

LEGAL SERVICES

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MEMORANDUM

March 7, 2014

SUBJECT: Harassment of vulnerable adults
(Work Order No. 28-LS1565)

TO: Senator Kevin Meyer
Attn: Edra Morledge

FROM: Kathleen Strasbaugh
Legislative Counsel

You have asked whether there are special protections for mentally or developmentally disabled adults in criminal statutes related to stalking, harassment, or exploitation.

The harassment, stalking, and theft statutes¹ do not provide specific protections for mentally or developmentally disabled adults. However, it is likely that in sentencing the vulnerability of the victim will be a consideration. For all the felony level offenses the sentencing statutes allow formal consideration of the vulnerability of the victim. AS 12.55.155(c) provides two relevant aggravating factors that can increase the presumptive range of the sentence:

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

...

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

If either of these aggravating factors is found by the trier of fact, then the court may increase the defendant's sentence up to the maximum sentence for the offense. AS 12.55.155(h).

¹ AS 11.41.260 and 11.41.270 (stalking in the first or second degree); AS 11.61.118 and 11.61.120. See AS 11.46 generally for theft and property crimes.

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SB 128 would add a provision to harassment in the second degree that would have as an element whether the victim experienced, among other things, intimidation or mental or emotional injury. An individual's vulnerabilities, such as a mental or developmental disability would have to be considered in such a case.

As to protection from exploitation, there are programs for reporting abuse and managing the affairs of adults with mental illness or intellectual disability.² AS 11.51.200 - 11.51.220 penalize the abandonment or neglect of vulnerable adults. A vulnerable adult is defined in AS 47.24.900(21) as:

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, is unable to meet the person's own needs or to seek help without assistance.

The sexual assault statutes proscribe the commission of sexual acts with persons who are mentally incapable, incapacitated, or unaware that a sexual act is being committed.³ See AS 11.41.410 - 11.41.425.

Certain other crimes might apply to conduct against a vulnerable person. See, e.g., AS 11.46.210 (failure to make required disposition of funds received or held); AS 11.46.620 (misapplication of property).

If I may be of further assistance, please advise.

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² See generally AS 47.24.

³ "Mentally incapable" is defined in AS 11.41.470(4) and "incapacitated" is defined in AS 11.41.470(2).