court
17 shall schedule a hearing within 20 days after the date the request is made, except that,
18 if the court finds that the request is meritless on its face, the court may deny the
19 request without a hearing.

20 (b) If a request for a modification is made under this section and the
21 respondent raises an issue not raised by the petitioner, the court may allow the
22 petitioner additional time to respond.

23 (c) If the court modifies a protective order, the court shall issue a modified
24 order and shall make reasonable efforts to ensure that the order is understood by the
25 petitioner, the respondent, and the protected person who are present at the hearing.

26 (d) The court shall cause a copy of a protective order, any related orders, and a
27 scheduling order, if any, to be served on the respondent and the protected person and
28 have a protective order and any related order delivered to the appropriate local law
29 enforcement agency for expedited entry in the central registry under AS 18.65.540.

30 (e) A protective order issued under AS 13.26.165 - 13.26.209 is in addition to
31 any other civil or criminal remedy.

1 (f) A third party that has received actual or legal notice of a protective order
2 issued under AS 13.26.165 - 13.26.209 shall comply with the order. A third party who
3 does not comply with a protective order granted under AS 13.26.165 - 13.26.209 may
4 be liable in a civil action to the protected person or the protected person's heirs,
5 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
6 costs, and fees associated with the failure to comply with the protective order. A third
7 party who does not comply with a protective order granted under AS 13.26.165 -
8 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
9 order. As used in this section, "actual or legal notice" means delivery by mail or
10 facsimile at the most recently known place of residence or business of the third party.

11 (g) The Alaska Court System, after consulting with the Department of Health
12 and Social Services, the office of public advocacy, the office of elder fraud and
13 assistance, the long term care ombudsman, and other interested persons and
14 organizations, shall prepare forms for petitions and protective orders and instructions
15 for use of the forms by a person seeking a protective order under AS 13.26.165 -
16 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
17 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
18 by legible handwriting. The office of the clerk of each superior and district court shall
19 make available to the public the forms a person seeking a protective order may need
20 and instructions for the use of the forms. The clerk shall provide assistance in
21 completing and filing the forms.

22 (h) Filing fees may not be charged for a petition under AS 13.26.207, for an
23 application under AS 13.26.208, or for a request for modification of a protective order
24 under AS 13.26.209(a).

25 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

- 28 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
29 (2) offenses against property under AS 11.46.100 - 11.46.740; or
30 (3) exploitation of another person or another person's resources for
31 personal profit or advantage if no significant benefit accrues to the person who is

1 exploited.

2 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

14 (a) The Department of Public Safety shall maintain a central registry of
15 protective orders issued by or filed with a court of this state under **AS 13.26.165 -**
16 **13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
17 include, for each protective order, the names of the petitioner and respondent, their
18 dates of birth, and the conditions and duration of the order. The registry shall retain a
19 record of the protective order after it has expired.

20 * **Sec. 14.** AS 18.65.540(b) is amended to read:

21 (b) A peace officer receiving a protective order from a court under
22 **AS 13.26.165 - 13.26.208**, AS 18.65.850 - 18.65.855, **or** AS 18.66.100 - 18.66.180, a
23 modified order issued under **AS 13.26.209**, AS 18.65.860, or AS 18.66.120, or an
24 order dismissing a protective order **shall** [, MUST] take reasonable steps to ensure that
25 the order, modified order, or dismissal is entered into the central registry within 24
26 hours after being received.

27 * **Sec. 15.** AS 44.21.415(g) is amended to read:

28 (g) In this section,

29 (1) "fraud" means

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

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

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

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

8 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

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

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

19 (3) a pharmacist;

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

22 (5) a guardian or conservator;

23 (6) a police officer;

24 (7) a village public safety officer;

25 (8) a village health aide;

26 (9) a social worker;

27 (10) a member of the clergy;

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

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

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

3 (14) a caregiver of the vulnerable adult;

4 (15) a certified nurse aide;

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

7 * **Sec. 17.** AS 47.24.010(b) is amended to read:

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

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

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

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

17 * **Sec. 18.** AS 47.24.010(c) is amended to read:

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

27 * **Sec. 19.** AS 47.24.010(d) is amended to read:

28 (d) This section does not prohibit a person listed in (a) of this section, or any
29 other person, from reporting cases of **undue influence**, abandonment, exploitation,
30 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's
31 attention **in the person's nonoccupational capacity. This section does not prohibit**

1 **any other person from reporting a harm under this section.**

2 * **Sec. 20.** AS 47.24.010(e) is amended to read:

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

20 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

26 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

31 (j) A person who recklessly makes a false report under this section is civilly

1 liable for actual damages suffered by the person who is the subject of the report.

2 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

10 * **Sec. 24.** AS 47.24.013(b) is amended to read:

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

16 * **Sec. 25.** AS 47.24.013(c) is amended to read:

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

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

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

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

26 * **Sec. 26.** AS 47.24.013(d) is amended to read:

27 (d) If the long term care ombudsman receives directly a report regarding the
28 undue influence, abandonment, exploitation, abuse, neglect, or self-neglect of a
29 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
30 report, and the results of the ombudsman's actions or investigations regarding the
31 report, to the central information and referral service of the office of the department

1 **that handles adult protective services.** The department may investigate the report as
2 described in AS 47.24.015 if the department determines that action is appropriate.

3 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

12 * **Sec. 28.** AS 47.24.015(c) is amended to read:

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

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

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

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

1 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

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

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

25 * **Sec. 30.** AS 47.24.016(a) is amended to read:

26 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
27 in need of protective services, but the department cannot obtain the vulnerable adult's
28 consent to receive the services because the vulnerable adult is unable to consent or
29 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
30 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
31 the vulnerable adult's surrogate decision maker, the department may select from the

1 following list, in the order of priority listed, an individual who is willing to be the
2 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
3 consent to the vulnerable adult's receipt of protective services:

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

5 [(A) THE VULNERABLE ADULT AND THE SPOUSE
6 HAVE SEPARATE DOMICILES; OR

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

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

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

13 (4) a parent of the vulnerable adult;

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

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

18 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

25 * **Sec. 32.** AS 47.24.016(d) is amended to read:

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

1 if the vulnerable adult consents.

2 * **Sec. 33.** AS 47.24.017(a) is amended to read:

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

16 * **Sec. 34.** AS 47.24.019(c) is amended to read:

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

25 * **Sec. 35.** AS 47.24.050 is amended to read:

26 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
27 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
28 neglect of a vulnerable adult filed under this chapter are confidential and are not
29 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
30 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
31 chapter, investigation reports may be used by appropriate agencies or individuals

1 inside and outside the state, in connection with investigations or judicial proceedings
2 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
3 neglect of a vulnerable adult.

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

18 * **Sec. 36.** AS 47.24.130 is amended to read:

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

30 * **Sec. 37.** AS 47.24.900(2) is amended to read:

31 (2) "abuse" means

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

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

6 * **Sec. 38.** AS 47.24.900(3) is amended to read:

7 (3) "caregiver" means

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

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

14 * **Sec. 39.** AS 47.24.900(4) is amended to read:

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

20 * **Sec. 40.** AS 47.24.900(7) is amended to read:

21 (7) "exploitation"

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

25 (B) includes acts by a person who stands in a position of
 26 trust or confidence with a vulnerable adult or who knows or should know
 27 that the vulnerable adult lacks the capacity to consent that involve
 28 obtaining profit or advantage through undue influence, deception, fraud,
 29 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has
 30 the meaning given in AS 13.26.324(1) and (2);

31 * **Sec. 41.** AS 47.24.900(9) is amended to read:

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

8 * Sec. 42. AS 47.24.900(11) is amended to read:

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

13 **(A) protective placement;**

14 **(B) applying for or obtaining public benefits;**

15 **(C) obtaining health care services and supplies;**

16 **(D) staying financial transactions;**

17 **(E) petitioning for a protective order under AS 13.26.165 -**

18 **13.26.209;**

19 **(F) assisting with personal hygiene;**

20 **(G) obtaining food and clothing;**

21 **(H) protection from physical and emotional abuse;**

22 **(I) obtaining representative payee services; and**

23 **(J) coordinating protective services;**

24 * Sec. 43. AS 47.24.900(15) is amended to read:

25 (15) "unable to consent" means refusal to, or inability to, accept
 26 services because

27 (A) the person is an incapacitated person or apparently is an
 28 incapacitated person;

29 (B) of coercion by or fear of reprisal from the perpetrator of
 30 **undue influence**, abandonment, exploitation, abuse, or neglect;

31 (C) of dependency on the perpetrator of **undue influence**,

1 abandonment, exploitation, abuse, or neglect for services, care, or support; or
2 (D) of an inability to perceive that refusal to consent results in
3 an imminent and substantial danger of **loss, waste, or dissipation of income**
4 **or assets, eviction, physical or mental harm to self or others, or** death [OR
5 IRREPARABLE HARM TO SELF OR OTHERS];

6 * **Sec. 44.** AS 47.24.900(16) is amended to read:

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

12 * **Sec. 45.** AS 47.24.900 is amended by adding new paragraphs to read:

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

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

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

- 21 (A) a broker-dealer;
22 (B) a commercial bank;
23 (C) a savings bank;
24 (D) a credit union;
25 (E) a premium finance company;
26 (F) a small loan company;
27 (G) a bank holding company;
28 (H) a financial holding company;
29 (I) a trust company;
30 (J) a savings and loan association;
31 (K) a deferred deposit advance licensee;

- 1 (L) an investment bank;
2 (M) an insurance company subject to regulation by AS 21;
3 (N) a licensee subject to regulation by AS 21; and
4 (O) an investment adviser;

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

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

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

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

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

22 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
23 granted by the court only for cause shown. **In deciding whether to grant the motion,**
24 **the court shall consider the victim's circumstances and the effect the delay would**
25 **have on the victim, particularly a victim of advanced age or extreme youth. The**
26 **court shall place its findings on the record.** The presiding judge of a judicial district
27 may require that a visiting or pro tem judge obtain approval from the presiding judge
28 before granting any continuance of trial.

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

31 DIRECT COURT RULE AMENDMENT. Rule 45(a), Alaska Rules of

1 Criminal Procedure, is amended to read:

2 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
3 placing criminal proceedings upon appropriate calendars. Preference shall be given to
4 criminal proceedings and the trial of defendants in custody shall be given preference
5 over other criminal cases. **The court shall consider the circumstances of the victim,**
6 **particularly a victim of advanced age or extreme youth, in setting the trial date.**

7 Trial dates in criminal cases in the superior court shall be set at the time of
8 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
9 for a date certain.

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

12 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.207, 13.26.208, and
13 13.26.209(a) - (g), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska
14 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
15 allowing ex parte and temporary orders and modifications of orders to be issued related to
16 protecting the assets of a person otherwise subject to AS 13.26.165 from financial
17 exploitation.

18 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, has the effect of amending Rule
19 9, Alaska Rules of Administration, by requiring that filing fees may not be charged for a
20 petition for an ex parte protective order under AS 13.26.207 for an application for a temporary
21 order under AS 13.26.208, or for modification of a protective order under AS 13.26.209(a),
22 enacted by sec. 10 of this Act.

23 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
24 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
25 petition for the appointment of a temporary conservator.

26 (d) AS 13.26.208, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
27 Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary
28 protective order on 10 days' notice.

29 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, have the effect of
30 amending Rule 77, Alaska Rules of Civil Procedure, by providing for a hearing on a request
31 for modification of a protective order on 20 days' notice and for modification of an ex parte

1 protective order on three days' notice.

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

4 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
5 on or after the effective date of secs. 3 - 5 of this Act.

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

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

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

12 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
13 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
14 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
15 out-of-home care facilities."

16 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 CONDITIONAL EFFECT. (a) AS 13.26.207 and 13.26.209(a) - (g), enacted by sec.
19 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each
20 house required by art. IV, sec. 15, Constitution of the State of Alaska.

21 (b) AS 13.26.209(h), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
22 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
23 the State of Alaska.

24 (c) AS 13.26.206, enacted by sec. 10 of this Act, takes effect only if sec. 48(c) of this
25 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
26 State of Alaska.

27 (d) AS 13.26.208, enacted by sec. 10 of this Act, takes effect only if sec. 48(a) and (d)
28 of this Act receive the two-thirds vote of each house required by art. IV, sec. 15, Constitution
29 of the State of Alaska.

30 (e) AS 13.26.209(a) and (b), enacted by sec. 10 of this Act, take effect only if sec.
31 48(e) of this Act receive the two-thirds vote of each house required by art. IV, sec. 15,

1 Constitution of the State of Alaska.

2 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.

3 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

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4/8/11

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) issued under AS 13.26.165 - 13.26.209 and knowingly commits
19 or attempts to commit an act with reckless disregard that the act violates or
20 would violate a provision of the protective order.

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

22 (c) In this section, "protective order" means an order issued or filed under
23 AS 13.26.165 - 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.207 or a temporary protective order filed under
9 AS 13.26.208.

10 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
12 initial petition for conservatorship, it appears that the respondent is in need of a
13 protective order to protect the respondent against waste or dissipation of funds or
14 property, or to obtain funds that are needed for the immediate support, care, and
15 welfare of the respondent or persons entitled to be supported by the respondent, and
16 the respondent is not capable of protecting the respondent's funds or property or
17 obtaining the funds that are needed to support the respondent or persons whom the
18 respondent is required to support, the petitioner may request the appointment of a
19 temporary conservator to authorize the protection or to obtain the necessary funds. The
20 request must state the reasons and factual basis for the request. The petitioner shall
21 immediately file the request with the court and serve copies on the respondent and the
22 respondent's attorney and other persons as ordered by the court. The court shall
23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
4 ex parte protective order against a person other than the protected person. A petition
5 filed on behalf of a protected person by a person other than the protected person must
6 be accompanied by proof of service of the petition on the protected person or the
7 person's attorney unless service would cause an immediate threat of harm to the best
8 interests of the protected person and the petition includes a written explanation of the
9 harm. If the court finds that the petition establishes probable cause that the respondent
10 is financially defrauding the petitioner or a person for whose benefit the petitioner
11 filed the petition and that, because of the fraud, there has been or is an immediate
12 threat of a waste or dissipation of the proposed protected person's funds or other
13 property, the court shall ex parte and without notice to the respondent issue a
14 protective order. The petitioner shall certify to the court in writing any effort that the
15 petitioner made to provide notice to the respondent.

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

17 (1) grant any protection described in AS 13.26.200;
18 (2) supersede an existing power of attorney;
19 (3) prohibit the respondent from having any direct or indirect contact
20 with the petitioner or other person for whose benefit the petitioner filed the petition;
21 and

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
26 dissolved earlier by the court at the request of the petitioner or respondent and after
27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
30 filed with the court before the expiration of a 20-day ex parte protective order issued
31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

1 protective order to a temporary order effective for up to six months. The court shall
2 provide to the protected person and the respondent at least 10 days' notice of the
3 hearing and the respondent's right to appear and be heard. If the court finds by a
4 preponderance of the evidence that the respondent has committed fraud against the
5 petitioner or the person for whose benefit the petition was filed, regardless of whether
6 the respondent appears at the hearing, the court may convert the ex parte protective
7 order to a temporary protective order effective for up to six months.

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
10 is a vulnerable adult, may request modification of a protective order issued under
11 AS 13.26.165 - 13.26.209. If a request is made for modification of a protective order,
12 the court shall schedule a hearing on three days' notice or on shorter notice as the court
13 may prescribe. If the court modifies a protective order, the court shall issue a modified
14 order and shall make reasonable efforts to ensure that the order is understood by the
15 petitioner, the respondent, and the protected person who are present at the hearing.

16 (b) The court shall cause a copy of a protective order, any related orders, and a
17 scheduling order, if any, to be served on the respondent and the protected person.

18 (c) A protective order issued under AS 13.26.165 - 13.26.209 is in addition to
19 any other civil or criminal remedy.

20 (d) A third party that has received actual or legal notice of a protective order
21 issued under AS 13.26.165 - 13.26.209 shall comply with the order. A third party who
22 does not comply with a protective order granted under AS 13.26.165 - 13.26.209 may
23 be liable in a civil action to the protected person or the protected person's heirs,
24 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
25 costs, and fees associated with the failure to comply with the protective order. A third
26 party who does not comply with a protective order granted under AS 13.26.165 -
27 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
28 order. As used in this section, "actual or legal notice" means delivery by mail or
29 facsimile at the most recently known place of residence or business of the third party.

30 (e) The Alaska Court System, after consulting with the Department of Health
31 and Social Services, the office of public advocacy, the office of elder fraud and

1 assistance, the long term care ombudsman, and other interested persons and
2 organizations, shall prepare forms for petitions and protective orders and instructions
3 for use of the forms by a person seeking a protective order under AS 13.26.165 -
4 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
5 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
6 by legible handwriting. The office of the clerk of each superior and district court shall
7 make available to the public the forms a person seeking a protective order may need
8 and instructions for the use of the forms. The clerk shall provide assistance in
9 completing and filing the forms.

10 (f) Filing fees may not be charged for a petition under AS 13.26.207, for an
11 application under AS 13.26.208, or for a request for modification of a protective order
12 under AS 13.26.209(a).

13 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

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

21 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

- 26 (1) committed domestic violence, except an offense under
27 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;
28 (2) committed the crime of violating a protective order in violation of
29 AS 11.56.740(a)(1) or (2) [AS 11.56.740];
30 (3) violated a condition of release imposed under AS 12.30.016(e) or
31 (f) or 12.30.027.

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

2 (a) The Department of Public Safety shall maintain a central registry of
3 protective orders issued by or filed with a court of this state under AS 13.26.165 -
4 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
5 include, for each protective order, the names of the petitioner and respondent, their
6 dates of birth, and the conditions and duration of the order. The registry shall retain a
7 record of the protective order after it has expired.

8 * **Sec. 14.** AS 18.65.540(b) is amended to read:

9 (b) A peace officer receiving a protective order from a court under
10 AS 13.26.165 - 13.26.208, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
11 modified order issued under AS 13.26.209, AS 18.65.860, or AS 18.66.120, or an
12 order dismissing a protective order shall [, MUST] take reasonable steps to ensure that
13 the order, modified order, or dismissal is entered into the central registry within 24
14 hours after being received.

15 * **Sec. 15.** AS 44.21.415(g) is amended to read:

16 (g) In this section,

17 (1) "fraud" means

18 (A) robbery, extortion, and coercion under AS 11.41.500 -
19 11.41.530;

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

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

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

27 * **Sec. 16.** AS 47.24.010(a) is amended to read:

28 (a) Except as provided in (e) and (f) of this section, the following persons
29 who, in the performance of their professional duties, have reasonable cause to believe
30 that a vulnerable adult suffers from undue influence, abandonment, exploitation,
31 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for

1 the belief, report the belief to the department's central information and referral service
2 for vulnerable adults in the office of the department that handles adult protective
3 services:

- 4 (1) a physician or other licensed health care provider;
- 5 (2) a mental health professional as defined in AS 47.30.915(11) and
6 including a marital and family therapist licensed under AS 08.63;
- 7 (3) a pharmacist;
- 8 (4) an administrator or employee of a nursing home, residential care,
9 or health care facility;
- 10 (5) a guardian or conservator;
- 11 (6) a police officer;
- 12 (7) a village public safety officer;
- 13 (8) a village health aide;
- 14 (9) a social worker;
- 15 (10) a member of the clergy;
- 16 (11) a staff employee of a project funded by the Department of
17 Administration for the provision of services to older Alaskans, the Department of
18 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
- 19 (12) an employee of a personal care or home health aide program;
- 20 (13) an emergency medical technician or a mobile intensive care
21 paramedic;
- 22 (14) a caregiver of the vulnerable adult;
- 23 (15) a certified nurse aide;
- 24 (16) an educator or administrative staff member of a public or
25 private educational institution.

26 * **Sec. 17.** AS 47.24.010(b) is amended to read:

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

- 29 (1) the name and contact information [ADDRESS] of the vulnerable
30 adult;
- 31 (2) information relating to the nature and extent of the undue

1 influence, abandonment, exploitation, abuse, neglect, or self-neglect;

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

5 * **Sec. 18.** AS 47.24.010(c) is amended to read:

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

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

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

21 * **Sec. 20.** AS 47.24.010(e) is amended to read:

22 (e) If a person making a report under this section believes that immediate
23 action is necessary to protect the vulnerable adult from imminent risk of serious
24 physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or
25 self-neglect and the reporting person cannot immediately contact the department's
26 central information and referral service for vulnerable adults, the reporting person
27 shall [MAY] make the report to a police officer or a village public safety officer. The
28 police officer or village public safety officer shall take immediate action to protect the
29 vulnerable adult and shall, within 24 hours after receiving the report of harm [AT
30 THE EARLIEST OPPORTUNITY], notify the department. A person may not bring an
31 action for damages against a police officer, a village public safety officer, the state, or

1 a political subdivision of the state based on a decision under this subsection to take or
2 not to take immediate action to protect a vulnerable adult. If a decision is made under
3 this subsection to take immediate action to protect a vulnerable adult, a person may
4 not bring an action for damages based on the protective actions taken unless the
5 protective actions were performed with gross negligence or intentional misconduct;
6 damages awarded in the action may include only direct economic compensatory
7 damages for personal injury.

8 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

14 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

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

21 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

29 * **Sec. 24.** AS 47.24.013(b) is amended to read:

30 (b) The department shall investigate a report received under AS 47.24.010
31 regarding the **undue influence,** abandonment, exploitation, abuse, neglect, or self-

1 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have
2 been committed by or to have resulted from the negligence of the staff or a volunteer
3 of an out-of-home care facility in which the vulnerable adult resides.

4 * **Sec. 25.** AS 47.24.013(c) is amended to read:

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

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

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

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

14 * **Sec. 26.** AS 47.24.013(d) is amended to read:

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

22 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

31 * **Sec. 28.** AS 47.24.015(c) is amended to read:

1 (c) The department [,] or its designee [,] shall immediately terminate an
2 investigation under this section upon the request of the vulnerable adult who is the
3 subject of the report made under AS 47.24.010. However, the department or its
4 designee may not terminate the investigation if the investigation to that point has
5 resulted in probable cause to believe that the vulnerable adult is in need of protective
6 services and the request is made personally by the vulnerable adult and the vulnerable
7 adult is not competent to make the request on the adult's own behalf, or the request is
8 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
9 and that person is the alleged perpetrator of the undue influence, abandonment,
10 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
11 this chapter. If the department has probable cause to believe that the vulnerable adult
12 is in need of protective services,

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

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

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

20 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

28 (j) Notwithstanding any other provision of law, the office of the department
29 that handles adult protective services shall have access to any information compiled or
30 retained by other divisions in the department, regardless of the nature of the
31 information or whether the information is considered confidential, to assist in

1 administering the provisions of this chapter.

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

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

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

13 * **Sec. 30.** AS 47.24.016(a) is amended to read:

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

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

24 [(A) THE VULNERABLE ADULT AND THE SPOUSE
25 HAVE SEPARATE DOMICILES; OR

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

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

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

- 1 (4) a parent of the vulnerable adult;
2 (5) a brother or sister of the vulnerable adult who is 18 years of age or
3 older; or
4 (6) a close friend or relative of the vulnerable adult who is 18 years of
5 age or older.

6 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

13 * **Sec. 32.** AS 47.24.016(d) is amended to read:

14 (d) The department may not continue to provide protective services to a
15 vulnerable adult based on the consent of a surrogate decision maker serving under this
16 section **or AS 13.52.030** if the department determines that the vulnerable adult has
17 become able to consent or has regained decision making capacity since the surrogate's
18 consent was given. The department may continue protective services to a vulnerable
19 adult who has become able to consent or has regained decision making capacity only
20 if the vulnerable adult consents.

21 * **Sec. 33.** AS 47.24.017(a) is amended to read:

22 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
23 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
24 adult's guardian, **conservator**, [OR] attorney-in-fact, **trustee**, [OR] a surrogate
25 decision maker selected under AS 47.24.016, **or a surrogate for health care**
26 **decisions under AS 13.52.030** consents to receipt of the protective services, and to
27 the extent that resources are available, the department shall ensure that the protective
28 services for the vulnerable adult are provided by the department, or its designee,
29 within 10 working days after the department received the report under AS 47.24.010
30 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
31 neglect of the vulnerable adult. However, if circumstances beyond the control of the

1 department or the department's designee make it impossible to provide the protective
2 services within the 10 working days, the department shall ensure that the services are
3 provided as soon as possible after that time.

4 * **Sec. 34.** AS 47.24.019(c) is amended to read:

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

13 * **Sec. 35.** AS 47.24.050 is amended to read:

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

23 (b) The department shall disclose a report of the undue influence,
24 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
25 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
26 conservator, attorney-in-fact, trustee, or surrogate decision maker consents in
27 writing. The department may not disclose a report of the undue influence,
28 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the
29 vulnerable adult's guardian, conservator, attorney-in-fact, trustee, or surrogate
30 decision maker if that person is an alleged perpetrator of the undue influence,
31 abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being

1 investigated under this chapter. The department shall, upon request, disclose the
2 number of verified reports of undue influence, abandonment, exploitation, abuse,
3 neglect, or self-neglect of a vulnerable adult that occurred at an institution that
4 provides care for vulnerable adults or that were the result of actions or inactions of a
5 public home care provider.

6 * **Sec. 36.** AS 47.24.130 is amended to read:

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

18 * **Sec. 37.** AS 47.24.900(2) is amended to read:

19 (2) "abuse" means

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

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

25 * **Sec. 38.** AS 47.24.900(3) is amended to read:

26 (3) "caregiver" means

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

31 (B) an employee of an out-of-home care facility who provides

1 care to one or more vulnerable adults;

2 * **Sec. 39.** AS 47.24.900(4) is amended to read:

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

8 * **Sec. 40.** AS 47.24.900(7) is amended to read:

9 (7) "exploitation"

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

13 (B) includes acts by a person who stands in a position of
14 trust or confidence with a vulnerable adult or who knows or should know
15 that the vulnerable adult lacks the capacity to consent that involve
16 obtaining profit or advantage through undue influence, deception, fraud,
17 intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has
18 the meaning given in AS 13.26.324(1) and (2);

19 * **Sec. 41.** AS 47.24.900(9) is amended to read:

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

27 * **Sec. 42.** AS 47.24.900(11) is amended to read:

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

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- (A) protective placement;
- (B) applying for or obtaining public benefits;**
- (C) obtaining health care services and supplies;**
- (D) staying financial transactions;**
- (E) petitioning for a protective order under AS 13.26.165 -**
- 13.26.209;**
- (F) assisting with personal hygiene;**
- (G) obtaining food and clothing;**
- (H) protection from physical and emotional abuse;**
- (I) obtaining representative payee services; and**
- (J) coordinating protective services;**

* Sec. 43. AS 47.24.900(15) is amended to read:

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

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

(B) of coercion by or fear of reprisal from the perpetrator of **undue influence**, abandonment, exploitation, abuse, or neglect;

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

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

* Sec. 44. AS 47.24.900(16) is amended to read:

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

* Sec. 45. AS 47.24.900 is amended by adding new paragraphs to read:

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

4 (18) "fiduciary duty" means the duty of a third party who stands in a
5 position of trust or confidence with another person, including a vulnerable adult, to act
6 with due regard for the benefit and interest of that person;

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

9 (A) a broker-dealer;

10 (B) a commercial bank;

11 (C) a savings bank;

12 (D) a credit union;

13 (E) a premium finance company;

14 (F) a small loan company;

15 (G) a bank holding company;

16 (H) a financial holding company;

17 (I) a trust company;

18 (J) a savings and loan association;

19 (K) a deferred deposit advance licensee;

20 (L) an investment bank;

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

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

23 (O) an investment adviser;

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

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

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

28 (C) has a legal or fiduciary relationship; or

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

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

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

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

10 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
11 granted by the court only for cause shown. In deciding whether to grant the motion,
12 the court shall consider the victim's circumstances and the effect the delay would
13 have on the victim, particularly a victim of advanced age or extreme youth. The
14 court shall place its findings on the record. The presiding judge of a judicial district
15 may require that a visiting or pro tem judge obtain approval from the presiding judge
16 before granting any continuance of trial.

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

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

21 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
22 placing criminal proceedings upon appropriate calendars. Preference shall be given to
23 criminal proceedings and the trial of defendants in custody shall be given preference
24 over other criminal cases. The court shall consider the circumstances of the victim,
25 particularly a victim of advanced age or extreme youth, in setting the trial date.
26 Trial dates in criminal cases in the superior court shall be set at the time of
27 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
28 for a date certain.

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

31 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.207, 13.26.208, and

1 13.26.209(a) - (e), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska
2 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
3 allowing ex parte and temporary orders and modifications of orders to be issued related to
4 protecting the assets of a person otherwise subject to AS 13.26.165 from financial
5 exploitation.

6 (b) AS 13.26.209(f), enacted by sec. 10 of this Act, has the effect of amending Rule 9,
7 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
8 for an ex parte protective order under AS 13.26.207 for an application for a temporary order
9 under AS 13.26.208, or for modification of a protective order under AS 13.26.209(a), enacted
10 by sec. 10 of this Act.

11 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
12 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
13 petition for the appointment of a temporary conservator.

14 (d) AS 13.26.208, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
15 Alaska Rules of Civil Procedure, by providing for a hearing on an application for a temporary
16 protective order on 10 days' notice.

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

19 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
20 on or after the effective date of secs. 3 - 5 of this Act.

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

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

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

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

31 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 CONDITIONAL EFFECT. (a) AS 13.26.207 and 13.26.209(a) - (e), enacted by sec.
3 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds vote of each
4 house required by art. IV, sec. 15, Constitution of the State of Alaska.

5 (b) AS 13.26.209(f), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
6 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
7 the State of Alaska.

8 (c) AS 13.26.206, enacted by sec. 10 of this Act, takes effect only if sec. 48(c) of this
9 Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the
10 State of Alaska.

11 (d) AS 13.26.208, enacted by sec. 10 of this Act, takes effect only if sec. 48(a) and (d)
12 of this Act receive the two-thirds vote of each house required by art. IV, sec. 15, Constitution
13 of the State of Alaska.

14 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.

15 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

27-GS1722I
Mischel
4/7/11

CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **(3) issued under AS 13.26.165 - 13.26.209 and knowingly commits**
19 **or attempts to commit an act with reckless disregard that the act violates or**
20 **would violate a provision of the protective order.**

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

22 (c) In this section, "protective order" means an order issued or filed under
23 **AS 13.26.165 - 13.26.209**, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The petition may include a request for temporary conservatorship as
2 provided in AS 13.26.206 if it appears that the respondent's property is likely to be
3 wasted or dissipated during the pendency of the conservatorship proceeding. A request
4 for temporary conservatorship must specify the facts that cause the petitioner to
5 believe that a temporary conservatorship is necessary.

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
8 order filed under AS 13.26.207 or a temporary protective order filed under
9 AS 13.26.208.

10 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

11 **Sec. 13.26.206. Temporary conservators.** (a) If, during the pendency of an
12 initial petition for conservatorship, it appears that the respondent is in need of a
13 protective order to protect the respondent against waste or dissipation of funds or
14 property, or to obtain funds that are needed for the immediate support, care, and
15 welfare of the respondent or persons entitled to be supported by the respondent, and
16 the respondent is not capable of protecting the respondent's funds or property or
17 obtaining the funds that are needed to support the respondent or persons whom the
18 respondent is required to support, the petitioner may request the appointment of a
19 temporary conservator to authorize the protection or to obtain the necessary funds. The
20 request must state the reasons and factual basis for the request. The petitioner shall
21 immediately file the request with the court and serve copies on the respondent and the
22 respondent's attorney and other persons as ordered by the court. The court shall
23 appoint an attorney for a respondent who is unrepresented to be at the hearing and
24 conduct a hearing within 72 hours after the filing.

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

31 (c) The temporary conservatorship expires at the time of the appointment of a

1 full or partial conservator or on the dismissal of the petition for conservatorship.

2 **Sec. 13.26.207. Ex parte protective orders.** (a) A person who is allowed to
3 file a petition for a protective order under AS 13.26.180(a) may file a petition for an
4 ex parte protective order against a person other than the protected person. A petition
5 filed on behalf of a protected person by a person other than the protected person must
6 be accompanied by proof of service of the petition on the protected person or the
7 person's attorney unless service would cause an immediate threat of harm to the best
8 interests of the protected person and the petition includes a written explanation of the
9 harm. If the court finds that the petition establishes probable cause that the respondent
10 is financially defrauding the petitioner or a person for whose benefit the petitioner
11 filed the petition and that, because of the fraud, there has been or is an immediate
12 threat of a waste or dissipation of the proposed protected person's funds or other
13 property, the court shall ex parte and without notice to the respondent issue a
14 protective order. The petitioner shall certify to the court in writing any effort that the
15 petitioner made to provide notice to the respondent.

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

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

18 (2) supersede an existing power of attorney;

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

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

25 (c) An ex parte protective order expires 20 days after it is issued, unless
26 dissolved earlier by the court at the request of the petitioner or respondent and after
27 notice and, if requested, a hearing, or on the earlier appointment of a temporary or
28 permanent conservator.

29 **Sec. 13.26.208. Temporary protective orders; conversions.** On application
30 filed with the court before the expiration of a 20-day ex parte protective order issued
31 under AS 13.26.207, the court shall schedule a hearing on whether to convert the

1 protective order to a temporary order effective for up to six months. The court shall
2 provide to the protected person and the respondent at least 10 days' notice of the
3 hearing and the respondent's right to appear and be heard. If the court finds by a
4 preponderance of the evidence that the respondent has committed fraud against the
5 petitioner or the person for whose benefit the petition was filed, regardless of whether
6 the respondent appears at the hearing, the court may convert the ex parte protective
7 order to a temporary protective order effective for up to six months.

8 **Sec. 13.26.209. Protective orders; modification; third-party compliance;**
9 **forms; fees.** (a) The petitioner, respondent, or protected person, if the protected person
10 is a vulnerable adult, may request modification of a protective order issued under
11 AS 13.26.165 - 13.26.209. If a request is made for modification of a protective order,
12 the court shall schedule a hearing on three days' notice or on shorter notice as the court
13 may prescribe. If the court modifies a protective order, the court shall issue a modified
14 order and shall make reasonable efforts to ensure that the order is understood by the
15 petitioner, the respondent, and the protected person who are present at the hearing.

16 (b) The court shall cause a copy of a protective order, any related orders, and a
17 scheduling order, if any, to be served on the respondent and the protected person.

18 (c) A protective order issued under AS 13.26.165 - 13.26.209 is in addition to
19 any other civil or criminal remedy.

20 (d) A third party that has received actual or legal notice of a protective order
21 issued under AS 13.26.165 - 13.26.209 shall comply with the order. A third party who
22 does not comply with a protective order granted under AS 13.26.165 - 13.26.209 may
23 be liable in a civil action to the protected person or the protected person's heirs,
24 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
25 costs, and fees associated with the failure to comply with the protective order. A third
26 party who does not comply with a protective order granted under AS 13.26.165 -
27 13.26.209 may also be criminally liable under AS 11.56.740 for violating a protective
28 order. As used in this section, "actual or legal notice" means delivery by mail or
29 facsimile at the most recently known place of residence or business of the third party.

30 (e) The Alaska Court System, after consulting with the Department of Health
31 and Social Services, the office of public advocacy, the office of elder fraud and

1 assistance, the long term care ombudsman, and other interested persons and
2 organizations, shall prepare forms for petitions and protective orders and instructions
3 for use of the forms by a person seeking a protective order under AS 13.26.165 -
4 13.26.209. The forms must conform to the Alaska Rules of Probate Procedure and
5 Alaska Rules of Civil Procedure, except that information on the forms may be filled in
6 by legible handwriting. The office of the clerk of each superior and district court shall
7 make available to the public the forms a person seeking a protective order may need
8 and instructions for the use of the forms. The clerk shall provide assistance in
9 completing and filing the forms.

10 (f) Filing fees may not be charged for a petition under AS 13.26.180 or
11 13.26.207.

12 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

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

20 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

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

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

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

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

1 (a) The Department of Public Safety shall maintain a central registry of
2 protective orders issued by or filed with a court of this state under AS 13.26.165 -
3 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
4 include, for each protective order, the names of the petitioner and respondent, their
5 dates of birth, and the conditions and duration of the order. The registry shall retain a
6 record of the protective order after it has expired.

7 * **Sec. 14.** AS 18.65.540(b) is amended to read:

8 (b) A peace officer receiving a protective order from a court under
9 AS 13.26.165 - 13.26.209, AS 18.65.850 - 18.65.855, or AS 18.66.100 - 18.66.180, a
10 modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a
11 protective order shall [, MUST] take reasonable steps to ensure that the order,
12 modified order, or dismissal is entered into the central registry within 24 hours after
13 being received.

14 * **Sec. 15.** AS 44.21.415(g) is amended to read:

15 (g) In this section,

16 (1) "fraud" means

17 (A) robbery, extortion, and coercion under AS 11.41.500 -
18 11.41.530;

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

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

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

26 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

1 for vulnerable adults **in the office of the department that handles adult protective**
2 **services:**

- 3 (1) a physician or other licensed health care provider;
4 (2) a mental health professional as defined in AS 47.30.915(11) and
5 including a marital and family therapist licensed under AS 08.63;
6 (3) a pharmacist;
7 (4) an administrator **or employee** of a nursing home, residential care,
8 or health care facility;
9 (5) a guardian or conservator;
10 (6) a police officer;
11 (7) a village public safety officer;
12 (8) a village health aide;
13 (9) a social worker;
14 (10) a member of the clergy;
15 (11) a staff employee of a project funded by the Department of
16 Administration for the provision of services to older Alaskans, the Department of
17 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
18 (12) an employee of a personal care or home health aide program;
19 (13) an emergency medical technician or a mobile intensive care
20 paramedic;
21 (14) a caregiver of the vulnerable adult;
22 (15) a certified nurse aide;
23 **(16) an educator or administrative staff member of a public or**
24 **private educational institution.**

25 * Sec. 17. AS 47.24.010(b) is amended to read:

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

- 28 (1) the name and **contact information** [ADDRESS] of the vulnerable
29 adult;
30 (2) information relating to the nature and extent of the **undue**
31 **influence,** abandonment, exploitation, abuse, neglect, or self-neglect;

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

4 * **Sec. 18.** AS 47.24.010(c) is amended to read:

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

14 * **Sec. 19.** AS 47.24.010(d) is amended to read:

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

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

21 (e) If a person making a report under this section believes that immediate
22 action is necessary to protect the vulnerable adult from imminent risk of serious
23 physical harm due to **undue influence,** abandonment, exploitation, abuse, neglect, or
24 self-neglect and the reporting person cannot immediately contact the department's
25 central information and referral service for vulnerable adults, the reporting person
26 **shall** [MAY] make the report to a police officer or a village public safety officer. The
27 police officer or village public safety officer shall take immediate action to protect the
28 vulnerable adult and shall, **within 24 hours after receiving the report of harm** [AT
29 THE EARLIEST OPPORTUNITY], notify the department. A person may not bring an
30 action for damages against a police officer, **a** village public safety officer, the state, or
31 a political subdivision of the state based on a decision under this subsection to take or

1 not to take immediate action to protect a vulnerable adult. If a decision is made under
2 this subsection to take immediate action to protect a vulnerable adult, a person may
3 not bring an action for damages based on the protective actions taken unless the
4 protective actions were performed with gross negligence or intentional misconduct;
5 damages awarded in the action may include only direct economic compensatory
6 damages for personal injury.

7 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

13 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

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

20 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

28 * **Sec. 24.** AS 47.24.013(b) is amended to read:

29 (b) The department shall investigate a report received under AS 47.24.010
30 regarding the **undue influence,** abandonment, exploitation, abuse, neglect, or self-
31 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have

1 been committed by or to have resulted from the negligence of the staff or a volunteer
2 of an out-of-home care facility in which the vulnerable adult resides.

3 * **Sec. 25.** AS 47.24.013(c) is amended to read:

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

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

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

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

13 * **Sec. 26.** AS 47.24.013(d) is amended to read:

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

21 * **Sec. 27.** AS 47.24.015(a) is amended to read:

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

30 * **Sec. 28.** AS 47.24.015(c) is amended to read:

31 (c) The department [,] or its designee [,] shall immediately terminate an

1 investigation under this section upon the request of the vulnerable adult who is the
2 subject of the report made under AS 47.24.010. However, the department or its
3 designee may not terminate the investigation if the investigation to that point has
4 resulted in probable cause to believe that the vulnerable adult is in need of protective
5 services and the request is made personally by the vulnerable adult and the vulnerable
6 adult is not competent to make the request on the adult's own behalf, or the request is
7 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
8 and that person is the alleged perpetrator of the undue influence, abandonment,
9 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
10 this chapter. If the department has probable cause to believe that the vulnerable adult
11 is in need of protective services,

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

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

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

19 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

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

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

12 * **Sec. 30.** AS 47.24.016(a) is amended to read:

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

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

23 [(A) THE VULNERABLE ADULT AND THE SPOUSE
24 HAVE SEPARATE DOMICILES; OR

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

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

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

31 (4) a parent of the vulnerable adult;

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

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

5 * **Sec. 31.** AS 47.24.016(b) is amended to read:

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

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

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

12 * **Sec. 32.** AS 47.24.016(d) is amended to read:

13 (d) The department may not continue to provide protective services to a
14 vulnerable adult based on the consent of a surrogate decision maker serving under this
15 section **or AS 13.52.030** if the department determines that the vulnerable adult has
16 become able to consent or has regained decision making capacity since the surrogate's
17 consent was given. The department may continue protective services to a vulnerable
18 adult who has become able to consent or has regained decision making capacity only
19 if the vulnerable adult consents.

20 * **Sec. 33.** AS 47.24.017(a) is amended to read:

21 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
22 in need of protective services and [EITHER] the vulnerable adult, the vulnerable
23 adult's guardian, **conservator**, [OR] attorney-in-fact, **trustee**, [OR] a surrogate
24 decision maker selected under AS 47.24.016, **or a surrogate for health care**
25 **decisions under AS 13.52.030** consents to receipt of the protective services, and to
26 the extent that resources are available, the department shall ensure that the protective
27 services for the vulnerable adult are provided by the department, or its designee,
28 within 10 working days after the department received the report under AS 47.24.010
29 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
30 neglect of the vulnerable adult. However, if circumstances beyond the control of the
31 department or the department's designee make it impossible to provide the protective

1 services within the 10 working days, the department shall ensure that the services are
2 provided as soon as possible after that time.

3 * **Sec. 34.** AS 47.24.019(c) is amended to read:

4 (c) If a vulnerable adult who has consented to receive protective services, or
5 on whose behalf consent to receive protective services has been given, is prevented by
6 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
7 SURROGATE DECISION MAKER] from receiving those services, the department
8 may petition the superior court for an injunction restraining the person
9 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
10 DECISION MAKER] from interfering with the provision of protective services to the
11 vulnerable adult.

12 * **Sec. 35.** AS 47.24.050 is amended to read:

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

22 (b) The department shall disclose a report of the undue influence,
23 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
24 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
25 conservator, attorney-in-fact, trustee, or surrogate decision maker consents in
26 writing. The department may not disclose a report of the undue influence,
27 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the
28 vulnerable adult's guardian, conservator, attorney-in-fact, trustee, or surrogate
29 decision maker if that person is an alleged perpetrator of the undue influence,
30 abandonment, exploitation, abuse, or neglect of the vulnerable adult and is being
31 investigated under this chapter. The department shall, upon request, disclose the

1 number of verified reports of **undue influence**, abandonment, exploitation, abuse,
2 neglect, or self-neglect of a vulnerable adult that occurred at an institution that
3 provides care for vulnerable adults or that were the result of actions or inactions of a
4 public home care provider.

5 * **Sec. 36.** AS 47.24.130 is amended to read:

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

17 * **Sec. 37.** AS 47.24.900(2) is amended to read:

18 (2) "abuse" means

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

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

24 * **Sec. 38.** AS 47.24.900(3) is amended to read:

25 (3) "caregiver" means

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

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

1 * **Sec. 39.** AS 47.24.900(4) is amended to read:

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

7 * **Sec. 40.** AS 47.24.900(7) is amended to read:

8 (7) "exploitation"
9 (A) means unjust or improper use of another person or another
10 person's resources for one's own profit or advantage, **with or without the**
11 **person's consent; and**

12 (B) **includes acts by a person who stands in a position of**
13 **trust or confidence with a vulnerable adult or who knows or should know**
14 **that the vulnerable adult lacks the capacity to consent that involve**
15 **obtaining profit or advantage through undue influence, deception, fraud,**
16 **intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has**
17 **the meaning given in AS 13.26.324(1) and (2);**

18 * **Sec. 41.** AS 47.24.900(9) is amended to read:

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

26 * **Sec. 42.** AS 47.24.900(11) is amended to read:

27 (11) "protective services" means services that are intended to prevent
28 or alleviate harm resulting from **undue influence,** abandonment, exploitation, abuse,
29 neglect, or self-neglect and that are provided to a vulnerable adult in need of
30 protection; **in this paragraph, "services" ["PROTECTIVE SERVICES"] includes**
31 (A) protective placement;

1 **(B) applying for or obtaining public benefits;**

2 **(C) obtaining health care services and supplies;**

3 **(D) staying financial transactions;**

4 **(E) petitioning for a protective order under AS 13.26.165 -**

5 **13.26.209;**

6 **(F) assisting with personal hygiene;**

7 **(G) obtaining food and clothing;**

8 **(H) protection from physical and emotional abuse;**

9 **(I) obtaining representative payee services; and**

10 **(J) coordinating protective services;**

11 * **Sec. 43.** AS 47.24.900(15) is amended to read:

12 (15) "unable to consent" means refusal to, or inability to, accept
13 services because

14 (A) the person is an incapacitated person or apparently is an
15 incapacitated person;

16 (B) of coercion by or fear of reprisal from the perpetrator of
17 **undue influence**, abandonment, exploitation, abuse, or neglect;

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

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

24 * **Sec. 44.** AS 47.24.900(16) is amended to read:

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

30 * **Sec. 45.** AS 47.24.900 is amended by adding new paragraphs to read:

31 (17) "deception" means creating, reinforcing, or failing to correct a

1 false impression or preventing another person from acquiring information that would
2 affect the person's judgment regarding a transaction;

3 (18) "fiduciary duty" means the duty of a third party who stands in a
4 position of trust or confidence with another person, including a vulnerable adult, to act
5 with due regard for the benefit and interest of that person;

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

8 (A) a broker-dealer;

9 (B) a commercial bank;

10 (C) a savings bank;

11 (D) a credit union;

12 (E) a premium finance company;

13 (F) a small loan company;

14 (G) a bank holding company;

15 (H) a financial holding company;

16 (I) a trust company;

17 (J) a savings and loan association;

18 (K) a deferred deposit advance licensee;

19 (L) an investment bank;

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

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

22 (O) an investment adviser;

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

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

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

27 (C) has a legal or fiduciary relationship; or

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

31 (21) "undue influence" means the use by a person who stands in a

1 position of trust or confidence of the person's role, relationship, or authority to
2 wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control
3 over the decision making of the vulnerable adult, including decision making related to
4 finances, property, residence, and health care.

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

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

9 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
10 granted by the court only for cause shown. **In deciding whether to grant the motion,**
11 **the court shall consider the victim's circumstances and the effect the delay would**
12 **have on the victim, particularly a victim of advanced age or extreme youth. The**
13 **court shall place its findings on the record.** The presiding judge of a judicial district
14 may require that a visiting or pro tem judge obtain approval from the presiding judge
15 before granting any continuance of trial.

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

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

20 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
21 placing criminal proceedings upon appropriate calendars. Preference shall be given to
22 criminal proceedings and the trial of defendants in custody shall be given preference
23 over other criminal cases. **The court shall consider the circumstances of the victim,**
24 **particularly a victim of advanced age or extreme youth, in setting the trial date.**

25 Trial dates in criminal cases in the superior court shall be set at the time of
26 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
27 for a date certain.

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

30 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.207, 13.26.208, and
31 13.26.209(a) - (e), enacted by sec. 10 of this Act, have the effect of amending Rule 17, Alaska

1 Rules of Probate Procedure, relating to conservatorships and protective proceedings, by
2 allowing ex parte orders to be issued related to protecting the assets of a person otherwise
3 subject to AS 13.26.165 from financial exploitation.

4 (b) AS 13.26.209(f), enacted by sec. 10 of this Act, has the effect of amending Rule 9,
5 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
6 for an ex parte protective order under AS 13.26.180, amended by secs. 7 and 8 of this Act, or
7 AS 13.26.207, enacted by sec. 10 of this Act.

8 (c) AS 13.26.206, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
9 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
10 petition for the appointment of a temporary conservator.

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

13 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
14 on or after the effective date of this Act.

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

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

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

21 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
22 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
23 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
24 out-of-home care facilities."

25 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 CONDITIONAL EFFECT. (a) AS 13.26.207, 13.26.208, and 13.26.209(a) - (e),
28 enacted by sec. 10 of this Act, take effect only if sec. 48(a) of this Act receives the two-thirds
29 vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) AS 13.26.209(f), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
31 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of

1 the State of Alaska.

2 * **Sec. 52.** Sections 16 and 20 of this Act take effect September 1, 2011.

3 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

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CS FOR SENATE BILL NO. 86(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

H/S

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 * **Sec. 9.** AS 13.26.185 is amended by adding a subsection to read:

7 (c) This section does not apply to a petition or order for an ex parte protective
 8 order filed under AS 13.26.209.

9 * **Sec. 10.** AS 13.26 is amended by adding new sections to read:

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

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

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

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1 **Sec. 13.26.209. Ex parte protective orders; modification; forms for**
 2 **petitions and orders; fees.** (a) A person who is allowed to file a petition for a
 3 protective order under AS 13.26.180(a) may file a petition for an ex parte protective
 4 order against another person. A petition filed on behalf of a protected person by
 5 another person must be accompanied by proof of service of the petition on the
 6 protected person or the person's attorney unless service would cause an immediate
 7 threat of harm to the best interests of the protected person and the petition includes a
 8 written explanation of the harm. If the court finds that the petition establishes probable
 9 cause that the respondent is financially defrauding the petitioner or a person for whose
 10 benefit the petitioner filed the petition and that, because of the fraud, there has been or
 11 is an immediate threat of a waste or dissipation of the proposed protected person's
 12 funds or other property, the court shall ex parte and without notice to the respondent
 13 issue a protective order. The petitioner shall certify to the court in writing any effort
 14 that the petitioner made to provide notice to the respondent. The court shall cause a
 15 copy of the protective order, any related orders, and a scheduling order, if any, to be
 16 served on the respondent and the protected person.

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(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 on the
appointment of a temporary or permanent conservator or dismissal of the petition for
the ex parte order.

(d) On 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

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protective order for up to six months. The court shall provide to the protected person and the respondent at least 10 days' notice 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.

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(e) Either the petitioner or the respondent may request modification of a protective order issued under this section. If a request is made for modification of a protective order, the court shall schedule a hearing on three days' notice or on shorter notice as the court may prescribe. If the court modifies a protective order under this section, the court shall issue a modified order and shall make reasonable efforts to ensure that the order is understood by the petitioner and by the respondent, if present at the hearing.

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

(g) A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order. 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 party 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. As used in this section, "actual or legal notice" means delivery by mail or facsimile at the most recently known place of residence or business of the third party. [or registering DPS...]

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(h) 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 and protective orders and instructions for use of the forms 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

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1 Civil Procedure, except that information on the forms may be filled in by legible
 2 handwriting. The office of the clerk of each superior and district court shall make
 3 available to the public the forms a person seeking a protective order under this section
 4 may need and instructions for the use of the forms. The clerk shall provide assistance
 5 in completing and filing the forms.

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

7 * **Sec. 11.** AS 13.26 is amended by adding a new section to article 4 to read:

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

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

15 * **Sec. 12.** AS 18.65.530(a) is amended to read:

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

- 20 (1) committed domestic violence, except an offense under
 21 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;
- 22 (2) committed the crime of violating a protective order in violation of
 23 AS 11.56.740(a)(1) or (2) [AS 11.56.740];
- 24 (3) violated a condition of release imposed under AS 12.30.016(e) or
 25 (f) or 12.30.027.

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

27 (a) The Department of Public Safety shall maintain a central registry of
 28 protective orders issued by or filed with a court of this state under AS 13.26.180,
 29 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180. The registry must
 30 include, for each protective order, the names of the petitioner and respondent, their
 31 dates of birth, and the conditions and duration of the order. The registry shall retain a

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1 record of the protective order after it has expired.

2 * **Sec. 14.** AS 18.65.540(b) is amended to read:

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

9 * **Sec. 15.** AS 44.21.415(g) is amended to read:

10 (g) In this section,

11 (1) "fraud" means

12 (A) robbery, extortion, and coercion under AS 11.41.500 -
13 11.41.530;

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

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

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

21 * **Sec. 16.** AS 47.24.010(a) is amended to read:

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

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

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

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

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

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

22 reporting person and must include

23 (1) the name and **contact information** [ADDRESS] of the vulnerable

24 adult;

25 (2) information relating to the nature and extent of the **undue**

26 **influence**, abandonment, exploitation, abuse, neglect, or self-neglect;

27 (3) other information that the reporting person believes might be

28 helpful in an investigation of the case or in providing protection for the vulnerable

29 adult.

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

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

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

9 * **Sec. 19.** AS 47.24.010(d) is amended to read:

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

15 * **Sec. 20.** AS 47.24.010(e) is amended to read:

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

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1 damages for personal injury.

2 * **Sec. 21.** AS 47.24.010(f) is amended to read:

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

8 * **Sec. 22.** AS 47.24.010 is amended by adding new subsections to read:

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

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

15 * **Sec. 23.** AS 47.24.013(a) is amended to read:

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

23 * **Sec. 24.** AS 47.24.013(b) is amended to read:

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

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

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

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

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

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

8 * **Sec. 26.** AS 47.24.013(d) is amended to read:

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

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

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

25 * **Sec. 28.** AS 47.24.015(c) is amended to read:

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

1 adult is not competent to make the request on the adult's own behalf, or the request is
 2 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
 3 and that person is the alleged perpetrator of the undue influence, abandonment,
 4 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
 5 this chapter. If the department has probable cause to believe that the vulnerable adult
 6 is in need of protective services,

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

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

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

14 * **Sec. 29.** AS 47.24.015 is amended by adding new subsections to read:

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

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

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

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

31 (l) The department shall provide for the training of investigators who

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1 investigate reports of harm under this section. Training must include instruction in
2 federal, state, and local laws and policies of the department related to vulnerable
3 adults, and in investigative techniques. The department may require other appropriate
4 training.

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

7 * **Sec. 30.** AS 47.24.016(a) is amended to read:

8 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
9 in need of protective services, but the department cannot obtain the vulnerable adult's
10 consent to receive the services because the vulnerable adult is unable to consent or
11 lacks decision making capacity, and has no guardian, conservator, [OR] attorney-in-
12 fact, trustee, or surrogate for health care decisions under AS 13.52.030 to serve as
13 the vulnerable adult's surrogate decision maker, the department may select from the
14 following list, in the order of priority listed, an individual who is willing to be the
15 vulnerable adult's surrogate decision maker for the purpose of deciding whether to
16 consent to the vulnerable adult's receipt of protective services:

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

18 [(A) THE VULNERABLE ADULT AND THE SPOUSE
19 HAVE SEPARATE DOMICILES; OR

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

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

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

26 (4) a parent of the vulnerable adult;

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

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

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

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

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

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

7 * **Sec. 32.** AS 47.24.016(d) is amended to read:

8 (d) The department may not continue to provide protective services to a
9 vulnerable adult based on the consent of a surrogate decision maker serving under this
10 section or AS 13.52.030 if the department determines that the vulnerable adult has
11 become able to consent or has regained decision making capacity since the surrogate's
12 consent was given. The department may continue protective services to a vulnerable
13 adult who has become able to consent or has regained decision making capacity only
14 if the vulnerable adult consents.

15 * **Sec. 33.** AS 47.24.017(a) is amended to read:

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

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29 * **Sec. 34.** AS 47.24.019(c) is amended to read:

30 (c) If a vulnerable adult who has consented to receive protective services, or
31 on whose behalf consent to receive protective services has been given, is prevented by

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1 any person [A CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR
 2 SURROGATE DECISION MAKER] from receiving those services, the department
 3 may petition the superior court for an injunction restraining the person
 4 [CAREGIVER, GUARDIAN, ATTORNEY-IN-FACT, OR SURROGATE
 5 DECISION MAKER] from interfering with the provision of protective services to the
 6 vulnerable adult.

7 * **Sec. 35.** AS 47.24.050 is amended to read:

8 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
 9 reports of the undue influence, abandonment, exploitation, abuse, neglect, or self-
 10 neglect of a vulnerable adult filed under this chapter are confidential and are not
 11 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
 12 under [IN ACCORDANCE WITH] this chapter and regulations adopted under this
 13 chapter, investigation reports may be used by appropriate agencies or individuals
 14 inside and outside the state, in connection with investigations or judicial proceedings
 15 involving the undue influence, abandonment, exploitation, abuse, neglect, or self-
 16 neglect of a vulnerable adult.

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

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31 * **Sec. 36.** AS 47.24.130 is amended to read:

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1 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
2 construed to mean that a person is **unduly influenced**, abused, neglected, self-
3 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
4 emergency or protective services for the sole reason that the person relies on or is
5 being furnished treatment by spiritual means through prayer alone **under** [IN
6 ACCORDANCE WITH] the tenets and practices of a church or religious
7 denomination of which the person is a member or adherent, **if** [PROVIDED THAT]
8 the person consents to the treatment through spiritual means only and the treatment is
9 administered by an accredited practitioner of the church or religious denomination. In
10 this section, "church or religious denomination" has the meaning given to "religious
11 organization" in AS 05.15.690.

12 * **Sec. 37.** AS 47.24.900(2) is amended to read:

13 (2) "abuse" means

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

17 or

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

19 * **Sec. 38.** AS 47.24.900(3) is amended to read:

20 (3) "caregiver" means

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

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

27 * **Sec. 39.** AS 47.24.900(4) is amended to read:

28 (4) "decision making capacity" means the ability to understand and
29 appreciate the nature and consequences of a decision and the ability to reach and
30 communicate an informed decision; **in this paragraph, "informed decision"**
31 **includes a decision made by the vulnerable adult that is free from undue**

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influence;

* **Sec. 40.** AS 47.24.900(7) is amended to read:

(7) "exploitation"

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

(B) includes acts by a person who stands in a position of trust or confidence with a vulnerable adult or who knows or should know that the vulnerable adult lacks the capacity to consent that involve obtaining profit or advantage through undue influence, deception, fraud, intimidation, or breach of fiduciary duty; in this paragraph, "fraud" has the meaning given in AS 13.26.324(1) and (2);

* **Sec. 41.** AS 47.24.900(9) is amended to read:

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

* **Sec. 42.** AS 47.24.900(11) is amended to read:

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

(A) protective placement;

(B) applying for or obtaining public benefits;

(C) obtaining health care services and supplies;

(D) staying financial transactions;

(E) petitioning for an ex parte protective order under

AS 13.26.209;

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

* **Sec. 43.** AS 47.24.900(15) is amended to read:

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

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

(B) of coercion by or fear of reprisal from the perpetrator of **undue influence**, abandonment, exploitation, abuse, or neglect;

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

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

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* **Sec. 44.** AS 47.24.900(16) is amended to read:

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

* **Sec. 45.** AS 47.24.900 is amended by adding new paragraphs to read:

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

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

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

- 3 (A) a broker-dealer;
- 4 (B) a commercial bank;
- 5 (C) a savings bank;
- 6 (D) a credit union;
- 7 (E) a premium finance company;
- 8 (F) a small loan company;
- 9 (G) a bank holding company;
- 10 (H) a financial holding company;
- 11 (I) a trust company;
- 12 (J) a savings and loan association;
- 13 (K) a deferred deposit advance licensee;
- 14 (L) an investment bank;
- 15 (M) an insurance company subject to regulation by AS 21;
- 16 (N) a licensee subject to regulation by AS 21; and
- 17 (O) an investment adviser;

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

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

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

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

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1 read:

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

4 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
5 granted by the court only for cause shown. In deciding whether to grant the motion,
6 the court shall consider the victim's circumstances and the effect the delay would
7 have on the victim, particularly a victim of advanced age or extreme youth. The
8 court shall place its findings on the record. The presiding judge of a judicial district
9 may require that a visiting or pro tem judge obtain approval from the presiding judge
10 before granting any continuance of trial.

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

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

15 (a) **Priorities in Scheduling Criminal Cases.** The court shall provide for
16 placing criminal proceedings upon appropriate calendars. Preference shall be given to
17 criminal proceedings and the trial of defendants in custody shall be given preference
18 over other criminal cases. The court shall consider the circumstances of the victim,
19 particularly a victim of advanced age or extreme youth, in setting the trial date.
20 Trial dates in criminal cases in the superior court shall be set at the time of
21 arraignment, and if a trial date is thereafter vacated, the trial shall be immediately set
22 for a date certain.

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23 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.209(a) - (h), enacted by
26 sec. 10 of this Act, have the effect of amending Rule 17, Alaska Rules of Probate Procedure,
27 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
28 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
29 financial exploitation.

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30 (b) AS 13.26.209(i), enacted by sec. 10 of this Act, has the effect of amending Rule 9,
31 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition

1 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 10 of this Act.

2 (c) AS 13.26.207, enacted by sec. 10 of this Act, has the effect of amending Rule 77,
3 Alaska Rules of Civil Procedure, by requiring a hearing within 72 hours of the filing of a
4 petition for the appointment of a temporary conservator.

5 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 APPLICABILITY. Sections 3 - 5, 46, and 47 of this Act apply to offenses committed
8 on or after the effective date of this Act.

9 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
12 catch line of

13 (1) AS 47.24.010 from "Reports of harm" to "Persons required to report;
14 reports of harm";

15 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
16 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
17 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
18 out-of-home care facilities."

19 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 CONDITIONAL EFFECT. (a) AS 13.26.209(a) - (h), enacted by sec. 10 of this Act,
22 take effect only if sec. 48(a) of this Act receives the two-thirds vote of each house required by
23 art. IV, sec. 15, Constitution of the State of Alaska.

24 (b) AS 13.26.209(i), enacted by sec. 10 of this Act, takes effect only if sec. 48(b) of
25 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
26 the State of Alaska.

27 * **Sec. 52.** Sections 16 - 28 of this Act take effect September 1, 2011.

28 * **Sec. 53.** Except as provided in sec. 52 of this Act, this Act takes effect July 1, 2011.

Handwritten notes: JS5 and 40

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

April 4, 2011

TO: Leg. Legal

FROM: Cindy Smith

RE: CS for SB86 Protection of Vulnerable Adults/Minors

Please prepare a CS for SB86, as follows:

Import the House Judiciary version of the companion bill (27-GH1722\D).

To that version of the bill make the following changes:

1. In Section 13.26.207, add language that requires that if an attorney has not already been appointed for the respondent, the court shall appoint an attorney to represent the person at the hearing.
2. In the exparte order section (Sec. 13.26.209 and any others as needed), add language to allow the person to be protected or the respondent to seek modification or termination of any ex-parte protective order on three days' notice.
3. Add language in 13.26.185 (not currently in the bill) to clarify notice provisions do not apply to the exparte orders created under this bill.
4. Add definitions from revisor's bill (see attached memo).
5. Add a delayed effective date for new reporting provisions in 47.24.010(a) and (e) to go into effect September 1, 2011.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

Changes were adopted that were made in the House Judiciary Committee:

1. Page 1: Inserted two new sections to address language changes originally in the revisor's bill.
2. Page 4, line 21, Sec. 10. AS 13.26.207(a): Following "attorney" inserted "**and other persons as ordered by the court**"
3. Page 5, line 4; Sec. 10. AS 13.26.209(a): Following "person." inserted "**A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person's attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm.**"
4. Page 4, lines 22-23; Sec. 10. AS 13.26.209(a): Replaced "**The court shall cause a copy of the protective order to be served on the respondent.**" with "**The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person.**"
5. Page 6, line 1; Sec. 10. AS 13.26.209(d): Following "**the court shall provide to**" inserted "**the protected person and**"
6. Page 6, line 16; Sec. 10. AS 13.26.209(g): Replaced "**A third party shall comply with a protective order issued under this section.**" with "**A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order.**"
7. Page 6, line 21; Sec. 10. AS 13.26.209(g): Replaced "person" with "party"
8. Page 6, line 23; Sec. 10. AS 13.26.209(g): Following "order." inserted "**As used in this section, "actual or legal notice" means delivery by mail or facsimile at the most**

recently known place of residence or business of the third party or registering with the Department of Public Safety.”

9. Page 7, line 8; Sec. 11. AS 13.26.325: The reference number 13.26.325 was already used, so Legal Services changed it to 13.26.324.
10. Page 7, line 8; Sec. 11. AS 13.26.325(2): Replaced **“theft and related offenses”** with **“offenses against property”**
11. Page 7, line 23; Sec. 12. AS 18.65.530(a)(2): Replaced **“and”** with **“or”**
12. Page 7, line 9, Section 15: this is a new section
13. Page 10, lines 23; Sec. 20. AS 47.24.010(e): Reinserted **“at the earliest opportunity”**
14. Page 13, line 15-18-Page 12, line 2; Sec. 29. AS 47.24.015(h): Redrafted section (h)
15. Page 13, lines 22; Sec. 29. AS 47.24.015(j): Deleted (j) and re-lettered the following subsections accordingly.
16. Page 14, line 6; Sec. 29. AS 47.24.015(m): Replaced **“the following:”** and (1) – (4) with **“any person”**
17. Page 14, line 11; Sec. 30. AS 47.24.016(a): Following **“guardian,”** inserted **“conservator,”**
18. Page 14, lines 20-21; Sec. 30. AS 47.24.016(a)(1): Replaced **“divorce or dissolution”** with **“divorce, [OR] dissolution, or legal separation”**
19. Page 15, line 18; Sec. 33. AS 47.24.017(a): Replaced **“guardian or”** with **“guardian, conservator, [OR]”**
20. Page 16, lines 1-2; Sec. 34. AS 47.24.019(c): Replaced **“a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker”** with **“any person”**
21. Page 16, lines 4-5 31; Sec. 34. AS 47.24.019(c): Replaced **“a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker”** with **“person”**
22. Page 16, lines 20 and 23; Sec. 35. AS 47.24.050(b): Following **“guardian,”** inserted **“conservator,”**
23. Page 17, line 14; Sec. 37. AS 47.24.900(2)(A): Following **“intentional,”** inserted **“knowing,”**

24. Page 17, line 31; Sec. 39. AS 47.24.900(4): Replaced “**means**” with “**includes**”
25. Page 18, line 10; Sec. 40. AS 47.24.900(7)(B): Following “**deception,**” inserted “**fraud,**”
26. Page 18, line 11-12; Sec. 40. AS 47.24.900(7)(B): Following “**duty,**” inserted “**in this paragraph, “fraud” has the meaning given in AS 13.26.324(1) and (2);**”
27. Page 18, line 14; Sec. 41. AS 47.24.900(9): Following “**intentional,**” inserted “**knowing,**”
28. Page 18, line 20; Sec. 41. AS 47.24.900(9): Replaced “**means**” with “**includes**”
29. Page 18-19, lines 22 on; Sec. 42. AS 47.24.900(11): Legal Services reformatted this section, there was no substantive change.
30. Page 18, line 27; Sec. 42. AS 47.24.900(11)(B)(D): Replaced “**(iv) freezing an account at a financial institution;**” with “**(D) staying financial transactions;**”
31. Page 19, line 16; Sec. 43. AS 47.24.900(15)(D): Following “**loss**” inserted “**, waste, or dissipation**”
32. Page 19, lines 29-31; Sec. 45. AS 47.24.900(18): Redrafted (18) description.
33. Page 20, lines 26-28; Sec. 45. AS 47.24.900(21): Replaced “ “**undue influence**” means a person of trust or confidence uses the person’s role, relationship or authority to exploit” with “ “**undue influence**” means the use by a person who stands in a position of trust or confidence of the person’s role, relationship, or authority to wrongfully exploit”
34. Page 20, line 28; Sec. 45. AS 47.24.900(21): Deleted “**deceptively**”
35. Page 21, lines 5-8; Sec. 46. Direct Court Rule Amendments 12(h): Replaced language with “**In deciding whether to grant the motion, the court shall consider the victim’s circumstances and the effect that delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record.**”
36. Page 21, lines 5-7; Sec. 47. Direct Court Rule Amendments 45(a): Deleted all bold language. And replaced with: following “**cases.**” inserted “**The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date.**”

37. Page 21 and 22, Secs. 48 and 49: Conforming amendments to adjust for earlier deletions and amendments.
38. A-Page 21, line 18; Sec. 47, Effective Date: Replaced “**immediately under AS 01.10.070(c).**” with “**July 1, 2011.**”

Additional Senate Judiciary Committee Changes incorporated in this SJUD CSSB86 (JUD) GS1722\M:

1. In Section 10, at lines 21-23, added language that requires that if a respondent is unrepresented, the court shall appoint an attorney to represent the person at the hearing.
2. In Section 10 at lines 6–13, added language to allow the person to be protected or the respondent to seek modification or termination of any ex-parte protective order on three days’ notice.
3. Add language in 13.26.185 (see lines 6-9, page 4) to clarify notice provisions do not apply to the ex parte orders created under this bill.
4. Add language changes from the revisor’s bill (see sections 1 and 2).
5. Add a delayed effective date for new reporting provisions in 47.24.010(a) and (e) to go into effect September 1, 2011 (see line 27 at page 22).
6. Delete reference added by House Judiciary at 13.26.209 (g) (see page 6) “registering with the Department of Public Safety” as a method of serving notice, as that database is not publicly available (the Department of Health and Social Services has requested this change in the House Finance Committee).

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

P.O. BOX 110801
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

CSHB 150 (JUD) – EXPLANATION OF CHANGES

The following is a description of the changes that have occurred between the originally introduced bill and the version before the House Finance Committee. A total of 40 amendments were made to the original version of the bill. The page references below refer to the current bill version.

1. The first two sections of the bill are newly added.
2. Page 4, line 18; Sec. 9. 13.26.207(a) - Following “attorney” inserted “**and other persons as ordered by the court**”.
3. Page 4, line 31-page 5, line 3; Sec. 9. AS 13.26.209(a) - Following “person.” inserted “**A petition filed on behalf of a protected person by another person must be accompanied by proof of service of the petition on the protected person or the person’s attorney unless service would cause an immediate threat of harm to the best interests of the protected person and the petition includes a written explanation of the harm.**”
4. Page 5, lines 10-12; Sec. 9. AS 13.26.209(a) -Replaced “**The court shall cause a copy of the protective order to be served on the respondent.**” with “**The court shall cause a copy of the protective order, any related orders, and a scheduling order, if any, to be served on the respondent and the protected person.**”
5. Page 5, lines 28-29; Sec. 9. AS 13.26.209(d) - Following “notice to” inserted “**the protected person and**” .
6. Page 6, lines 5-6; Sec. 9. AS 13.26.209(f) - Replaced “**A third party shall comply with a protective order issued under this section.**” with “**A third party that has received actual or legal notice of a protective order issued under this section shall comply with the order.**”
7. Page 6, line 10; Sec. 9. AS 13.26.209(f) - Replaced “person” with “party”.
8. Page 6, lines 12-15; Sec. 9. AS 13.26.209(f) - Following “order.” inserted “**As used in this section, “actual or legal notice” means delivery by mail or facsimile at the most recently known place of residence or business of the third party or registering with the Department of Public Safety.**”
9. Page 6, line 29; Sec. 10. AS 13.26.324 - The reference number 13.26.325 was already used, so Legal Services changed it to 13.26.324.

10. Page 7, line 1; Sec. 10. AS 13.26.324(2) - Replaced **“theft and related offenses”** with **“offenses against property”**.
11. Page 7, line 13; Sec. 11. AS 18.65.530(a)(2) - Replaced **“and”** with **“or”** .
12. Page 7, line 30-Page 8, line 10; Sec. 14. AS 44.21.415(g) - this is a new section
13. Page 10, lines 13-14; Sec. 19. AS 47.24.010(e) - Reinserted **“at the earliest opportunity”**.
14. Page 13, lines 5-8; Sec.28. AS 47.24.015(h) - this is a totally redrafted subsection.
15. Page 13, line 13; Sec. 28. AS 47.24.015(j) - Deleted (j) in the original bill and re-lettered the following subsections accordingly.
16. Page 13, line 28; Sec. 28. AS 47.24.015(m) - Replaced **“the following:”** and (1) – (4) with **“any person”**
17. Page 14, line 2; Sec. 29. AS 47.24.015(a) - Following **“guardian,”** inserted **“conservator,”** .
18. Page 14, line 11-12; Sec. 29. AS 47.24.015(a)(1) - Replaced **“divorce or dissolution”** with **“divorce, [OR] dissolution, or legal separation”** .
19. Page 15, line 9; Sec. 32. AS 47.24.017(a) - Replaced **“guardian or”** with **“guardian, conservator, [OR]”**.
20. Page 15, line 23; Sec. 33. AS 47.24.019(c) - Replaced **“a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker”** with **“any person.**
21. Page 15, line 25; Sec. 33. AS 47.24.019(c) - Replaced **“a family member, caregiver, guardian, conservator, attorney-in-fact, trustee, or surrogate decision maker”** with **“person”**.
22. Page 16, line 10; Sec. 34. AS 47.24.050(b) - Following **“guardian,”** inserted **“conservator,”**
23. Page 16, line 13; Sec. 34. AS 47.24.050(b) - Following **“guardian,”** inserted **“conservator,”**

24. Page 17, line 4; Sec. 36. AS 47.24.900(2)(A) - Following **“intentional,”** inserted **“knowing,”** .
25. Page 17, line 21; Sec. 38. AS 47.24.900(4) - Replaced **“means”** with **“includes”**.
26. Page 17, line 31; Sec. 39. AS 47.24.900(7)(B) - Following **“deception,”** inserted **“fraud,”** .
27. Page 18, lines 1-2; Sec. 39. AS 47.24.900(7) (B) - Following **“duty;”** inserted **“in this paragraph, “fraud” has the meaning given in AS 13.26.324(1) and (2);”**
28. Page 18, line 4; Sec. 40. AS 47.24.900(9) - Following **“intentional,”** inserted **“knowing,”**.
29. Page 18, line 10; Sec. 40. AS 47.24.900(9) - Replaced **“means”** with **“includes”**.
30. Page 18, lines 12-26; Sec. 41. AS 47.24.900(11) - Legal Services reformatted this section, but there was no substantial change.
31. Page 18, line 19; Sec. 41. AS 47.24.900(11)(B)(D) - Replaced **“(iv) freezing an account at a financial institution;”** with **“(D) staying financial transactions;”**
32. Page 19, line 6; Sec. 42. AS 47.24.900(15)(D) - Following **“loss”** inserted **“, waste, or dissipation”** .
33. Page 19, lines 19-21; Sec. 44. AS 47.24.900(18) – Redrafted the definition of **“fiduciary duty”**.
34. Page 20, lines 16-18; Sec. 44. AS 47.24.900(21) - Replaced **““undue influence” means a person of trust or confidence uses the person’s role, relationship or authority to exploit”** with **““undue influence” means the use by a person who stands in a position of trust or confidence of the person’s role, relationship, or authority to wrongfully exploit”** .
35. Page 20, line 18; Sec. 44. AS 47.24.900(21) - Deleted **“deceptively”**.
36. Page 20, lines 26-29; Sec. 45. Direct Court Rule Amendments 12(h) - Replaced all bold language with **“In deciding whether to grant the motion, the court shall consider the victim’s circumstances and the effect that delay would have on the victim, particularly a victim of advanced age or extreme youth. The court shall place its findings on the record.”**
37. Page 21, lines 8-9; Sec. 46. Direct Court Rule Amendments 45(a) - Deleted all bold language.

38. Page 21, line 8; Sec. 46. Direct Court Rule Amendments 45(a) - Following “cases.” inserted **“The court shall consider the circumstances of the victim, particularly a victim of advanced age or extreme youth, in setting the trial date.”**

39. Page 21, lines 23-25; Sec. 47. Indirect Court Rule Amendments (c) - Due to the deletion of Page 12, lines 6-14; Sec. 25. AS 47.24.015(j) in original bill, deleted (c). Due to Page 4, lines 3-4; Sec. 7. AS 13.26.207(a) in original bill, inserted new (c).

40. Page 22, line 17; Sec. 51. Effective Date - Replaced “immediately under AS 01.10.070(c).” with “**July 1, 2011.**”

#1 moved

AMENDMENT (SB86)

OFFERED IN THE HOUSE FINANCE
COMMITTEE
TO: CSHB 150(JUD)

BY _____

- 1 Page ~~4~~⁵, line ~~28~~¹:
- 2 Delete "Ex parte protective"
- 3 Insert "Protective"
- 4
- 5 Page 5, line ~~22~~²⁶, following "issued,", through line ~~28~~²⁷ ²⁸:
- 6 ~~Delete all material.~~
- 7 Insert "unless dissolved earlier by the court, ~~or on the~~"
- 8
- 9 Page 6, line ~~7~~⁶:
- 10 Delete "ex parte"

16-28

Am / amendment
stated
"conceptual"

SENATE BILL NO. 86

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/9/11

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the protection of property of persons under disability and minors;
2 relating to the crime of violating a protective order concerning certain vulnerable
3 persons; relating to aggravating factors at sentencing for offenses concerning a victim 65
4 years or older; relating to the protection of vulnerable adults; amending Rule 12(h),
5 Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal
6 Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17,
7 Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration;
8 and providing for an effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 * **Section 1.** AS 11.56.740(a) is amended to read:

new protective order provisions

11 (a) A person commits the crime of violating a protective order if the person is
12 subject to a protective order

1 (1) issued or filed under AS 18.66 and containing a provision listed in
2 AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act with
3 reckless disregard that the act violates or would violate a provision of the protective
4 order; [OR]

5 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and knowingly
6 commits or attempts to commit an act that violates or would violate a provision listed
7 in AS 18.65.850(c)(1) - (3); or

8 (3) issued under AS 13.26.180 or 13.26.209 and knowingly commits
9 or attempts to commit an act with reckless disregard that the act violates or
10 would violate a provision of the protective order.

11 * **Sec. 2.** AS 11.56.740(c) is amended to read:

12 (c) In this section, "protective order" means an order issued or filed under
13 AS 13.26.180, 13.26.209; AS 18.65.850 - 18.65.870; or AS 18.66.100 - 18.66.180.

14 * **Sec. 3.** AS 12.55.155(c) is amended by adding a new paragraph to read:

15 (35) the defendant knowingly directed the conduct constituting the
16 offense at a victim because that person was 65 years of age or older. *vulnerable or not*

17 * **Sec. 4.** AS 13.26.165 is amended to read:

18 **Sec. 13.26.165. Protective proceedings.** Upon petition and after notice and
19 hearing in accordance with the provisions of AS 13.26.165 - 13.26.315, the court may
20 appoint a conservator or make other protective order for cause as follows:

21 (1) appointment of a conservator or other protective order may be
22 made in relation to the estate and affairs of a minor if the court determines that a minor
23 owns money or property that requires management or protection which cannot
24 otherwise be provided, has or may have business affairs which may be jeopardized or
25 prevented by the status of being a minor, or that funds are needed for the minor's
26 support and education and that protection is necessary or desirable to obtain or provide
27 funds;

28 (2) appointment of a conservator or other protective order may be
29 made in relation to the estate and affairs of a person if the court determines that

30 (A) the person is unable to manage the person's property and
31 affairs effectively for reasons such as mental illness, mental deficiency,

①

1 physical illness or disability, advanced age, chronic use of drugs, chronic
2 intoxication, **fraud**, confinement, detention by a foreign power, or
3 disappearance; and

4 (B) the person has property which will be wasted or dissipated
5 unless proper management is provided, or that funds are needed for the
6 support, care and welfare of the person or those entitled to be supported by the
7 person and that protection is necessary or desirable to obtain or provide funds.

8 * **Sec. 5.** AS 13.26.180(a) is amended to read:

9 (a) The person to be protected, a person's attorney or other legal
10 representative, any person who is interested in the estate, affairs, or welfare of the
11 person to be protected, including a parent, guardian, [OR] custodian, or caregiver, the
12 Department of Health and Social Services, or any person who would be adversely
13 affected by lack of effective management of the property and affairs of the person to
14 be protected, may petition for the appointment of a conservator or for other
15 appropriate protective order.

16 * **Sec. 6.** AS 13.26.180 is amended by adding a new subsection to read:

17 (c) The petition may include a request for temporary conservatorship as
18 provided in AS 13.26.207 if it appears that the respondent's property will be wasted or
19 dissipated during the pendency of the conservatorship proceeding. A request for
20 temporary conservatorship must specify the facts that cause the petitioner to believe
21 that a temporary conservatorship is necessary.

22 * **Sec. 7.** AS 13.26 is amended by adding new sections to read:

23 **Sec. 13.26.207. Temporary conservators.** (a) If, during the pendency of an
24 initial petition for conservatorship, it appears that the respondent is in need of a
25 protective order to protect the respondent against waste or dissipation of funds or
26 property, or to obtain funds that are needed for the immediate support, care, and
27 welfare of the respondent or persons entitled to be supported by the respondent, and
28 the respondent is not capable of protecting the respondent's funds or property or
29 obtaining the funds that are needed to support the respondent or persons whom the
30 respondent is required to support, the petitioner may request the appointment of a
31 temporary conservator to authorize the protection or to obtain the necessary funds. The

1 request shall state the reasons and factual basis for the request. The petitioner shall
 2 immediately file the request with the court and serve copies on the respondent and the
 3 respondent's attorney. The court shall conduct a hearing within 72 hours after the
 4 filing.

5 (b) If the court determines that a temporary conservator should be appointed,
 6 it shall make the appointment and grant to the temporary conservator only the
 7 authority that is least restrictive upon the liberty of the respondent and that enables the
 8 temporary conservator to provide the protection or authority necessary to protect the
 9 respondent from waste or dissipation of funds or property or to obtain the funds
 10 necessary for support.

11 (c) The temporary conservatorship expires at the time of the appointment of a
 12 full or partial conservator or upon the dismissal of the petition for conservatorship.

13 **Sec. 13.26.209. Ex parte protective orders; forms for petitions and orders;**

14 **fees.** (a) A person who is allowed to file a petition for a protective order under
 15 AS 13.26.180(a) may file a petition for an ex parte protective order against another
 16 person. If the court finds that the petition establishes probable cause that the
 17 respondent is financially defrauding the petitioner or a person for whose benefit the
 18 petitioner filed the petition, and that because of the fraud there has been, or is an
 19 immediate threat of, a waste or dissipation of the proposed protected person's funds or
 20 other property, the court shall ex parte and without notice to the respondent issue a
 21 protective order. The petitioner shall certify to the court in writing any effort that the
 22 petitioner made to provide notice to the respondent. The court shall cause a copy of
 23 the protective order to be served on the respondent.

24 (b) An ex parte protective order under this section may
 25 (1) grant any protection described in AS 13.26.200;
 26 (2) supersede an existing power of attorney;
 27 (3) prohibit the respondent from having any direct or indirect contact
 28 with the petitioner or other person for whose benefit the petitioner filed the petition;
 29 and

30 (4) prohibit the respondent from taking any act with respect to the
 31 funds or other property of the petitioner or other person for whose benefit the

1 petitioner filed the petition.

2 (c) An ex parte protective order expires 20 days after it is issued, at the end of
3 a six-month extension if granted by the court under (d) of this section, or upon the
4 appointment of a temporary or permanent conservator or dismissal of the petition for
5 the ex parte order.

6 (d) Upon application filed with the court before the expiration of the 20-day
7 ex parte protective order, the court shall schedule a hearing on whether to extend the
8 protective order for up to six months. The court shall provide at least 10 days' notice to
9 the respondent of the hearing and the respondent's right to appear and be heard. If the
10 court finds by a preponderance of the evidence that the respondent has committed
11 fraud against the petitioner or the person for whose benefit the petition was filed,
12 regardless of whether the respondent appears at the hearing, the court may extend the
13 ex parte protective order for up to six months.

14 (e) A protective order issued under this section is in addition to any other civil
15 or criminal remedy.

16 (f) A third party shall comply with a protective order issued under this section.
17 A third party who does not comply with a protective order granted under this section
18 may be liable in a civil action to the protected person or the protected person's heirs,
19 assigns, or estate for a civil penalty not to exceed \$1,000, plus the actual damages,
20 costs, and fees associated with the failure to comply with the protective order. A third
21 person who does not comply with a protective order granted under this section may
22 also be criminally liable under AS 11.56.740 for violating a protective order.

23 (g) The Alaska Court System, after consulting with the Department of Health
24 and Social Services, the office of public advocacy, the office of elder fraud and
25 assistance, the long-term care ombudsman, and other interested persons and
26 organizations, shall prepare forms for petitions, protective orders, and instructions for
27 their use by a person seeking a protective order under this section. The forms must
28 conform to the Alaska Rules of Probate Procedure and Alaska Rules of Civil
29 Procedure, except that information on the forms may be filled in by legible
30 handwriting. The office of the clerk of each superior and district court shall make
31 available to the public the forms a person seeking a protective order under this section

1 may need and instructions for the use of the forms. The clerk shall provide assistance
2 in completing and filing the forms.

3 (h) Filing fees may not be charged for a petition under this section.

4 * **Sec. 8.** AS 13.26 is amended by adding a new section to read:

5 **Sec. 13.26.325. Definitions.** In AS 13.26.165 - AS 13.26.325, unless the
6 context requires otherwise, "fraud" means

- 7 (1) robbery, extortion, and coercion under AS 11.41.500 - 11.41.530;
8 *Same as* (2) theft and related offenses under AS 11.46.100 - 11.46.740; or
9 *'Arise or* (3) exploitation of another person or another person's resources for
10 *elder abuse* personal profit or advantage with no significant benefit accruing to the person who is
11 exploited.

12 * **Sec. 9.** AS 18.65.530(a) is amended to read:

13 (a) Except as provided in (b) or (c) of this section, a peace officer, with or
14 without a warrant, shall arrest a person if the officer has probable cause to believe the
15 person has, either in or outside the presence of the officer, within the previous 12
16 hours,

17 (1) committed domestic violence, except an offense under
18 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

19 *→* (2) committed the crime of violating protective order in violation of
20 AS 11.56.740(a)(1) and (2) [AS 11.56.740];

21 (3) violated a condition of release imposed under AS 12.30.016(e) or
22 (f) or 12.30.027.

23 * **Sec. 10.** AS 18.65.540(a) is amended to read:

24 (a) The Department of Public Safety shall maintain a central registry of
25 protective orders issued by or filed with a court of this state under AS 13.26.180,
26 13.26.209; AS 18.65.850 - 18.65.870; or AS 18.66.100 - 18.66.180. The registry must
27 include for each protective order the names of the petitioner and respondent, their
28 dates of birth, and the conditions and duration of the order. The registry shall retain a
29 record of the protective order after it has expired.

30 * **Sec. 11.** AS 18.65.540(b) is amended to read:

31 (b) A peace officer receiving a protective order from a court under

1 **AS 13.26.180, 13.26.209;** AS 18.65.850 - 18.65.855; **or** [,] AS 18.66.100 - 18.66.180,
 2 a modified order issued under AS 18.65.860 or AS 18.66.120, or an order dismissing a
 3 protective order, must take reasonable steps to ensure that the order, modified order, or
 4 dismissal is entered into the central registry within 24 hours after being received.

5 * **Sec. 12.** AS 47.24.010(a) is amended to read:

Reporting

6 ~~(a)~~ Except as provided in (e) and (f) of this section, the following persons
 7 who, in the performance of their professional duties, have reasonable cause to believe
 8 that a vulnerable adult suffers from **undue influence**, abandonment, exploitation,
 9 abuse, neglect, or self-neglect shall, not later than 24 hours after first having cause for
 10 the belief, report the belief to the department's central information and referral service
 11 for vulnerable adults **in the department office that handles adult protective**
 12 **services**:

- 13 (1) a physician or other licensed health care provider;
- 14 (2) a mental health professional as defined in AS 47.30.915(11) and
 15 including a marital and family therapist licensed under AS 08.63;
- 16 (3) a pharmacist;
- 17 (4) an administrator **or employee** of a nursing home, residential care or
 18 health care facility;
- 19 (5) a guardian or conservator;
- 20 (6) a police officer;
- 21 (7) a village public safety officer;
- 22 (8) a village health aide;
- 23 (9) a social worker;
- 24 (10) a member of the clergy;
- 25 (11) a staff employee of a project funded by the Department of
 26 Administration for the provision of services to older Alaskans, the Department of
 27 Health and Social Services, or the Council on Domestic Violence and Sexual Assault;
- 28 (12) an employee of a personal care or home health aide program;
- 29 (13) an emergency medical technician or a mobile intensive care
 30 paramedic;
- 31 (14) a caregiver of the vulnerable adult;

- 1 (15) a certified nurse aide;
- 2 **(16) an educator or administrative staff member of a public or**
- 3 **private educational institution.**

4 * Sec. 13. AS 47.24.010(b) is amended to read:

5 (b) A report made under this section may include the name and address of the

✓
may vs.
shall

6 reporting person and must include

7 (1) the name and **contact information** [ADDRESS] of the vulnerable

8 adult;

9 (2) information relating to the nature and extent of the **undue**

10 **influence**, abandonment, exploitation, abuse, neglect, or self-neglect;

11 (3) other information that the reporting person believes might be ?

12 helpful in an investigation of the case or in providing protection for the vulnerable

13 adult.

14 * Sec. 14. AS 47.24.010(c) is amended to read:

15 (c) The department, or its designees, shall report to the Department of Law

16 any person required by (a) of this section to report who fails to comply with this

17 section. A person listed in (a) of this section who, because of the circumstances,

18 should have had reasonable cause to believe that a vulnerable adult suffers from

19 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect but who

20 knowingly fails to comply with this section is guilty of a class B misdemeanor. If a

21 person convicted under this section is a member of a profession or occupation that is

22 licensed, certified, or regulated by the state, the court shall notify the appropriate

23 licensing, certifying, or regulating entity of the conviction.

24 * Sec. 15. AS 47.24.010(d) is amended to read:

25 (d) This section does not prohibit a person listed in (a) of this section, or any

26 other person, from reporting cases of **undue influence**, abandonment, exploitation,

27 abuse, neglect, or self-neglect of a vulnerable adult that have come to the person's

28 attention **in their nonoccupational capacity, nor does it prohibit any other person**

29 **from reporting a harm under this section.**

30 * Sec. 16. AS 47.24.010(e) is amended to read:

31 (e) If a person making a report under this section believes that immediate

1 action is necessary to protect the vulnerable adult from imminent risk of serious
2 physical harm due to undue influence, abandonment, exploitation, abuse, neglect, or
3 self-neglect and the reporting person cannot immediately contact the department's
4 central information and referral service for vulnerable adults, the reporting person
5 shall [MAY] make the report to a police officer or a village public safety officer. The
6 police officer or village public safety officer shall take immediate action to protect the
7 vulnerable adult and shall [AT THE EARLIEST OPPORTUNITY,] notify the
8 department within 24 hours of receiving the report of harm. A person may not
9 bring an action for damages against a police officer, village public safety officer, the
10 state, or a political subdivision of the state based on a decision under this subsection to
11 take or not to take immediate action to protect a vulnerable adult. If a decision is made
12 under this subsection to take immediate action to protect a vulnerable adult, a person
13 may not bring an action for damages based on the protective actions taken unless the
14 protective actions were performed with gross negligence or intentional misconduct;
15 damages awarded in the action may include only direct economic compensatory
16 damages for personal injury.

how does this
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CCS?

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17 * Sec. 17. AS 47.24.010(f) is amended to read:

18 (f) A person listed in (a) of this section who reports to the long term care
19 ombudsman under AS 47.62.015, or to the Department of Health and Social Services,
20 that a vulnerable adult has been unduly influenced, abandoned, exploited, abused, or
21 neglected in an out-of-home care facility is considered to have met the duty to report
22 under (a) of this section.

23 * Sec. 18. AS 47.24.010 is amended by adding new subsections to read:

24 (i) A person required to report under this section who makes the report to the
25 person's job supervisor or to another individual working for the entity that employs the
26 person is not relieved of the obligation to make the report to the department as
27 required under (a) of this section.

28 (j) A person who recklessly makes a false report under this section is civilly
29 liable for actual damages suffered by the person who is the subject of the report.

30 * Sec. 19. AS 47.24.013(a) is amended to read:

31 (a) If a report received under AS 47.24.010 regards the undue influence,

1 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is
 2 60 years of age or older that is alleged to have been committed by or to have resulted
 3 from the negligence of the staff or a volunteer of an out-of-home care facility,
 4 including a facility licensed under AS 47.32, in which the vulnerable adult resides, the
 5 department shall transfer the report for investigation to the long term care ombudsman
 6 under AS 47.62.015.

7 * **Sec. 20.** AS 47.24.013(b) is amended to read:

8 (b) The department shall investigate a report received under AS 47.24.010
 9 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
 10 neglect of a vulnerable adult who is less than 60 years of age that is alleged to have
 11 been committed by or to have resulted from the negligence of the staff or a volunteer
 12 of an out-of-home care facility in which the vulnerable adult resides.

13 * **Sec. 21.** AS 47.24.013(c) is amended to read:

14 (c) Upon receipt of a report under (a) or (b) of this section, the long term care
 15 ombudsman and the department shall

16 (1) conduct an investigation as appropriate under AS 47.62.015 or this
 17 title, respectively;

18 (2) coordinate and cooperate in their responses to and investigations of
 19 the report if their jurisdictions overlap;

20 (3) provide the results of their actions or investigations to the central
 21 information and referral service of the **office of the** department **that handles adult**
 22 **protective services** within 60 days after the receipt of the report.

23 * **Sec. 22.** AS 47.24.013(d) is amended to read:

24 (d) If the long term care ombudsman receives directly a report regarding the
 25 **undue influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a
 26 vulnerable adult in an out-of-home care facility, the ombudsman shall provide the
 27 report, and the results of the ombudsman's actions or investigations regarding the
 28 report, to the central information and referral service of the **office of the** department
 29 **that handles adult protective services**. The department may investigate the report as
 30 described in AS 47.24.015 if the department determines that action is appropriate.

31 * **Sec. 23.** AS 47.24.015(a) is amended to read:

1 (a) Upon the department's receipt of a report under AS 47.24.010 that is not
 2 transferred under AS 47.24.013, the department, or its designee, shall promptly initiate
 3 an investigation to determine whether the vulnerable adult who is the subject of the
 4 report suffers from undue influence, abandonment, exploitation, abuse, neglect, or
 5 self-neglect. The department, or its designee, shall conduct a face-to-face interview
 6 with the subject of the report unless that person is unconscious or the department, or
 7 its designee, has determined that a face-to-face interview could further endanger the
 8 vulnerable adult.

9 * **Sec. 24.** AS 47.24.015(c) is amended to read:

10 (c) The department, or its designee, shall immediately terminate an
 11 investigation under this section upon the request of the vulnerable adult who is the
 12 subject of the report made under AS 47.24.010. However, the department, or its
 13 designee, may not terminate the investigation if the investigation to that point has
 14 resulted in probable cause to believe that the vulnerable adult is in need of protective
 15 services and the request is made personally by the vulnerable adult and the vulnerable
 16 adult is not competent to make the request on the adult's own behalf, or the request is
 17 made by the vulnerable adult's guardian, attorney-in-fact, or surrogate decision maker
 18 and that person is the alleged perpetrator of the undue influence, abandonment,
 19 exploitation, abuse, or neglect of the vulnerable adult and is being investigated under
 20 this chapter. If the department has probable cause to believe that the vulnerable adult
 21 is in need of protective services,

22 (1) the department may petition the court as set out in AS 47.24.019;

23 (2) the department, or its designee, may refer the report made to the
 24 department under AS 47.24.010 to a police officer for criminal investigation; or

25 (3) in cases involving fraud, the department, or its designee, may refer
 26 the report made to the department under AS 47.24.010 to the office of public advocacy
 27 for investigation; in this paragraph, "fraud" has the meaning given in AS 13.26.325.

28 * **Sec. 25.** AS 47.24.015 is amended by adding new subsections to read:

29 (h) An individual or entity shall cooperate with an investigation initiated by
 30 the department under this section. The individual or entity shall permit representatives
 31 of the department to obtain and review any financial or health care records related to a

1 vulnerable adult and to interview staff that have had contact with, treated, or observed
2 the vulnerable adult.

3 (i) A person may not interfere with the department in the performance of its
4 investigation under this section, including interfering with the department's access to
5 the vulnerable adult.

6 (j) If an entity or other person denies the department access to a vulnerable
7 adult, a vulnerable adult's residence, or the health care or financial records of a
8 vulnerable adult, the department may file a petition with the court for an ex parte order
9 granting access if the department has not filed a petition for guardianship or
10 conservatorship of the vulnerable adult. The court may grant the ex parte order if the
11 petition shows that the department has received a report of harm under AS 47.24.010
12 and that the order is necessary for access to the adult or that the health care or financial
13 records are relevant to the department's investigation under AS 47.24.015. Notice of
14 the order shall be given to the party denying access as directed by the court.

15 (k) Notwithstanding any other provision of law, the office of the department
16 that handles adult protective services shall have access to any information compiled or
17 retained by other divisions within the department, regardless of the nature of the
18 information or whether the information is considered confidential, in order to assist in
19 administering the provisions of this chapter.

20 (l) The department may audiotape or videotape an interview of a vulnerable
21 adult if the adult has the capacity to consent and gives that consent. The department
22 shall document the consent in its investigative file. The department may not audiotape
23 or videotape an interview of a vulnerable adult who lacks the capacity to consent.

24 (m) The department shall provide for the training of investigators who
25 investigate reports of harm under this section. Training must include instruction in
26 federal, state, and local laws and policies of the department related to vulnerable
27 adults, and in investigative techniques. The department may require other appropriate
28 training.

29 (n) In this section, "financial records" includes records related to the
30 vulnerable adult maintained by the following:

- 31 (1) the vulnerable adult or fiduciary for the vulnerable adult;

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- 1 (2) a financial institution;
 2 (3) a caregiver of a vulnerable adult;
 3 (4) a member of the vulnerable adult's family.

4 * **Sec. 26.** AS 47.24.016(a) is amended to read:

5 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
 6 in need of protective services, but the department cannot obtain the vulnerable adult's
 7 consent to receive the services because the vulnerable adult is unable to consent or
 8 lacks decision making capacity, and has no guardian, attorney-in-fact, trustee, or
 9 surrogate for health care decisions under AS 13.52.030 [OR ATTORNEY IN
 10 FACT] to serve as the vulnerable adult's surrogate decision maker, the department
 11 may select from the following list, in the order of priority listed, an individual who is
 12 willing to be the vulnerable adult's surrogate decision maker for the purpose of
 13 deciding whether to consent to the vulnerable adult's receipt of protective services:

14 (1) the vulnerable adult's spouse, unless

15 [(A) THE VULNERABLE ADULT AND THE SPOUSE
 16 HAVE SEPARATE DOMICILES; OR

17 (B)] the vulnerable adult or the spouse have initiated divorce or
 18 dissolution proceedings;

19 (2) an individual who lives with the vulnerable adult in a spousal
 20 relationship or as a domestic partner and who is 18 years of age or older;

21 (3) a son or daughter of the vulnerable adult who is 18 years of age or
 22 older;

23 (4) a parent of the vulnerable adult;

24 (5) a brother or sister of the vulnerable adult who is 18 years of age or
 25 older; or

26 (6) a close friend or relative of the vulnerable adult who is 18 years of
 27 age or older.

28 * **Sec. 27.** AS 47.24.016(b) is amended to read:

29 (b) An individual from the list in (a) of this section may not be selected as a
 30 surrogate decision maker if

31 (1) the department determines that individual does not possess decision

1 making capacity; or

2 (2) there are allegations that individual is a perpetrator of the **undue**
3 **influence**, abandonment, exploitation, abuse, or neglect of the vulnerable adult.

4 * **Sec. 28.** AS 47.24.016(d) is amended to read:

5 (d) The department may not continue to provide protective services to a
6 vulnerable adult based on the consent of a surrogate decision maker serving under this
7 section **or AS 13.52.030** if the department determines that the vulnerable adult has
8 become able to consent or has regained decision making capacity since the surrogate's
9 consent was given. The department may continue protective services to a vulnerable
10 adult who has become able to consent or has regained decision making capacity only
11 if the vulnerable adult consents.

12 * **Sec. 29.** AS 47.24.017(a) is amended to read:

13 (a) If the department determines under AS 47.24.015 that a vulnerable adult is
14 in need of protective services and either the vulnerable adult, the vulnerable adult's
15 guardian or **attorney-in-fact, trustee** [ATTORNEY IN FACT], [OR] a surrogate
16 decision maker selected under AS 47.24.016, **or a surrogate for health care**
17 **decisions under AS 13.52.030** consents to receipt of the protective services, and to
18 the extent that resources are available, the department shall ensure that the protective
19 services for the vulnerable adult are provided by the department, or its designee,
20 within 10 working days after the department received the report under AS 47.24.010
21 regarding the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
22 neglect of the vulnerable adult. However, if circumstances beyond the control of the
23 department or the department's designee make it impossible to provide the protective
24 services within the 10 working days, the department shall ensure that the services are
25 provided as soon as possible after that time.

26 * **Sec. 30.** AS 47.24.019(c) is amended to read:

27 (c) If a vulnerable adult who has consented to receive protective services, or
28 on whose behalf consent to receive protective services has been given, is prevented by
29 a **family member**, caregiver, guardian, **conservator**, attorney-in-fact, **trustee**, or
30 surrogate decision maker from receiving those services, the department may petition
31 the superior court for an injunction restraining the **family member**, caregiver,

1 guardian, **conservator**, attorney-in-fact, **trustee**, or surrogate decision maker from
 2 interfering with the provision of protective services to the vulnerable adult.

3 * **Sec. 31.** AS 47.24.050 is amended to read:

4 **Sec. 47.24.050. Confidentiality of reports.** (a) Investigation reports and
 5 reports of the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
 6 neglect of a vulnerable adult filed under this chapter are confidential and are not
 7 subject to public inspection and copying under AS 40.25.110 - 40.25.125. However,
 8 **under** [IN ACCORDANCE WITH] this chapter and regulations adopted under this
 9 chapter, investigation reports may be used by appropriate agencies or individuals
 10 inside and outside the state, in connection with investigations or judicial proceedings
 11 involving the **undue influence**, abandonment, exploitation, abuse, neglect, or self-
 12 neglect of a vulnerable adult.

13 (b) The department shall disclose a report of the **undue influence**,
 14 abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable adult if the
 15 vulnerable adult who is the subject of the report or the vulnerable adult's guardian,
 16 attorney-in-fact, **trustee**, or surrogate decision maker consents in writing. The
 17 department may not disclose a report of the **undue influence**, abandonment,
 18 exploitation, abuse, neglect, or self-neglect of a vulnerable adult to the vulnerable
 19 adult's guardian, attorney-in-fact, **trustee**, or surrogate decision maker if that person is
 20 an alleged perpetrator of the **undue influence**, abandonment, exploitation, abuse, or
 21 neglect of the vulnerable adult and is being investigated under this chapter. The
 22 department shall, upon request, disclose the number of verified reports of **undue**
 23 **influence**, abandonment, exploitation, abuse, neglect, or self-neglect of a vulnerable
 24 adult that occurred at an institution that provides care for vulnerable adults or that
 25 were the result of actions or inactions of a public home care provider.

26 * **Sec. 32.** AS 47.24.130 is amended to read:

27 **Sec. 47.24.130. Treatment through spiritual means.** This chapter may not be
 28 construed to mean that a person is **unduly influenced**, abused, neglected, self-
 29 neglected, vulnerable, unable to consent, abandoned, exploited, or in need of
 30 emergency or protective services for the sole reason that the person relies on or is
 31 being furnished treatment by spiritual means through prayer alone **under** [IN

1 ACCORDANCE WITH] the tenets and practices of a church or religious
 2 denomination of which the person is a member or adherent, if [PROVIDED THAT]
 3 the person consents to the treatment through spiritual means only and the treatment is
 4 administered by an accredited practitioner of the church or religious denomination. In
 5 this section, "church or religious denomination" has the meaning given to "religious
 6 organization" in AS 05.15.690.

7 * **Sec. 33.** AS 47.24.900(2) is amended to read:

8 (2) "abuse" means

9 (A) the [WILFUL,] intentional, or reckless nonaccidental, and
 10 nontherapeutic infliction of physical pain, injury, [OR] mental or emotional
 11 distress, or fear, including coercion and intimidation; or

12 (B) sexual assault under AS 11.41.410 or 11.41.420;

13 * **Sec. 34.** AS 47.24.900(3) is amended to read:

14 (3) "caregiver" means

15 (A) a person who is providing care to a vulnerable adult as a
 16 result of a family relationship, or who has assumed some or all responsibility
 17 for the care of a vulnerable adult voluntarily, by contract, as an employee of a
 18 business that provides care in an adult's home, or by court order; or

19 (B) an employee of an out-of-home care facility who provides
 20 care to one or more vulnerable adults;

21 * **Sec. 35.** AS 47.24.900(4) is amended to read:

22 (4) "decision making capacity" means the ability to understand and
 23 appreciate the nature and consequences of a decision and the ability to reach and
 24 communicate an informed decision; in this paragraph, "informed decision" means
 25 a decision made by the vulnerable adult that is free from undue influence;

26 * **Sec. 36.** AS 47.24.900(7) is amended to read:

27 (7) "exploitation"

28 (A) means unjust or improper use of another person or another
 29 person's resources for one's own profit or advantage, with or without the
 30 person's consent;

31 (B) includes acts by a person who stands in a position of

1 trust or confidence with a vulnerable adult, or who knows or should know
 2 that the vulnerable adult lacks the capacity to consent, that involve
 3 obtaining profit or advantage through undue influence, deception,
 4 intimidation, or breach of fiduciary duty;

5 * Sec. 37. AS 47.24.900(9) is amended to read:

6 (9) "neglect" means the intentional, or reckless failure by a caregiver
 7 to provide essential care or services or access to essential care or services, or to
 8 carry out a prescribed treatment plan, necessary to maintain the physical and
 9 mental health of the vulnerable adult when the vulnerable adult is unable to provide
 10 or obtain the services on the vulnerable adult's own; in this paragraph, "essential
 11 care or services" means food, clothing, shelter, medical care, and supervision;

12 * Sec. 38. AS 47.24.900(11) is amended to read:

13 (11) "protective services"

14 (A) means services that are intended to prevent or alleviate
 15 harm resulting from undue influence, abandonment, exploitation, abuse,
 16 neglect, or self-neglect and that are provided to a vulnerable adult in need of
 17 protection; ["PROTECTIVE SERVICES"]

18 (B) includes

19 (i) protective placement;

20 (ii) applying for or obtaining public benefits;

21 (iii) obtaining health care services and supplies;

22 (iv) freezing an account at a financial institution;

23 (v) petitioning for an ex parte protective order

24 under AS 13.26.209;

25 (vi) assisting with personal hygiene;

26 (vii) obtaining food and clothing;

27 (viii) protection from physical and emotional abuse;

28 (ix) obtaining representative payee services; and

29 (x) coordinating protective services;

30 * Sec. 39. AS 47.24.900(15) is amended to read:

31 (15) "unable to consent" means refusal to, or inability to, accept

1 services because

2 (A) the person is an incapacitated person or apparently is an
3 incapacitated person;

4 (B) of coercion by or fear of reprisal from the perpetrator of
5 **undue influence**, abandonment, exploitation, abuse, or neglect;

6 (C) of dependency on the perpetrator of **undue influence**,
7 abandonment, exploitation, abuse, or neglect for services, care, or support; or

8 (D) of an inability to perceive that refusal to consent results in
9 an imminent and substantial danger of **loss of income or assets, eviction,**
10 **physical or mental harm to self or others, or** death [OR IRREPARABLE
11 HARM TO SELF OR OTHERS];

12 * **Sec. 40.** AS 47.24.900(16) is amended to read:

13 (16) "vulnerable adult" means a person 18 years of age or older who,
14 because of **incapacity, mental illness, mental deficiency, physical illness or**
15 **disability, advanced age, chronic use of drugs, chronic intoxication, fraud,**
16 **confinement, or disappearance** [PHYSICAL OR MENTAL IMPAIRMENT], is
17 unable to meet the person's own needs or to seek help without assistance.

18 * **Sec. 41.** AS 47.24.900 is amended by adding new paragraphs to read:

19 (17) "deception" means creating, reinforcing, or failing to correct a
20 false impression or preventing another person from acquiring information that would
21 affect the person's judgment regarding a transaction;

22 (18) "fiduciary duty" means the duty of a guardian, conservator,
23 trustee, representative payee, or holder of a power of attorney of a vulnerable adult to
24 act for the benefit of the vulnerable adult;

25 (19) "financial institution" means an institution subject to state or
26 federal banking or financial regulations, including

27 (A) a broker-dealer;

28 (B) a commercial bank;

29 (C) a savings bank;

30 (D) a credit union;

31 (E) a premium finance company;

- 1 (F) a small loan company;
- 2 (G) a bank holding company;
- 3 (H) a financial holding company;
- 4 (I) a trust company;
- 5 (J) a savings and loan association;
- 6 (K) a deferred deposit advance licensee;
- 7 (L) an investment bank;
- 8 (M) an insurance company subject to regulation by AS 21;
- 9 (N) a licensee subject to regulation by AS 21; and
- 10 (O) an investment adviser;

11 (20) "person who stands in a position of trust or confidence" means a
 12 person who

- 13 (A) is a relative by blood or marriage;
- 14 (B) is a joint tenant or tenant in common;
- 15 (C) has a legal or fiduciary relationship; or
- 16 (D) is a person who has been entrusted with or has assumed
 17 responsibility for the use or management of the vulnerable adult's assets or
 18 income;

Should this include primary caregivers?

19 (21) "undue influence" means a person of trust and confidence uses the
 20 person's role, relationship, or authority to exploit the trust, dependency, or fear of a
 21 vulnerable adult deceptively to gain control over the decision making of the vulnerable
 22 adult, including decision making related to finances, property, residence, and health
 23 care;

24 * **Sec. 42.** The uncoded law of the State of Alaska is amended by adding a new section to
 25 read:

26 DIRECT COURT RULE AMENDMENTS. (a) Rule 12(h), Alaska Rules of
 27 Criminal Procedure, is amended to read:

28 (h) **Continuance of Trial.** A motion for continuance of a trial date will be
 29 granted by the court only for cause shown. **In determining cause, the court shall**
 30 **consider whether the victim is vulnerable due to advanced age, and the effect the**
 31 **delay will have on that person; the court shall place its findings on the record.**

1 The presiding judge of a judicial district may require that a visiting or pro tem judge
2 obtain approval from the presiding judge before granting any continuance of trial.

3 (b) Rule 45(a), Alaska rules of Criminal Procedure, is amended to read:

4 (a) The court shall provide for placing criminal proceedings upon appropriate
5 calendars. Preference shall be given to criminal proceedings, [AND] the trial of
6 defendants in custody, and the trial of cases in which the victim is vulnerable due
7 to advanced age, shall be given preference over other criminal cases. Trial dates in
8 criminal cases in the superior court shall be set at the time of arraignment, and if a trial
9 date is thereafter vacated, the trial shall be immediately set for a date certain.

10 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.209(a) - (g), enacted by
13 sec. 7 of this Act, has the effect of amending Rule 17, Alaska Rules of Probate Procedure,
14 relating to conservatorships and protective proceedings, by allowing ex parte orders to be
15 issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from
16 financial exploitation.

17 (b) AS 13.26.209(h), enacted by sec. 7 of this Act, has the effect of amending Rule 9,
18 Alaska Rules of Administration, by requiring that filing fees may not be charged for a petition
19 for an ex parte protective order under AS 13.26.209(a), enacted by sec. 7 of this Act.

20 (c) AS 47.24.015(j), enacted by sec. 25 of this Act, has the effect of amending Rule
21 65, Alaska Rules of Civil Procedure, relating to injunctions, by allowing ex parte orders to be
22 issued related to injunctive relief for certain access to persons or records in order to
23 investigate a report of harm under AS 47.24.010 for a vulnerable adult.

24 * **Sec. 44.** The uncodified law of the state of Alaska is amended by adding a new section to
25 read:

26 **APPLICABILITY.** Sections 1, 2, 3, and 42 of this Act apply to offenses committed on
27 or after the effective date of this Act.

28 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **CONDITIONAL EFFECT.** (a) AS 13.26.209(a) - (g), enacted by sec. 7 of this Act,
31 takes effect only if sec. 43(a) of this Act receives the two-thirds vote of each house required

1 by art. IV, sec. 15, Constitution of the State of Alaska.

2 (b) AS 13.26.209(h), enacted by sec. 7 of this Act, takes effect only if sec. 43(b) of
3 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
4 the State of Alaska.

5 (c) AS 47.24.015(j), enacted by sec. 25 of this Act, takes effect only if sec. 43(c) of
6 this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of
7 the State of Alaska.

8 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
11 catchline of

12 (1) AS 47.24.010 from "Reports of harm" to "Persons required to report;
13 reports of harm;"

14 (2) AS 47.24.013 from "Reports of abandonment, exploitation, abuse, neglect,
15 or self-neglect of vulnerable adults in out-of-home care facilities" to "Reports of undue
16 influence, abandonment, exploitation, abuse, neglect, or self-neglect of vulnerable adults in
17 out-of-home care facilities."

18 * **Sec. 47.** This Act takes effect immediately under AS 01.10.070(c).

SECTIONAL ANALYSIS

SB 86, “An Act relating to the protection of property of persons under disability and minor; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date.”

Section 1 makes the knowing violation or attempted violation of a financial protective order (introduced in section 7 of this legislation to protect vulnerable adults and elders) a crime.

Section 2 amends the definition of protective orders found in AS 11.56.740 to include financial protective orders being introduced with this legislation to protect the financial security of vulnerable adults and elders.

Section 3 makes the fact that a defendant knowingly directed criminal conduct at a person 65 years of age or older an aggravating factor at sentencing.

Section 4 adds being a victim of fraud as a basis for appointing a conservator by amending AS 13.26.165(2)(a). This will allow courts to protect individuals who may not be suffering from any mental deficiency but are victims of financial abuse.

Section 5 adds attorneys, caregivers, and the Department of Health and Social Services as entities who may petition for conservatorship for an individual. These additions widen the net of

individuals who can help protect victims to include entities who likely have first-hand knowledge of the abuse.

Section 6 creates a procedure for requesting the appointment of a temporary conservator in a conservatorship petition by adding a new subsection to AS 13.26.180. Currently, there is no statutory basis for appointing a conservator on a temporary basis. Under this section, a temporary conservator may be requested if it appears that the respondent's property will be wasted or dissipated during the pendency of the conservatorship proceedings.

Section 7 adds two new statutes. The first provides the statutory basis for temporary conservators to protect the victims of fraud and financial abuse and to ensure that funds are obtained to meet the needs of the respondent and respondent's dependents. Procedurally, this proposed statute parallels the existing statute AS 13.26.140 which deals with temporary guardians. The second statute creates a process for obtaining financial protective orders to immediately stop suspected financial abuse of the elderly and vulnerable adults. An initial 20-day protective order may be obtained ex parte, without notice to the respondent. The protective order may be extended for up to six months, after notice and a hearing at which the respondent may be heard.

Section 8 adds a definition of fraud (which is already found in the statutes creating the Office of Elder Fraud and Assistance) to conservatorship statutes.

Section 9 excludes the crime of violating a financial protective order from the crimes subject to warrantless arrest.

Sections 10 and 11 add financial protective order to the registry of protective orders maintained by the Department of Public Safety and updated by law enforcement officers.

Section 12 adds the concept of undue influence to the list of reportable harms to a vulnerable adult. Employees of nursing homes, residential care or health care facilities and the staff of educational institutions are added to the list of mandated reporters.

Section 13 clarifies information that may be contained in a report of harm to include contact information regarding the vulnerable adult and information regarding any undue influence.

Section 14 adds “undue influence” to the list of reportable harms.

Section 15 adds “undue influence” to the list of reportable harms and clarifies that a mandatory reporter is not prohibited from reporting harm in their non-occupational capacity. It also clarifies that no person is prohibited from making a report of harm.

Section 16 requires mandated reporters to contact law enforcement in situations where they believe the vulnerable adult is at imminent risk of serious physical harm and it is not possible to contact the department. “Undue influence” is added as one of the reportable harms. Law enforcement is required to contact the department within 24 hours of receiving the report.

Section 17 adds “undue influence” and “abandonment” to the list of harms that can be reported regarding a vulnerable adult residing in an out-of-home care facility.

Section 18 adds two new subsections. The first subsection states that a mandatory reporter is not relieved of the obligation to report to the department by reporting to their supervisor or another employee. The second subsection makes an individual who willfully or recklessly makes a false report liable for civil damages.

Section 19 adds “undue influence” to the list of reportable harms regarding vulnerable adults 60 years of age or older residing in an out-of-home care facility. The department is required to transfer these reports to the long term care ombudsman.

Section 20 adds “undue influence” to the list of reportable harms the department is required to investigate regarding individuals under 60 years of age living in out-of-home facilities.

Section 21 clarifies that the department and the long term care ombudsman must provide the results of their actions or investigations to the office of the department that handles adult protective services.

Section 22 adds “undue influence” to the list of reportable harms included in the reports sent to the department by the long term care ombudsman. It is clarified that these reports are sent to the office of the department that handles adult protective services.

Section 23 adds “undue influence” to the list of reportable harms the department is required to investigate.

Section 24 adds “undue influence” to the list of reported harm that applies to an alleged perpetrator.

Section 25 adds seven new subsections. These subsections

- Require individuals and entities to provide the department access to health and financial records of a vulnerable adult as part of its investigation;
- Prohibit anyone from interfering in an investigation;
- Allow the department to file an ex parte order for access to records if necessary if no petition for guardianship or conservatorship has been filed;
- Allow adult protective services access to any departmental information necessary to assist in the case;
- Allow the department to audio or video tape an interview of a vulnerable adult with their consent;
- Require the department to provide training to investigators and
- Define “financial records”.

Section 26 adds an attorney-in-fact, a surrogate for health care decisions and a trustee as individuals who may serve as a surrogate decision maker for the purpose of consenting to the receipt of protective services for a vulnerable adult. It also deletes the requirement that in order for a spouse to be a surrogate decision maker, the spouse and vulnerable adult may not be living

in separate domiciles.

Section 27 adds an allegation of “undue influence” to the allegations that would disqualify an individual from being selected as a surrogate decision maker.

Section 28 requires the department to discontinue protective services if a vulnerable adult who has regained the cognitive ability to make their own decisions refuses services. Services may be continued only if the adult consents.

Section 29 adds attorney-in-fact, surrogate for health care decisions and a trustee as individuals who may consent to the provision of protective services to a vulnerable adult and adds undue influence to the list of potential reports of harm.

Section 30 adds family members, trustees and conservators to the list of individuals who may be restrained by a court injunction from interfering with the provision of protective services to a vulnerable adult.

Section 31 adds “undue influence” to the types of harm contained in confidential reports and adds trustee to the list of individuals who may consent to release a confidential report.

Section 32 clarifies that a person is not considered to be unduly influenced if they choose to consent to treatment by spiritual means only.

Section 33 redefines “abuse” to include the infliction of emotional distress or fear, including coercion and intimidation.

Section 34 redefines “caregiver” to include someone who is an employee of a business that provides care in an adult’s home.

Section 35 defines “informed decision” as a decision made free from undue influence.

Section 36 redefines “exploitation” to include acts by a person in a position of trust with a vulnerable adult who obtains profit or advantage through undue influence, deception, intimidation or breach of fiduciary duty.

Section 37 redefines neglect to include the willful or reckless failure by a caregiver to provide access to services or to carry out a treatment plan necessary to the health of a recipient.

“Essential care or services are defined as food, clothing, shelter, medical care and supervision.

Section 38 expands the definition of protective services to include services that obtain basic health care needs, financial assistance services, and protection from abuse, obtaining basic food, shelter and clothing, among others. Undue influence is added to the list of types of harm.

Section 39 amends the definition of “unable to consent” by adding the concept of “undue influence” and that the inability to consent includes a person’s inability to perceive a loss of income or assets, eviction, and physical or mental harm.

Section 40 amends the definition of a vulnerable adult by more clearly defining what constitutes a physical or mental impairment.

Section 41 adds definitions for the following terms:

- Deception
- Fiduciary duty
- Financial institution
- Person who stands in a position of trust or confidence
- Undue influence

Section 42 amends the uncodified law. Under Alaska Rules of Criminal Procedure, the court, when considering a motion for continuance of a trial date, will be required to consider whether the victim is vulnerable due to advanced age and what effect the delay would have on the victim. In addition, trials in which the victim is vulnerable due to advanced age will be added to cases that will be given preference for scheduling.

Section 43 amends Indirect Court Rules in three areas. First, amending Rule 17, Alaska Rules of Probate Procedure, to allow ex parte orders to be issued to protect persons from financial exploitation. Second, amending Rule 9, Alaska Rules of Administration, by not requiring filing fees for an ex parte protective order. Third, amending Rule 65, Alaska Rules of Civil Procedure, by allowing ex parte orders to be issued to access records related to the investigation of a report of harm.

Section 44 amends the uncodified law by indicating that Section 1, 2, 3, and 42 apply to offenses committed on or after the effective date of the Act.

Section 45 amends the uncodified law regarding the number of votes required to enact Sections 7 and 25 of this bill.

Section 46 amends the uncodified law by adding revisor's instructions.

Section 47 provides for an effective date.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 86
 (S) Publish Date: 2/9/11

Identifier (file name): 1722-DHSS-SDSA-02-08-2011 Dept. Affected: Health and Social Services
 Title: Adult Protective Services Appropriation: Senior and Disabilities Services
 Allocation: Senior and Disabilities Services Admin
 Sponsor: Rules by Request of the Governor
 Requester: Governor OMB Component Number: 2663

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by: Duane Mayes, Director
 Division: Senior and Disabilities Services
 Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Phone 269-2083
 Date/Time 2/8/11 1:00 PM
 Date 2/8/2011

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis:

This legislation provides additional protections to seniors and other vulnerable adults. The proposed changes in the vulnerable adult statutes add the concept of undue influence as a potential harm. This bill provides additional legal and investigatory tools to the department in order to respond to reports of harm and establish protective services to individuals who need them. There is no fiscal impact anticipated.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
 Bill Version SB 86
 (S) Publish Date 2/9/11

Identifier (file name) LL1722-DOA-OPA-2-8-11 Dept. Affected DOA
 Title An Act relating to the protection of property of persons under Appropriation Legal and Advocacy Services
disability Allocation Office of Public Advocacy
 Sponsor _____ Rules by Request _____
 Requester Governor OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Rachel Levitt, Acting Director
 Division Office of Public Advocacy
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
 Date/Time 2/8/2011, 10:30 am.
 Date 2/8/2011

FISCAL NOTE #2

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis

This bill will enhance the legal protections against fraud and financial abuse available to elders and vulnerable adults. The Office of Public Advocacy wishes to highlight two portions of the bill that will provide new emergency procedures to protect vulnerable adults who may be served by the agency's Elder Fraud or Probate practices.

In section 7, this bill creates two emergency judicial proceedings to stop and prevent financial exploitation of vulnerable adults. The first is a process for the appointment of temporary conservators. This will allow the court to impose emergency conservatorships to assist vulnerable individuals with their financial affairs to prevent imminent waste or fraudulent dissipation of their estates.

The second creates a process for the imposition of financial protective orders. Individual victims and other concerned parties will be able to apply for the protections of 20 day ex parte protective orders to stop or prevent financial exploitation. The initial ex parte order may be extended for up to six months after notice and a hearing at which the respondent may be heard.

The bill also provides for expanded reporting of financial abuse and enhanced penalties in criminal cases when there is an elderly victim. Additionally, the bill criminalizes violations of the financial protective orders.

The agency does not believe that this will result in significant cost increases to the agency.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 3
 Bill Version SB 86
 (S) Publish Date 2/9/11

Identifier (file name): 1722-LAW-CIV-02-03-11 Dept. Affected Law
 Title An Act relating to property of persons; crime of violating protective order, aggravating factors at sentencing; protection; amending... Appropriation Civil
 Allocation Human Services
 Sponsor Rules
 Requester Request of the Governor OMB Component Number 2962

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 2/3/11 4:15 PM
 Date 2/3/2011

FISCAL NOTE #3

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis

This bill adds a 20-day and six-month ex parte process for financial fraud, and a temporary conservatorship process when the need exists during the pendency of a regular petition for conservatorship. The bill also expands the list of mandatory reporters of harm to a vulnerable adult, adds the harm of undue influence, and expands the investigative powers of the Office of Adult Protective Services, including the authority to seek an ex parte order for access to a vulnerable adult or records regarding an adult. The bill also amends the crime of violating a protective order by adding the crime of violating a protective order issued to protect a vulnerable adult under AS 13.26.180 or 13.26.209. Violating a protective order is a class A misdemeanor.

There is no anticipated fiscal impact to Department of Law.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 4
 Bill Version SB 86
 (S) Publish Date 2/9/11

Identifier (file name) LL1722-DPS-DSS-02-08-11 Dept. Affected Public Safety
 Title "An Act relating to the protection of property... Vulnerable Adults" Appropriation Statewide Support
 Allocation Records & Identification
 Sponsor Rules Committee
 Requester Governor OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel	16.0							
Services	32.0							
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	48.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	48.0							
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	48.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by David Schade
 Division Statewide Services
 Approved by Joseph Masters
Commissioner

Phone 907-269-0202
 Date/Time 2/8/11 12:00 AM
 Date 2/8/2011

FISCAL NOTE #4

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis

This bill treats AS 13 protective orders in the same manner as stalking, sexual assault, and domestic violence protective orders under AS 18 and will require the development of new protective order forms with substantial collaboration between DPS, the Alaska Court System, DHSS, the Office of Public Advocacy, and the Department of Revenue. The findings and orders for these new AS 13 protective orders will differ from the AS 18 orders in the existing protection order registry, which address violence and domestic situations.

Once the forms are developed, APSIN programming changes will be required to accommodate new fields and types of information required. A separate version of the APSIN central registry must be developed to accommodate these new orders. Note: these new orders do not meet the necessary criteria for entry into the national registry of protection, stalking and sexual assault orders (NCIC) because they do not necessarily involve physical violence.

Programming and analysis for APSIN changes will require 280 hours of contractual work @ \$100/hr to evaluate and make recommendations regarding statewide implementation of new processes and procedures for entering and maintaining these new orders into existing APSIN . Additionally, 40 hours of contractual work (at \$100/hr) will be required to integrate these new orders in new APSIN.

Statewide training will then be required on the new forms and APSIN procedures. Statewide training costs are included.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 5
 Bill Version SB 86
 (S) Publish Date 2/9/11

Identifier (file name) LL1722-DPS-DET-02-08-11
 Title "An Act relating to the protection of property of persons under disability and minors;...vulnerable adults..."
 Sponsor Rules Committee
 Requester Governor

Dept. Affected Public Safety
 Appropriation Alaska State Troopers
 Allocation AST Detachments
 OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version.

Prepared by Lt Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph Masters
Commissioner

Phone 907-247-4480
 Date/Time 2/8/11 1:30PM
 Date 2/8/2011

FISCAL NOTE #5

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis

This bill makes several changes to AS 13.26 and AS 47.24 concerning vulnerable adults. It adds fraud as a reason that might necessitate a conservatorship, and as a basis for seeking an ex parte financial protective order. This bill also adds the concept of undue influence to the list of reportable harms and adds certain individuals as mandatory reporters of harm to vulnerable adults. Finally, this bill expands the investigatory authority of the Adult Protective Services Office.

Passage of this legislation will have no fiscal impact on the division.

FISCAL NOTE #6

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 86

Analysis

This legislation creates a new crime of violating protective orders and adds aggravating factors at sentencing for a crime against a victim 65 years or older. Violation of this law could result in incarceration. However, the Department of Corrections is unable to determine the number of future offenders and therefore is unable to determine the fiscal impact of the passage of this legislation.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

February 10, 2011

The Honorable Hollis French, Chair
Senate Judiciary Committee
State Capitol Room 417
Juneau, AK 99801

Dear Senator French:

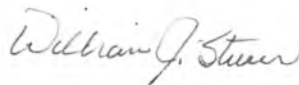
The Department of Health and Social Services respectfully requests a hearing in the Senate Judiciary Committee on Senate Bill 86, "An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

The bill strengthens the laws against financial exploitation and enhances the ability to obtain emergency protection orders for seniors. It improves the ability of those investigating reports of harm to obtain vital information in a timely manner, and will lead to better services and safety for vulnerable adults who are abused, neglected or exploited and unable to protect their own interests.

A copy of Governor Parnell's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,



William J. Streur
Commissioner

cc: Heather Brakes, Legislative Director, Office of the Governor