

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 7, 2006

8:05 a.m.

MEMBERS PRESENT

Representative Carl Gatto, Vice Chair
Representative Jim Elkins
Representative Bob Lynn
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

Representative Paul Seaton, Chair
Representative Jay Ramras

COMMITTEE CALENDAR

HOUSE BILL NO. 399

"An Act establishing the office of elder fraud and assistance;
and relating to fraud involving older Alaskans."

- MOVED HB 399 OUT OF COMMITTEE

HOUSE BILL NO. 34

"An Act relating to the expungement of records relating to
conviction set asides granted after suspended imposition of
sentence."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 399

SHORT TITLE: ELDER FRAUD AND ASSISTANCE/OPA

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

01/27/06	(H)	READ THE FIRST TIME - REFERRALS
01/27/06	(H)	STA, FIN
02/07/06	(H)	STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

SUE WRIGHT, Staff
to Representative Mike Chenault

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 399 on behalf of
Representative Chenault, sponsor.

LALANYA SNYDER, Staff
to Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative
Chenault, sponsor.

JOSH FINK, Director
Office of Public Advocacy (OPA)
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of OPA during the
hearing on HB 399.

DAN McDOWELL

Wasilla, Alaska

POSITION STATEMENT: Testified on behalf of himself during the
hearing on HB 399.

BOB DREYER, Ombudsman
Long Term Care Ombudsman
Alaska Mental Health Trust Authority
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions on behalf
of the Long Term Care Ombudsman during the hearing on HB 399.

ACTION NARRATIVE

VICE CHAIR CARL GATTO called the House State Affairs Standing
Committee meeting to order at [8:05:07 AM](#). Representatives
Elkins, Lynn, Gardner, and Gatto were present at the call to
order. Representative Gruenberg arrived as the meeting was in
progress.

HB 399-ELDER FRAUD AND ASSISTANCE/OPA

[8:06:30 AM](#)

VICE CHAIR GATTO announced that the only order of business was
HOUSE BILL NO. 399, "An Act establishing the office of elder

fraud and assistance; and relating to fraud involving older Alaskans."

8:06:38 AM

SUE WRIGHT, Staff to Representative Mike Chenault, Alaska State Legislature, introduced HB 399 on behalf of Representative Chenault, sponsor. She said the proposed bill is an event-driven piece of legislation. She related the case of the McDowell family, in which a relative from Colorado "bought a \$250,000 note and filed liens on every piece of property the McDowells owned, [including their] vehicles." She stated, "This man, by the time our office got involved, was evicting them from their property that he had gutted over the summer, having removed the bathroom facilities, the kitchen, and the insulation to the house." Mr. McDowell is in the early stages of Alzheimer's and Mrs. McDowell is now living with public assistance in the Sterling Senior Center. The Office of Public Advocacy (OPA) has stepped in to stop what has been going on with this particular case. Ms. Wright said when Representative Chenault became involved in this case, phone calls from around the state started coming in from people in similar situations. She said people are ashamed to admit that they have been "taken," and they are scared. There are people who have experienced physical abuse and having food withheld.

MS. WRIGHT said more than half of the states have some type of protection in effect for senior citizens for senior citizens over 55 or 60; in some states the age is 65. She directed attention to an article included in the committee packet, entitled, "Stolen 'Golden Years'." Ms. Wright reported that almost half of the representatives in the House have added their signatures to the bill.

8:10:08 AM

MS. WRIGHT expressed willingness to "take care of that little conflict that some of you have with the age restriction," by increasing the age to 65 from 55. She explained that the bill sponsor chose 55 because it is the generally accepted age for which AARP is looking at financial fraud.

8:11:21 AM

REPRESENTATIVE LYNN asked if there are any other specific groups that are particularly vulnerable to fraud.

[8:11:41 AM](#)

MS. WRIGHT answered yes, but noted that most of the disabled populations have a mechanism in place already for protection.

[8:12:19 AM](#)

LALANYA SNYDER, Staff to Representative Mike Chenault, Alaska State Legislature, testified on behalf of Representative Chenault, sponsor. Regarding cases that go unreported, she referred to a quote from the previously mentioned article, which read in part: "Seventy percent of the nation's net worth is owned by those aged 50 or older. This makes seniors a rich target." She noted that financial abuse of seniors takes many forms, including: credit card fraud, real estate scams, and burglary. As many as 5 million seniors may be victims of financial exploitation each year. Ms. Snyder said the proposed legislation would benefit seniors by establishing an office of elder fraud and assistance.

[8:14:49 AM](#)

REPRESENTATIVE LYNN said an increasing number of seniors are becoming comfortable with the use of the Internet. He said the Internet is rife with fraud and that issue needs to be addressed. He surmised that "that would probably come under [the Federal Communications Commission (FCC)]."

[8:15:33 AM](#)

REPRESENTATIVE ELKINS noted that the article specifies some states have associations between their elderly fraud programs and banks, and he asked if there is anything similar ongoing in Alaska.

[8:16:01 AM](#)

MS. SNYDER stated her understanding that there is not, but opined that the article has information in it that makes it a valuable source for Alaska to start its own office.

[8:16:28 AM](#)

REPRESENTATIVE GARDNER mentioned the Long Term Care Ombudsman, under the Alaska Mental Health Trust Authority, within the [Department of Revenue], and noted that that entity's focus is primarily on the elderly in long-term care, with the ability to

do investigations. She offered a description of that entity as follows: "They're a specially trained and certified state government employee, given authority by federal and state statutes to identify, investigate, and resolve complaints made by or on behalf of Alaskans who are 60 years of age and older." She suggested that the state already may have what the bill is proposing and that just needs to be advertised. She noted that HB 399 would authorize OPA to investigate complaints. She asked if OPA already has an investigator on staff. She observed, "They currently provide services to people who have a conservator or legal guardian, but investigations is a different kind of bailiwick"

[8:17:48 AM](#)

MS. SNYDER concurred with Representative Gardner's statements. Notwithstanding that, she said she thinks the state needs a resource that is specifically devoted to the elderly outside of long-term care.

[8:18:50 AM](#)

REPRESENTATIVE GRUENBERG said the committee has not received any fiscal notes for the bill.

[8:19:02 AM](#)

MS. SNYDER said information is still being gathered into a fiscal note, and she said the committee would receive a fiscal note as soon as possible.

[8:19:33 AM](#)

REPRESENTATIVE GRUENBERG asked why something like the Office of Elder Fraud and Assistance isn't established within the Department of Law in the Office of the District Attorney, in order to pursue criminal complaints.

[8:20:02 AM](#)

MS. SNYDER deferred the question to Josh Fink.

[8:20:10 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 3, [beginning on line 9 through line 12], which read as follows:

The office shall work in cooperation with local, state, and national law enforcement agencies and may bring civil enforcement actions for injunctive and other relief for fraud committed against older Alaskans.

REPRESENTATIVE GRUENBERG said, "Often these result in criminal actions." He indicated that the ability to bring criminal enforcement would give the office "more teeth." He referred to page 4, [lines 18-21], which read:

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

REPRESENTATIVE GRUENBERG asked why the Department of Health and Social Services is authorized to make the report only to the Office of Public Advocacy (OPA) and not also to the police or the Office of the District Attorney.

[8:20:48 AM](#)

MS. SNYDER agreed with a further comment from Representative Gruenberg that doing so would increase the effectiveness of the bill's plan.

[8:21:31 AM](#)

REPRESENTATIVE GARDNER said Adult Protective Services, under the Division of Senior and Disabilities Services, within the Department of Health & Social Services, offers investigation of reports, protective placement, and guardianship conservatorship counseling. She stated, "It seems to me that this might also be a place to put teeth in or strengthen their existing strengths rather than bringing ... a third office into it. I'm just wondering if there's a benefit to doing this under OPA instead of Adult Protective Services or under the other offices that we have."

[8:22:12 AM](#)

MS. SNYDER deferred that question to Josh Fink.

[8:22:53 AM](#)

JOSH FINK, Director, Office of Public Advocacy (OPA), Department of Administration, informed the committee that he has not yet had a chance to fully discuss the proposed legislation with the other agencies charged with addressing financial exploitation of the elderly and other vulnerable adults. Accordingly, he said he doesn't believe the administration has an official position on the specifics of HB 399. Notwithstanding that, on behalf of his commissioner, he commended the sponsor of the bill for introducing legislation to address the exploitation of older Alaskans, a practice which is an unconscionable growing trend. He continued:

While we have a myriad of state agencies to report these incidents to, with one exception there currently is no agency actively pursuing civil remedies for the exploited individuals in court - private individuals.

MR. FINK listed the following state agencies as having some jurisdiction in financial exploitation matters: Adult Protective Services, Long Term Care Ombudsman, Division of Banking & Securities, Office of the District Attorney, and Office of Public Advocacy, as well as numerous federal agencies. The leading agency on processing and investigating reports of harm is Adult Protective Services. According to the director of that agency, Brenda [Mahiatini], in fiscal year 2005 (FY 05), Adult Protective Services investigated 500 cases of financial abuse and found 87 percent of them to be valid. According to a hand count conducted by Ms. Mahiatini, the agency investigated 397 cases of financial abuse in FY 04. He continued:

While Adult Protective Services can investigate these cases and, when they're valid, put in safety measures relatively quickly to stop the future exploitation, they currently have no statutory ability to retrieve monies and properties lost for individuals; they don't have the ability to go to court and file a suit on behalf of an individual to recover lost monies or defrauded funds.

MR. FINK said a similar situation exists with the Division of Banking & Securities. That division can investigate complaints regarding fraudulent security scams targeted at the elderly, but it cannot undertake any private action in civil court on behalf of the those individuals.

MR. FINK said OPA has the ability to undertake private action to recover fraudulently obtained funds and property if it is the

ward of the individual. He said OPA has approximately 900 adults ranging in age from 18 to senior citizen for whom it serves as public guardian. He said he conducted an informal survey yesterday which shows that about 10 percent of OPA's clients have suffered financial exploitation. Like Adult Protective Services, he said, when OPA gets appointed, the first thing it does is put safety measures into place to stop future exploitation. As guardians and conservators, OPA can do more than APS with its wards; it can go to court on their behalf, individually, and sue to recover fraudulently taken funds. He added, "To be honest though, if the recovery involves more than going to small claims court, we're very limited in what we can do with out resources and expertise"

[8:26:54 AM](#)

MR. FINK said if there is enough at stake, OPA can interest private attorneys to take the case on a contingency basis. He noted that OPA is currently working with a private attorney on the case to which Ms. Wright previously referred. The amounts of money involved vary greatly, he said. The clients OPA aids are generally poor, but the agency has received a number of appointments from people who had funds that were taken from them and, thus, ended up poor. He said OPA sees fraudulent exploitation ranging from \$800 to \$4,000.

MR. FINK explained that exploitation occurs in a variety of ways: direct theft of money, such as taking a permanent fund income (PFD) entitlement income, or native corporation distribution income; theft of personable belongings or food, including taking advantage of food and housing allowances; running up credit cards for large purchases; and obtaining liens against property. Mr. Fink said family members' friends exploit people by selling the victim's goods and services. He said oftentimes they will obtain court appointed status and then take advantage of the incapacitated person's resources by signing things over to themselves, such as benefit checks and property. Some relatives have become guardians in order to write checks to themselves, turn homes over to themselves, or transfer property to themselves. He offered further examples.

[8:30:21 AM](#)

MR. FINK said it would greatly serve the public to have a state agency that could go to court on behalf of defrauded individuals who cannot do so themselves. The proposed legislation anticipates that responsibility would fall to OPA; however, he

said there are other agencies that could handle the work, and that would be a policy call. Regarding the question about the fiscal note, he said he is trying to come up with some standards, given the case numbers he received from Adult Protective Services regarding what sort of caseload an attorney could handle. He said however this works out, OPA doesn't want to be duplicating what other agencies do. He said APS has five investigators. He suggested one possibility could be that if APS investigates and finds that court action needs to be taken, the case could be referred to OPA. He said the committee may want to consider whether OPA's involvement would be needs based. He explained that generally OPA is appointed only when individuals cannot take care of the problems themselves. He said, "The committee may want to consider if we litigate on behalf of individuals that there'd be some mechanism by which, if we were successful, we could recover our actual costs, if there was not financial hardship on the individual we were litigating for." He said currently OPA charges its wards a small fee of \$40 each month, but it waives that fee if paying it is a financial hardship for the client.

[8:31:57 AM](#)

MR. FINK, in response to a request for clarification from Representative Gardner, reviewed that under current law OPA would not act on behalf of a person unless it was their guardian or ward; however, HB 399 would expand that statutory mandate. He noted, "Under current statute, if we become aware of a protective appointment - a private guardian or private conservator - and it comes to our attention that there's exploitation going on, we do have the statutory to go to court and intervene in that proceeding and ask that the guardian or conservator be removed."

[8:32:39 AM](#)

REPRESENTATIVE GARDNER asked how OPA would respond to a situation in which it had somebody on its caseload who had been mistreated and their assets taken improperly but, perhaps due to Alzheimer's, refused to take OPA's advice in going to court.

[8:33:23 AM](#)

MR. FINK replied that if the individual does not have an appointed conservator or guardian, whether or not to have one would be his/her decision, because OPA cannot litigate on someone's behalf if that person doesn't wish it. If that person

has Alzheimer's, dementia, or some developmental disability, family members can petition for a guardianship or conservatorship. Adult Protective Services often petitions for those. Then the probate court appoints that guardian or conservator an attorney, a court visitor conducts an investigation, and the court looks at the issue of capacity and makes a determination as to whether that person needs a protective appointment because he/she lacks the capacity to make the decisions. If the court finds the person does not lack capacity and does not grant a protective order, then it would be up to that individual as to whether any litigation was pursued at all, he concluded.

[8:34:24 AM](#)

REPRESENTATIVE GARDNER asked if someone's inability to protect him/herself from predatory relatives could be in and of itself evidence that he/she doesn't have the capacity to make decisions.

[8:34:49 AM](#)

MR. FINK answered, "For a conservatorship, possibly, yes." He clarified the difference between a conservatorship and a full guardianship is that the former's appointment is limited to managing the financial aspect of the individual's life, whereas the latter's appointment can also make legal, medical, and housing decisions - basically acting as a parent.

[8:35:12 AM](#)

REPRESENTATIVE GARDNER asked Mr. Fink if he anticipates that sometimes the actions that OPA would want to take would be opposed by the client.

[8:35:30 AM](#)

MR. FINK said sometimes OPA's wards oppose appointment, but most don't.

[8:36:15 AM](#)

MR. FINK, in response to a question from Representative Gardner, said his previous statement that OPA can go to court and APS cannot, does not take into consideration the Long Term Care Ombudsman, which can go to court, but only has one attorney general working with it. He said [the Long Term Care Ombudsman

agency] is an option as one place to put the function of the bill if the committee decides not to assign it to OPA.

[8:37:49 AM](#)

REPRESENTATIVE GARDNER asked what the benefit would be in putting the function of the bill into OPA.

[8:38:01 AM](#)

MR. FINK reiterated that that is a policy decision for the committee to make and said he needs to work with his commissioner regarding what the administration's position will be. He said OPA currently has applicable experience; it has been in service since 1984, and has provided public guardian services since then.

[8:38:34 AM](#)

REPRESENTATIVE GARDNER asked, "If you were representing somebody who was not in a long-term care facility and then was moved to a long-term care facility, would the case then move to the Long Term Care Ombudsman?"

[8:39:00 AM](#)

MR. FINK answered no. He explained that the Long Term Care Ombudsman does not provide guardian or conservatorship services, but OPA does; therefore, wherever OPA's ward transfers, OPA would remain in that capacity. He continued:

If the question was, "Would we still pursue a private civil remedy if they were financially exploited or return it over to the [Long Term Care Ombudsman]?", as a conservator of a ward it would be our obligation to pursue the litigation. Now, if the [Long Term Care Ombudsman] offered to provide that for us, we would utilize that, because that would lessen the draw on our resources. If they did not provide that, it would be incumbent upon us to use either an in-house attorney or contract with someone to pursue that.

[8:39:41 AM](#)

REPRESENTATIVE GRUENBERG said there seems to be a real fragmentation in responsibility in this area and the potential for duplication. He observed that there are at least eight

different agencies in this area: the Long Term Care Ombudsman, the Office of Public Advocacy, Adult Protective Services, Alaska Legal Services, the district attorney, the Division of Banking & Securities, the Division of Insurance, and both local police and the Alaska State Troopers. He asked Mr. Fink, "What's the best way of making this the most efficient and effective?"

MR. FINK said there would probably be some value in having these agencies form a working group. He said the agencies that Representative Gruenberg just mentioned all have somewhat of a different role.

[8:41:53 AM](#)

REPRESENTATIVE GRUENBERG emphasized that was the intent behind his question. He listed questions that have to be addressed, including: who will be responsible and how the costs will be borne. He mentioned SB 132 and an amendment that allowed the use of "the little ... private attorney general theory." He explained, "There was limitation on the funding for the agency, and if people, in that case, took discrimination cases on a private basis and they prevailed, they would be able to get actual full attorney's fees." He said that is something else that should be considered. He said the model that was used in SB 132 was taken from the consumer protection law of Alaska.

[8:44:20 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the previously mentioned language on page 3, [lines 9-12], and then referred to [OPA's] existing authority in AS 44.21.410(a). Referring back to the language in the bill again, he asked, "That doesn't say that you can do it unless you first take a guardianship, right?"

[8:46:16 AM](#)

MR. FINK said he thinks the language could be clearer. He said, "Currently we cannot unless we have an appointment as a conservator or guardian; however, I believe with the language on [page 3], lines 9-12, the intent of the sponsor was to allow us to bring action on behalf of an individual who was not a guardian or ward, but simply was an Alaskan 55 or older." He directed attention to the language on page 3, lines 2-4, which read:

**(11) investigate complaints involving fraud
committee against residents of the state who are 55**

years of age or older; in this paragraph, "fraud" has the meaning given in AS 44.21.415.

MR. FINK indicated that the phrase "and bring private civil action on behalf of individuals" should be inserted somewhere in that language.

[8:46:44 AM](#)

REPRESENTATIVE GRUENBERG said he would like to know whether it's more cost effective for the state to simply contract the work out to legal services, rather than having to having to hire new state employees.

[8:47:09 AM](#)

MR. FINK said that is a policy decision. He noted that OPA has the right to contract out work when it cannot do it in house and Alaska Legal Services has recently taken on some of OPA's caseload in Juneau. He said if the function proposed in the bill "sat at OPA," then OPA may make arrangements with Alaska Legal Services to do some of that work.

[8:48:17 AM](#)

REPRESENTATIVE GRUENBERG said it looks like the only thing HB 399 addresses is financial abuse of elders, but not physical or mental abuse, and he questioned why all three are not addressed together.

[8:48:51 AM](#)

MR. FINK replied that physical abuse is a crime and presumably the district attorney would be involved. If an elder was in an unhealthy situation or living environment, a report of harm would be made to Adult Protective Services who would then investigate and take action within 10 days. He said APS will often file a petition for a guardianship or conservatorship. He stated that OPA is an appointment of last resort, after first looking to family members, friends, or private entities for help. He continued:

Speaking of ... civil remedy in court for physical ... or mental abuse, we don't ... really do much of that. I suppose you could do that - that's a tort - but given the demands on our resources it's not something -- I'm not aware of any time where we've gone into

court and sued someone for a tort on behalf of a client.

[8:50:32 AM](#)

REPRESENTATIVE GRUENBERG responded:

I'm just thinking you might have the same person committing the physical tort and also some misappropriation conversion in the legal sense - that sort of thing - and you'd want to probably combine them in the same suit. There may even be some insurance; it may be a small amount involved. It wouldn't be worth a private attorney's time and [it would be] difficult to get a private attorney. But I'm thinking that if we're going to do this, you ought to have the broadest possible authority.

REPRESENTATIVE GRUENBERG stated his strong support of the bill, but said if the concept is adopted it should be dealt with in the best possible way to "give these people the most protection we can."

[8:51:24 AM](#)

VICE CHAIR GATTO said the elderly are susceptible to spending money on things such as magazine subscriptions that never get read or \$29.95 gadgets from television infomercials. He indicated that the only way to stop that kind of spending is to take away the person's ability to write a check or use a credit card. He offered his understanding that that can be done by having a conservator.

[8:53:13 AM](#)

MR. FINK said oftentimes family members become the conservator by becoming power of attorney. There are lesser appointments than that of conservator, he said. For example: representative payee, which is not a protective appointment in court, but is something that can be formerly set up with private entities that receive the person's benefit checks and pay his/her bills. With the representative payee system, he said, the individual still maintains the power to take that control back from the representative payee.

[8:53:57 AM](#)

VICE CHAIR GATTO asked if the only option is to "pile agency upon agency" or if Mr. Fink is endorsing the creation of a new agency.

[8:54:35 AM](#)

MR. FINK, regarding Vice Chair Gatto's previous remark, said there is a difference between someone who is not spending money wisely, as perhaps in the case of purchasing magazines that never get read, and fraudulent exploitation, where people come in and, through means of deception and dishonesty, clean people out who have diminished capacity. The latter is criminal and puts the victims in untenable situations. He reiterated that this is a growing problem. He said the Disability Law Center and Alaska Legal Services don't have the resources and are declining referrals from APS, so there are people who have been "fleeced in some pretty significant ways" with no redress. He said the district attorney in Anchorage has informed him that he does not recall one financial exploitation case last year in Anchorage. He said, "They are very difficult cases to prosecute. Your victim by nature often is incapacitated or incompetent to some degree; they don't make the best witnesses." He suggested the legislature may want to address that issue.

MR. FINK said HB 399 addresses, in a real way, the civil remedy for someone to be made whole who has been defrauded and is a necessary function. He revealed that he is a fiscal conservative who does not believe in creating agencies unnecessarily, but he thinks this is a real need. He added, "And I'm not advocating that just because it would be coming to OPA. Wherever the committee or the legislature decides it should go is fine with me, but it's something I think needs to be done."

[8:56:40 AM](#)

VICE CHAIR GATTO asked Mr. Fink to estimate the fiscal cost of the bill.

[8:56:59 AM](#)

MR. FINK said he is leery about [offering an estimate]. He said the key question would be to ask how many civil fraud cases an attorney can handle a year. He said he is looking for some standards and guidance by contacting other state agencies and national organizations to see what their experience is. He said he would hate to say anything and then "be grossly

underestimated." Notwithstanding that, he said he initially is thinking it would take perhaps two attorneys and "something under \$.5 million with staff and space." He reemphasized that that is an unsupported number at this stage.

[8:58:12 AM](#)

REPRESENTATIVE GRUENBERG proffered that ultimately it may be that the person who is the perpetrator finally declares bankruptcy and nothing can be retrieved from the situation. He said he thinks Mr. Fink's suggestion of gathering together the various agencies to come up with the best solution to this problem is an excellent one.

[8:59:24 AM](#)

MR. FINK thanked Representative Gruenberg. He said he saw the bill last Friday, and he offered his understanding that the governor's office would be setting up a meeting.

[8:59:52 AM](#)

REPRESENTATIVE GRUENBERG suggested that the Division of Occupational Licensing also be included in the discussion. He said, "Because one way you can get at these people is - we're finding - when they don't pay their child support ... you pull their licenses." He offered a list of licenses that can be pulled.

[9:00:12 AM](#)

MR. FINK concurred.

[9:00:20 AM](#)

DAN McDOWELL, testifying on behalf of himself, said he is a lifetime Alaskan born in the Territory of Alaska. He said his father, who has lived in Alaska since the age of 19 is almost 80 and his mother is in her mid-70s, and they spent their entire working lives in Alaska. He emphasized the importance of HB 399 [which is legislation primarily in response to the McDowell family's situation]. Mr. McDowell told the committee that his father has suffered from Alzheimer's and dementia for the last 6 years. When his father began having difficulty with his finances, Mr. McDowell said, his mother took over, but she experienced difficulties and didn't want to tell anyone in the immediate family. She met a man from Colorado who is a distant

relative. The man had Mr. McDowell's parents sign documents, telling them that he would set up a trust for the family. Mr. McDowell described the man's systematic defrauding of his parents' properties and finances and said the man took every dime his parents had until they could not even fight back. His father now lives in the Heritage House in Soldotna - an assisted living home - and his mother lives on public assistance in a senior center. He praised Representative Chenault and his staff and Mr. Fink for their tireless efforts to help in this matter. Mr. McDowell said his father is an honest man and was a self-made millionaire, but is dying of a broken heart right now.

[9:05:34 AM](#)

MR. McDOWELL offered further details regarding the man from Colorado and the steps he took to defraud the family. Mr. McDowell expressed his appreciation for Representative Gruenberg's questions and concurred with the idea of finding one agency that can handle this situation, rather than duplicating services in several agencies. Regarding the man from Colorado, Mr. McDowell said, "I don't know if he's done it to other Alaskans, but we're almost convinced that he has done it certainly in the Lower 48." He asked for the committee's support.

[9:08:19 AM](#)

MR. McDOWELL, in response to a question from Vice Chair Gatto, said several attorneys looked at the case and said it is absolutely criminal and winnable, but there is a lot of money involved and the family cannot come up with the amount of money necessary. He related further tactics used by the man from Colorado to defraud the family. He mentioned OPA and Mr. Fink and indicated that there may be an attorney now that will take the case. If not, he said, he doesn't know what to do.

[9:10:41 AM](#)

REPRESENTATIVE GARDNER asked Mr. McDowell if he has any suggestions on how to prevent defrauding of the elderly.

[9:12:07 AM](#)

MR. McDOWELL responded that his mother relied on the man from Colorado because of her religion and what he said his was. He said there is information available about seniors and fraud, but it is difficult for seniors to separate the bad advice from the

good. He stated that a criminal who takes advantage of seniors needs to be prosecuted to the full extent of the law, because this is a criminal matter, not just a civil one. He added, "This is an FBI-across-state-lines matter." Mr. McDowell said that he loves his parents and, out of all the children in his family, he has spent the most time with his mother and father, but he was unaware of what was going on with his mother, because the man from Colorado convinced her she could not talk to anyone about what he was doing.

9:13:50 AM

REPRESENTATIVE GRUENBERG suggested that since the man from Colorado talked to the mother on the telephone, it may be a wire fraud case; therefore, he recommended that Mr. McDowell talk to the U.S. Attorney.

9:14:16 AM

MR. McDOWELL said he supplied the FBI with information, but that entity looked at the letters that the mother signed and said it appeared to be a civil case. He offered his understanding that if an attorney first looked at the case and sent a letter to the FBI stating that he/she believes there is criminal wrongdoing, then the FBI would get involved. He said he is asking the State of Alaska if that is possible. He declared, "If you help us, I'll make sure you get every darn penny back."

9:15:10 AM

REPRESENTATIVE GRUENBERG said if Mr. McDowell "put a little money into a private investigator and ... had a small report done," then an attorney could send a letter to the FBI.

9:15:43 AM

MR. McDOWELL reiterated that his funds are limited. He said he has spent most of his savings taking care of his parents and cannot even promote his own business right now. He concluded, "But that's what I want to happen; I would love to see the FBI get involved."

9:16:15 AM

BOB DREYER, Ombudsman, Long Term Care Ombudsman, Alaska Mental Health Trust Authority, Department of Revenue, said the Older Americans Act requires that each state have a Long Term Care

Ombudsman for the purpose of protecting and advocating for the elderly. He said Alaska's own state statutes mirror that requirement, further clarifying that the state's position is to advocate for and protect the rights of Alaskans 60 years of age and older. In response to prior testimony, he said the Long Term Care Ombudsman office has the authority to issue subpoenas. He offered his understanding that APS does not have that authority, and he said he is not sure whether OPA does or not.

MR. DREYER confirmed that Mr. Fink was correct that the Long Term care Ombudsman is represented by legal council that can go to court on its behalf regarding exploitation cases. He said the Long Term Care Ombudsman is currently working on a couple of cases: one involves multiple guardianships appearing to be exploiting the elderly, and another involves a person that is providing personal services that border on physical therapy at an exorbitant cost, without benefit of being licensed. He said people 60 years of age and older who have money are being targeted.

[9:18:23 AM](#)

REPRESENTATIVE GARDNER asked if there would be any benefit in moving the function to OPA.

[9:18:36 AM](#)

MR. DRYER responded that, as has been previously mentioned, he is concerned about the duplication of effort. He said he thinks it would make sense to [house the function of the bill in the Long Term Care Ombudsman office], because that would give the elderly a "one-stop-shop place they can call with all their concerns."

[9:19:12 AM](#)

REPRESENTATIVE GARDNER said that's a good point, because it is already difficult for people to figure out what all the different agencies do, and it seems like it would result in another level of complexity to have "a different service elsewhere."

[9:19:41 AM](#)

VICE CHAIR GATTO closed public testimony.

[9:19:53 AM](#)

REPRESENTATIVE GARDNER shared that her mother was a fiercely independent person who had Alzheimer's, and it was a matter of pride for her not have to acknowledge the need for help. She said she doesn't know what the solution is but said it's clear that something needs to be done. She said HB 399 would redress a wrong, but the real issue is in preventing [abuse of the elderly].

[9:20:48 AM](#)

VICE CHAIR GATTO indicated that there can be misunderstandings between family members and in those cases it is better for the elderly person to find independent advisors.

[9:21:19 AM](#)

REPRESENTATIVE ELKINS stated that he thinks the bill doesn't go far enough. He said, "I personally would like to see a bill that says to people who might be interested in defrauding seniors that you better not do it in Alaska." He said he would not like the bill moved out of committee today because he would like to investigate how to "toughen it up a little bit and put that message out."

[9:21:52 AM](#)

VICE CHAIR GATTO stated his understanding that the next committee of referral for HB 399 is the House Finance Committee.

[9:22:15 AM](#)

REPRESENTATIVE GRUENBERG asked Ms. Wright what the wish of the sponsor is regarding whether or not to move the bill out of committee today.

[9:22:27 AM](#)

MS. WRIGHT said she would like to work on bill further because there have been issues brought to attention that the sponsor had not thought about. However, she said the sponsor would like to see the bill moved out of the House State Affairs Standing Committee and have that work done in the House Finance Committee. She stated that this is the most difficult issue other than child abuse in which she has ever been involved. Regarding the previously mentioned case around which the bill was formulated, she said the sponsor "tried everywhere to get

private attorneys to take this." She said Mr. McDowell searched all through Anchorage, but all the attorneys approached wanted a large retainer before they would even look at the case. she said the sponsor wrote a letter to the Federal Bureau of Investigation (FBI).

MS. WRIGHT noted that there currently is a case in front of the U.S. Attorney that addresses wire fraud, and she stated her belief that that's where this case will eventually wind up. In the mean time, she said, "this gentleman from out of state needs to be stopped from his further legal action." She said that's why OPA became involved. She noted that Adult Public Assistance was not interested at the time and she did not receive a return call from the Long Term Care Ombudsman office. She explained that she had to go with the person who responded to her and she emphasized that Mr. Fink responded, understood the issue, and visited the site of the McDowell home firsthand. She explained, "Because these people, instead of living on public assistance, should be enjoying their lives. ... If someone did this to me it would be devastating. And that's why we're asking that the bill pass out, and we will come to you and incorporate as many ideas as what fits."

[9:25:29 AM](#)

MS. WRIGHT, in response to a question from Vice Chair Gatto, said the bill sponsor has been out of town and will be present in about a week.

[9:25:36 AM](#)

VICE CHAIR GATTO suggested holding bill to Thursday so that Representative Elkins could have the time he had requested.

[9:26:11 AM](#)

REPRESENTATIVE ELKINS responded that he believes Ms. Wright and Representative Chenault's staff are sincere when saying they will address everybody's needs, and he is "comfortable with that." He restated that the bill needs to send a stronger message, but admitted he is not quite sure how to do that.

[9:26:40 AM](#)

REPRESENTATIVE GARDNER revealed that she used to work as a guardian ad litem for OPA and has a tremendous respect for that agency. Notwithstanding that, she said it seems that the thrust

of the bill should be with the ombudsman. She said if the Long Term Care Ombudsman did not respond to the sponsor's request, then that's appalling and needs to be addressed. She asked, "Do you see a way to ... give them the responsibility that this bill attempts to move to OPA?"

[9:27:21 AM](#)

MS. WRIGHT said it is certainly something that the sponsor would consider. At the time, the only response was from OPA. She said it is difficult to take care of a problem that has such an immediate need when an agency does not respond.

[9:28:09 AM](#)

REPRESENTATIVE GARDNER restated her question and asked Ms. Wright to consider it as a policy matter. She continued:

If the ombudsman can pursue actions without requiring that the victim be under guardianship or be a ward of the state - and for OPA they have to be made guardian or conservator at some level - the ombudsman's office can proceed without that. And it may be that people are capable of taking care of themselves normally, but a family member is defrauding them, and they're not willing to act on their own, or something like that. And I would hate to have to see them have a conservator appointed to their affairs in order to pursue action against somebody. That seems to create a problem. And they could be resisting and fighting and not have the choice, in order to pursue it.

MS. WRIGHT responded that Representative Gardner's point is well taken.

[9:29:05 AM](#)

REPRESENTATIVE GRUENBERG said the committee is engaged in this subject, but to do the job right will take coordination among various agencies and a working group of legislators who are willing to spend time on this issue. He indicated that this may require a slower process than Ms. Wright may desire.

[9:31:05 AM](#)

MS. WRIGHT suggested she could host a meeting with all the representatives in Representative Chenault's office, rather than

forming a subcommittee. She said she doesn't want the bill to become too complex.

[9:31:48 AM](#)

VICE CHAIR GATTO stated that he has no intention of forming a subcommittee and he suspects the committee will move the bill today, but he encouraged Ms. Wright to contact the representatives for input that can be passed along to the hearing in the House Finance Committee. Vice Chair Gatto said this is a dynamite issue and he wants the state to have the ability to chase down the criminals. Without the ability to do that, he indicated, the bill will have a very limited effect.

[9:33:42 AM](#)

REPRESENTATIVE GRUENBERG said he is interested in learning more, but is happy to see the bill moved out of committee. He stated, "This is a very, very important issue - far beyond one family's problem, and ... because [the] Baby Boomers are coming up, this is going to - in the next 20 years - multiply in importance."

[9:36:05 AM](#)

REPRESENTATIVE LYNN moved to report HB 399 out of committee [with individual recommendations]. There being no objection, HB 399 was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:36:38 AM](#).