

HB510

(13)

Date Referred: March 25, 1992

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

Date of Committee Action: 4/15/92

The FINANCE Committee considered:

HB 510

HOUSE BILL NO. 510

PROTECT ELDERLY AND DISABLED ADULTS

"An Act relating to criminal offenses and penalties for offenses involving disabled or elderly adults."

RECOMMENDATIONS:

be replaced with CS HB 510 (JUD) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact CORRECTIONS

fiscal note(s) Admin 3/25/92

zero fiscal note DCEB

zero fiscal note(s) Admin 3/25/92 DPS 3/25/92 LAW 3/25/92 DHS 3/6/92

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. McInerney</u> McInerney	<input checked="" type="checkbox"/>	<u>Bea Sharp</u> Sharp		<input checked="" type="checkbox"/>	
<u>Mark Boyer</u> Boyer	<input checked="" type="checkbox"/>	<u>Phillips</u> Phillips		<input checked="" type="checkbox"/>	
<u>Tay Brown</u> Brown	<input checked="" type="checkbox"/>				
<u>Koponen</u> Koponen	<input checked="" type="checkbox"/>				
<u>Barnes</u> Barnes	<input type="checkbox"/>				
<u>Arnold J. Larson</u> Larson	<input type="checkbox"/>				
<u>W. W. W. W.</u> W. W. W.	<input type="checkbox"/>				
<u>Mike Navarre</u> Navarre	<input checked="" type="checkbox"/>				
<u>Jacko</u> Jacko	<input checked="" type="checkbox"/>				

W. W. W. W. Navarre P. McInerney

FISCAL NOTE

NO. 3
 F Version: CSHB 510(JUD)
 (H) Publish Date: 3-25-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety
 Title: "An act relating to criminal offenses involving disabled or elderly" BRU: Alaska State Troopers
 Sponsor: Representative Mackie Component: Detachments
 Requestor: Representative Mackie COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE						
FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

UNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2/24/92
 Approved by Commissioner: *James A. Houtler* Richard L. Burton
 Agency: Department of Public Safety COMMITTEE COPY Date: 2/25/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. HB 510

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: An Act relating to criminal offenses and penalties for offenses involving disabled or elderly adults. BRU: Occupational Licensing
 Component: Administration
 Sponsor: Reps. Mackle, Ellis, Lincoln
 Requestor: Rep. Mackie COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 510 adds a new section to the centralized licensing statutes (AS 08.01) to provide that a conviction under AS 47.24 by a person licensed, certified, or regulated may be considered by the department or board as grounds for disciplinary proceedings or sanctions. New funds are not required to implement this provision.

Prepared By: Jennifer Strickler Phone: 465-2144
 Division: Occupational Licensing Date: 02/25/92
 Approved by Commissioner: Glenn A. Olds Date: 2.26.92
 Agency: Commerce & Economic Development

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

NO. 4
Bill Version: CSHB 510 (JUD)
(H) Publish Date: 3-25-92

Revision Date: _____
Title: An Act relating to criminal offenses and penalties
or offenses involving disabled or elderly adults.
Sponsor: Mackie
Requestor: House Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO.

0	0	4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
RAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

PITAL	0	0	0	0	0	0
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REVENUE BY SOURCE:	0	0	0	0	0	0
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EXPENDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
GENERAL FUNDS	0	0	0	0	0	0
OTHER BY SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNCTIONS:

NON-TIME	0	0	0	0	0	0
TIME	0	0	0	0	0	0
ORDINARY	0	0	0	0	0	0

Estimated impact of current year impact: None

Comments: (Attach a separate page if necessary.)

by: Kevin Brooks, Director
Administrative Services

Phone: 465-2277
Date: March 19, 1992

by Commissioner: Nancy Bear Usera
Administration

Date: 3/17/92

Prepared by (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 3
Bill Version: CSHB 510(JUD)
(H) Publish Date: 3-25-92

Revision Date: March 19, 1992
Title: "...criminal offenses...involving disabled or elderly adults."
Sponsor: Representative Mackie
Requestor: Representative Mackie

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Richard I. Peques FOR
Agency: Department of Law

Phone: 465-3672
Date: March 19, 1992

Date: March 19, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS No 3

For Bill/Resolution No. CSHB 510 (DVD)

The HES Committee substitute corrected a drafting error in Section 7. Otherwise, the bill is unchanged. Our fiscal note analysis is therefore repeated below.

This bill amends various criminal statutes to increase the penalty for an offense, if the offense is committed against a disabled or elderly adult. The department's analysis follows below.

Section 1. This section amends AS 08.01 to provide that conviction of a person licensed or regulated by the Department of Commerce and Economic Development, for failure to report harm to an elderly person or failure to report physical or sexual assault of a disabled adult, may be considered as grounds for disciplinary proceedings or sanctions against a person who has a duty to make such a report. This section will not have a direct fiscal impact for the Department of Law, nor should there be any impact for the Division of Occupational Licensing, because failure to report occurs rarely.

Section 2. This section amends AS 11.41.200(a) to include recklessly causing serious physical injury to a disabled or elderly adult within the crime of assault in the first degree. Because recklessly causing serious physical injury is currently assault in the second degree, this section will have the effect of raising the penalty for this conduct from a class B felony to a class A felony, if the victim is a disabled or elderly adult.

We cannot determine a fiscal impact for this section because the state does not keep records by the age of the victim, except for minors. Each year there are between 300 and 400 felony assaults referred for prosecution. However, we do not know how many of these assaults are committed against disabled or elderly adults. Increasing the penalty for this crime could cause some additional cost for the department because of the difficulty of proving that the defendant knew that the victim was a disabled or elderly adult.

Section 3. This section amends AS 11.41.210(a) to include recklessly causing physical injury to a disabled or elderly adult within the crime of assault in the second degree. Because recklessly causing physical injury is currently assault in the fourth degree, this section will have the effect of raising the penalty for this conduct from a class A misdemeanor to a class B felony, if the victim is a disabled or elderly adult.

Here again, we cannot determine a fiscal impact due to the lack of information about the age or mental disability of adult victims. It does appear likely, however, that some substantial impact will occur if what is currently a misdemeanor offense is raised to a felony offense. This is because full range felony prosecution includes the grand jury and indictment process, pretrial

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 510 (JUD)

motion practice and, in view of the increased severity of the charge, a much more vigorous defense. We would also have to prove that the defendant knew that the victim was a disabled or elderly adult. Currently, about 3,000 misdemeanor assaults are reported under state law each year.

Section 4. This section amends AS 11.41.220(a) to include placing a disabled or elderly adult in fear of imminent physical injury by words or other conduct within the crime of assault in the third degree. This amendment will have the effect of raising the penalty for conduct currently classified as a class A misdemeanor to a class C felony if the victim is a disabled or elderly adult. The department's comments on the impact for Section 3 apply to this section, as well.

Section 5. This section amends AS 11.46.120(a) to provide that a person commits theft in the first degree if the victim of the theft is a disabled or elderly adult. Normally, the value of the property or services must be \$25,000 or more before the criminal conduct reaches theft in the first degree. Consequently, this section will have the effect of making theft with a value in any amount a class B felony, if the victim is a disabled or elderly adult. The department handles 1,000 misdemeanor thefts and 200 class C felony thefts annually.

For the reasons discussed above, we cannot determine what number of misdemeanors, or lesser degree felonies, would be required to be handled as class B felonies if this section is approved. However, some fiscal impact will occur if there is a substantial number of new felonies.

Section 6. This section defines a "disabled or elderly adult" to mean a person 18 years of age or older who has a physical or mental disability, or physical or mental impairment, as defined in AS 18.80.300, or a person 65 years of age or older.

Section 7. This section provides that a person who fails to report suspected harm to an elderly person, as required by AS 47.24.010, is guilty of a class B misdemeanor. The section also provides that the court shall notify a licensing entity when a person who is a member of a profession or occupation regulated by the state is convicted for failure to report. Failure to report is very rare. Consequently, this section should not have a fiscal impact.

Section 8. This section provides that the court shall notify the licensing entity when a person regulated by the state is convicted for knowingly failing or refusing to report suspected physical or sexual assault of disabled adults. Failure to report is rare, and a fiscal impact is not anticipated.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 2
Bill Version: CSHB 510(JUD)
(H) Publish Date: 3-25-92

Revision Date: _____
Title: "An Act relating to criminal offenses and penalties
for offenses involving disabled or elderly adults."
Sponsor: Mackie
Requestor: _____

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING

CAPITAL
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REVENUE FUND SOURCE:
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FUNDING: (Thousands of Dollars)

GENERAL FUND
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	.	.	.	.	.	.

POSITIONS:

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY	.	.	.	.	.	.

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

(See attached)

Prepared by: John Salemi, Public Defender
Agency: Public Defender Agency

Phone: 279-7541
Date: March 9, 1992

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 3/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 2
BILL NO. CSHB 510 (JUD)

ANALYSIS: (continued)

The fiscal impact that will result from treating disabled and elderly adults as a special class of victim is impossible to quantify. However, it is clear that by increasing the seriousness of the penalties (in some cases requiring mandatory jail time) and also increasing the seriousness of the crime (making crimes that formerly were misdemeanors felonies with rights to grant jury and 12-person juries) defense costs will increase as well.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 510 (JUD)

Revision Date: 4/13/92 Department Affected: Corrections
 Title: ...adding an aggravating factor at sentencing... BRU: Statewide Operations
 Component: Various
 Sponsor: Rep. Mackie
 Requestor: House Finance COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	43.9	43.9	43.9	87.8	109.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	43.9	43.9	43.9	87.8	109.8
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	43.9	43.9	43.9	87.8	109.8
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0				
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached fiscal analysis.

Prepared By: *Diane Schenker* Phone: 465-3376
 Division: _____ Date: 4/13/92
 Approved by Commissioner: Lloyd Hames
 Agency: Department of Corrections Date: 4/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Off., & Impacted Agency(ies).

CONTINUATION OF FISCAL ANALYSIS

BILL: CSHB 510 (JUD): An Act adding as an aggravating factor at sentencing that a victim was elderly or disabled; and relating to failure to report harm or assaults of the elderly or disabled.

The bill would add an aggravator to be considered at sentencing if the victim of an offense was 65 years or older or had a physical or mental disability that substantially limited one or more life activities. This change will impact the Department by increasing total incarceration length in certain cases, discussed below.

A person who, in the performance of their professional duties, has reasonable cause to believe that an elderly person has suffered harm, and who knowingly fails to comply with reporting requirements outlined in AS 47.24.010, would be guilty of a class B misdemeanor. Such failure is a violation under current law. This change is not anticipated to impact the Department due to the assumption of infrequency of the offense and the assumption that imprisonment would be unlikely upon conviction.

Crimes affected by the additional aggravator include: class A felonies, second or third class B and C felonies, and Sexual Assault I and Sexual Abuse of a Minor I. The sentence lengths could be increased to the maximum terms of imprisonment based on the finding of aggravator(s). Deducting one third of the sentence for statutory good time, the actual length of imprisonment mandated for each of these categories, without aggravators, is as follows:

Class A felony:	40 months
(second offense)	80 months
(third offense)	120 months

AVERAGE = 80 MONTHS

Class B felony:	
(second offense)	32 months
(third offense)	48 months

AVERAGE = 40 MONTHS

Class C felony:	
(second offense)	16 months
(third offense)	24 months

AVERAGE = 20 MONTHS

Sexual Assault I	64 months
SAM I	64 months

CONTINUATION OF FISCAL ANALYSIS--CSHB 510 (JUD)

Data was available in the Department of Corrections' 1991 Annual Report to indicate the total number of admissions in 1991 for the following offenses impacted by these sentencing guidelines: Manslaughter; Assault I, II, and III; Theft I and II; Burglary I and II; Robbery I and II; Sexual Assault I; and Sexual Abuse of a Minor I. These offense categories were broken down into class A, B, and C felonies, as well as the sexual crimes categories. Since data is not available to indicate whether a conviction was the first, second, or third, the average term of imprisonment for each category is used. Since class B and C felonies are subject to the presumptive terms (and aggravators/mitigators) only for second and third offenses, the total number of admissions for these categories was halved, on the assumption that half of the admissions were first-time offenders not subject to these sentencing terms.

The Alaska State Data Center reports that 4.1% of the total population of the state age 65 or over. The Department does not have data available with regard to the percentage of the state's population meeting the criteria for "disabled" in the bill. Therefore, it is assumed that the total percentage of the population which is 65 or older or is disabled is approximately 5%. If data becomes available indicating a higher or lower percentage of disabled, the fiscal impact will be recalculated. Assuming that 5% of the total population meets the definition of the bill's aggravating factor, it is also assumed that 5% of the victims of crimes would also meet the definition.

Assuming only 5% of the convictions would involve victims addressed by the bill's aggravator, the following numbers of convictions are assumed each year, based on 1991 rates:

Class A felonies:	5% of	65	=	2
Class B felonies:	5% of	72	=	4
Class C felonies:	5% of	150	=	8
Sexual Assault I:	5% of	38	=	2
S&M I	:	1% of	26	= 0*

* Since the nature of the crime precludes the victim being age 65 or older, the 1% disabled estimate is used for this offense.

Data is not available to indicate the actual increase in the term of imprisonment which would occur if the aggravator regarding age or disability were present. Therefore, it is assumed that the aggravator would result in an average increase of 20% of the non-aggravated term of imprisonment. If data becomes available to suggest that the aggravator would result in more or less of an adjustment, the fiscal impact will be recalculated.

CONTINUATION OF FISCAL ANALYSIS--CSHB 510 (JUD)

Based on these assumptions, the fiscal impact on the Department is estimated as follows:

FY93: No impact. Those sentenced in FY93 would receive sentences of over 12 months regardless of the aggravator.

FY94: If, in FY93, 8 class C felonies were increased from 20 months of incarceration to 24 months of incarceration due to the aggravator, 8 felons would require four months, or 122 days, of additional incarceration in FY94. Assuming the additional time could be served in a community residential center at an average statewide cost of about \$45/day, the additional cost would be:

$$8 \times 122 \times \$45 = \$43,920.00.$$

FY95: 8 Class C felons sentenced in FY94 would result in another \$43,920.00.

FY96: 8 Class C felons sentenced in FY95 would result in another \$43,920.00.

FY97: 8 Class C felons sentenced in FY96 would result in another \$43,920.00.

4 Class B felons sentenced in FY93 would have had their sentences increased from 40 to 48 months of incarceration. This would result in 8 additional months, or 244 additional days of incarceration each, during FY97.

$$\begin{array}{r} 4 \times 244 \times \$45 = 43,920.00 \\ + \quad 43,920.00 \\ \hline \text{TOTAL} \quad \$ 87,840.00 \end{array}$$

FY98: 8 Class C felons sentenced in FY97 would result in another \$43,920.00.

4 Class B felons sentenced in FY94 would result in another \$43,920.00.

2 felons convicted of Sexual Assault I, in FY93, would have had their sentences increased from 64 months to 87 months. Instead of being released during the fourth month of FY98, they would remain incarcerated for the remainder of the year, resulting in an additional eight months, or

CONTINUATION OF FISCAL ANALYSIS--CSHR 520 (JUD)

244 days each. If these or other offenders could be diverted to community residential center beds for these extra days, the impact would be:

	2 X 244 X \$45 =	\$21,960.00
		+43,920.00
		<u>+43,920.00</u>
TOTAL		\$109,800.00

FISCAL NOTE

No. _____
 Bill Version: CSHB 510 (JUD)
 (H) Publish Date: _____

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date February 18, 1992 Dept. Affected Health and Social Service
 Title: "An Act relating to criminal offenses and penalties for offenses involving disabled or elderly adults." BRU: Division of Family and Youth Services
 Sponsor: Representative Mackie Component: SERO, SCRO, NRO
 Requestor: House HESS Committee COMPONENT SERIAL NO. 0254, 0255, 0258

Expenditures/Revenues

(Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
OPERATING						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING:

(Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY93	FY94	FY95	FY96	FY97	FY98
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: **NONE**

ANALYSIS: (Attach a separate page if necessary)

Alaska, like many states in the early 80's, passed but failed to fund a Protection of the Elderly statute. Ten years after Alaska's law was passed, the Department still is not adequately funded for this mandate. There is concern over raising the penalty when mandated professionals fail to report abuse and neglect to elderly persons to the Department as the existing response system is inadequate. This bill, however, if passed, would not directly create an additional workload on the Department.

Prepared by: Brian Saylor, Deputy Commissioner *B Saylor*
 Division: Division of Family and Youth Services

Phone: 465-3030
 Date: March 4, 1992

Approved by Commissioner: Theodore A. Mala, MD, MFH *T. Mala*
 Agency: Department of Health and Social Services

Date: 4-3-92

Distribution (by preparer):

Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

CS FOR HOUSE BILL NO. 510 (JUDICIARY)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/25/92
 Referred: Finance

Sponsor(s): REPRESENTATIVES MACKIE, Ellis, Lincoln, Larson, Gonzales

A BILL

FOR AN ACT ENTITLED

1 "An Act adding as an aggravating factor at sentencing that a victim was elderly or
 2 disabled; and relating to failure to report harm or assaults of the elderly or disabled."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 08.01 is amended by adding a new section to read:

5 Sec. 08.01.088. CONVICTION AS GROUNDS FOR DISCIPLINARY ACTION.
 6 Notwithstanding any other provision of this title, the conviction under AS 47.24.010 or 47.24.110
 7 of a person licensed, certified, or regulated by the department or a board under this title may be
 8 considered by the department or board as grounds for disciplinary proceedings or sanctions.

9 * Sec. 2. AS 12.55.155(c) is amended by adding a new paragraph to read:

10 (29) the victim of the offense is 65 years of age or older or has a physical or
 11 mental disability that substantially limits one or more major life activities.

12 * Sec. 3. AS 47.24.010(c) is amended to read:

13 (c) A person who knowingly fails to comply with this section is guilty of a class B
 14 misdemeanor. If a person convicted under this section is a member of a profession or

1 occupation that is licensed, certified, or regulated by the state, the court shall notify the
2 licensing, certifying, or regulating entity of the conviction [VIOLATION AS DEFINED IN
3 AS 11.81.900(b)].

4 * Sec. 4. AS 47.24.110(b) is amended to read:

5 (b) A person who knowingly fails or refuses to make a report required under (a) of this
6 section is guilty of a class B misdemeanor. If a person convicted under this section is a
7 member of a profession or occupation that is licensed, certified, or regulated by the state.
8 the court shall notify the licensing, certifying, or regulating entity of the conviction.

HB 510: "An Act relating to criminal offenses and penalties for offenses involving disabled or elderly adults."

HB 510 gives authority to the appropriate board or the department where no board exists for disciplinary actions against the license or certification of a person under Title 8, for conviction under AS 47.24.010 or 47.24.110.

It instructs the court to notify the department of a conviction which assures it coming to our attention. By allowing the conviction to serve as prima facie evidence that the alleged act was committed, much time and funds will be saved in bringing an action against the license.

We believe this may be a deterrent to a licensed or certified professional who counts on being able to pay a fine but keep on practicing without a blemish in his or her licensing file.

It is our understanding that many of these cases are settled out-of-court with Health and Social Services being the mediator. Therefore, we would recommend that Health and Social Services be included with the court to notify the department when they make a "substantiation of a report of harm." Health and Social Services should be protected from a complaint of invasion of privacy, etc., by the person who is the subject of the report to the department.

The department supports passage of HB 510.

Glenn A. Olds
Glenn A. Olds, Commissioner

Date: 2.16.92

S P O N S O R S T A T E M E N T

CS HB 510 (Jud), "An Act adding as an aggravating factor at sentencing that a victim was elderly or disabled; and relating to failure to report harm or assaults of the elderly or disabled."

There are a number of things occurring in Alaska that make it critical for the legislature to discuss the subject of abuse, exploitation and crimes against elderly and disabled adults.

The 65+ age group increased by 93.7% in Alaska in the last decade. Mat-Su increased by 155% and Haines by 133% in this same category.

HB 510 will make the conviction of failure to report abuse under AS 47.24, the Elder Abuse Reporting law, grounds for disciplinary action if the person convicted is licensed under AS 08.

A person, who is a member of the 20 professions listed in the Elder Abuse law, who knowingly fails to report that an elderly or disabled adult has suffered harm will be guilty of a Class B misdemeanor and the courts will be required to notify the licensing entity. Under present law violation of the duty to report is only punishable by a non-criminal violation.

Similarly, if a person, listed in AS 47.24 is convicted of failing to report that a disabled or elderly adult has been physically or sexually assaulted, the court making the finding shall report the conviction to the licensing entity.

The proposed Judiciary Committee CS for HB 510 will also add a new aggravator under factors in aggravation and mitigation. If a person is convicted of an offense and is subject to sentencing under certain sections of AS 12.55.125 then the presumptive terms of sentencing may be increased or decreased depending on the factors in aggravation. CSHB 510 will add a new factor to be considered under sentencing; whether the victim is 65 years of age or older or has a physical or mental disability or impairment as defined in the bill.

Sponsor Statement
Judiciary CS for HB 510
April 13, 1992

AS 18.80.300 (12)a defines this impairment as one that substantially limits one or more of life's major activities. This means that the impairment must be severe, not cosmetic or merely a medical condition such as a digestive, endocrinary or urologic problem as might be included in other sections defining disabilities and impairments.

The Judiciary CS for HB 510 is intended to provide a much broader net than that proposed in the original bill. It is my hope as sponsor to now catch in this criminal net those hoods committing strong arm robberies against vulnerable adults targeting them for social security and longevity bonus payments and their permanent fund dividends.

I firmly believe that our present statutory framework does not provide a sufficient deterrent to these types of crimes. A similar aggravator, AS 12.55.155 (c)(5) is aimed at defendants who knew their victim was particularly vulnerable. The current aggravator provides only a subjective test; did the defendant know that the victim was vulnerable? HB 510 will add the objective test, it will not require an evaluation of what the defendant was thinking. The objective test will provide a much higher standard and combined, the two aggravators will provide more absolute protections.

Legal Counsel to House Judiciary worked closely with the Department of Law to refine these provisions. These enhanced penalties for crimes against the elderly are critically needed in the face of an adult protective services system sorely in need of an overhaul; phenomenal rates of growth in the 65 and older age category and the inability to track the incidence of crimes against these vulnerable persons.

Elderly and handicapped persons are more vulnerable and disproportionately damaged by crime - because they are less able to escape offenders and tend to suffer the greatest relative deprivation as a result of crimes against them. The elderly and disabled are also more susceptible to long-term adverse effects of crimes because they are less able to recover from the impact of physical, emotional and financial abuse.

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

February 26, 1992

Mr. David L. Olerud
P. O. Box 1069
4th and Main Street
Haines, Alaska 99827

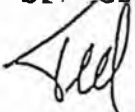
Dear Mr. Olerud:

Thank you for your recent letter regarding your concern on behalf of an elderly citizen of Haines. I appreciate your taking the time to inform me of her financial, physical and mental abuse from a caregiver and am relieved to learn that you and others have worked to improve the situation.

The legislation you mention has been introduced by Representative Mackie. Indeed it responds both to the situation you describe and to other similar cases of abuse by caregivers. In concept the Department is very supportive of the bills. I am informed that Pat O'Brien, Adult Protective Services coordinator, in the Division of Family and Youth Services has been working closely with Representative Mackie's staff. She is also reviewing the two bills, HB 510 and HB 511 with key staff from other affected divisions to ensure that the legislation appropriately addresses the issues.

Again, thank you for your concern. I will watch the progress on these bills with interest.

Sincerely,



Theodore A. Mala, MD, MPH
Commissioner

cc: Brian Saylor, PhD, MPH
Acting Director
Division of Family
and Youth Services
Representative Jerry Mackie

P. O. Box 1069
Haines, AK 99827

May 9, 1991

State Representative Johnny Ellis
Seventeenth Alaska State Legislature
Interdepartmental Mail Stop
P. O. Box V
Juneau, AK 99811

Dear Representative Ellis:

This letter is in regard to the subject of protection for the elderly population of Alaska, and also in response to my telephone conversation with Vickie. I wholeheartedly feel that we can and must provide a blanket of protection to our elderly and those who are incapacitated in any way. These objectives could best be met by placing into law the following:

1. Those persons providing either public or private care/services to the elderly or otherwise incapacitated people, would be denied the following perogatives:
 - a) Caregivers could not assume or be placed under any powers of attorney, last wills or testaments, or joint bank accounts.
2. Responsibility should be placed upon those who provide outside physical, mental, or material services. A degree of responsibility must be constantly maintained so that any physical neglect or mental abuse must be reported to the proper authorities. In other words, the elderly and disadvantaged should also be allowed the same lawful protection currently given to young people in relationship to child abuse.

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Recent personal experiences which I related in my earlier letter to State Representative J. Mackie (copy enclosed) have led me to believe that the state of Alaska has allowed a tremendous void to take place in relation to this particular grouping of people. The sad part is that each of us could undoubtedly have a high percentage chance of being in this same situation, and thus state mandated protection is extremely necessary.

With your abilities and dedication, I know that this problem can be corrected. If I can assist in way, I would be more than honored to do so.

Thank you for your time and effort.

Sincerely,



David E. Olerud

/lao
Enclosure

✓ cc: State Representative Jerry Mackie (w/o encl.)

P. O. Box 1069
Haines, AK 99827

State Representative Jerry Mackie
Seventeenth Alaska State Legislature
Interdepartmental Mail Stop 3100
P. O. Box V
Juneau, AK 99811

Dear Representative Mackie:

In response to our telephone conversation today, I wish to recap in writing the subject of our discussion, which I feel should be very closely evaluated.

In the last few months, I've received an educational experience pertaining to personal and legal problems confronting an elderly lady with whom my wife and I have been close friends for almost 30 years. And, it occurs to me that this situation is undoubtedly representative of similar occurrences elsewhere.

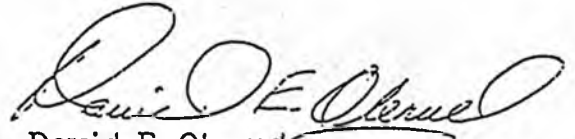
This particular individual is suffering from advanced stages of Parkinson's disease. In her prime she was extremely sharp, and quite possibly one of the most dynamic and mentally alert persons in our community, at which time she took great pains to organize the necessary papers, etc., that would oversee her desires upon her death. We now find her to be maybe one-hundredth of her mental capabilities, but most unfortunately, we are seeing tremendous stress being placed on her in relation to the wealth that she accumulated during her lifetime. The situation is a prime example of how older or otherwise incapacitated people can become very susceptible to outside mental control. One of the ways I believe we can protect these people, and give greater security with less pressure later on in life, is legislation that mandates those who provide care or services for innumeration in any way, be barred from holding power of attorney, participation in wills, or even joint-bank accounts. I very strongly believe that a third party outside of those who provide personal services, should act as a buffer to prevent mental intimidation and transfer of wealth.

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I will look favorably upon any legislation that will protect these people who are so vulnerable. I realize your time is in great demand, and I very much appreciate your phone call and interest.

Thank you, and if I can be of any assistance, it would be my pleasure.

Sincerely yours,



David E. Olerud

March 25, 1991



TANANA CHIEFS CONFERENCE, INC.

Tok Subregional Office
P.O. Box 126
Tok, Alaska 99780
(907) 883-5181

March 16, 1992

Representative Dave Donley
Chair - House Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99811

Dear Representative Donley:

Tanana Chiefs Conference, Tok Subregional Office of the Upper Tanana Area is in full support of HB 510 "An Act Relating to Criminal Offenses Involving Disabled or Elderly Adults," and HB 511 "An Act Relating to Public Home Care Providers."

Tanana Chiefs Conference, Tok Subregion have been concerned for the welfare of our frail, elderly people. We are aware that sometimes, unfortunately, relatives and care providers take advantage of our elderly. Our Elders, often times neglect to report these offences.

House Bills 510 and 511 will provide protection for the elderly and disabled by increasing penalties for abuse of and theft from them; and by strengthening penalties for failing to report crimes against the elderly and disabled.

The members of our elderly will continue to rise in the future, the potential for abuse/crimes against them will continue to increase also.

We encourage the House Judiciary Committee to recommend passage of HB 510 and 511.

Thank you.

Sincerely,

Rose Isaac/RS

Rose Isaac
Subregional Director

RI:rs

cc: Tok Subregional Villages
Robert Silas
Representative Jerry Mackie

AVCP

Association of Village Council Presidents
P.O. Box 219 • Bethel, Alaska 99559 • Phone 543-3521

March 13, 1992

Dave Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

RE: HB 510 and HB 511

The Association of Village Council Presidents is interested in the quality of life for our elders. House Bill 510 and House Bill 511 are of particular interest to us, in it the bills will enhance much needed protection for the elderly and disabled. And it will mandate harsher penalties for crimes committed against them.

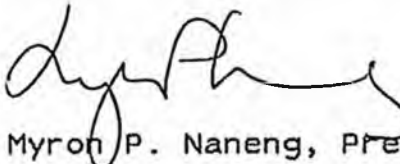
In this area we value the wisdom and the direction the elders give us. Crimes against the elderly and disabled cannot be tolerated, as well as the failure to report such abuse.

We hope that HB 510 and HB 511 introduced by Representative Mackie, Representative Ellis and Representative Lincoln will be passed into law.

House Bills 510 and 511 have our full support.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS
Willie Kasayulie, Chairman



Myron P. Naneng, President

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

→ news Articles re: crimes against elderly