

**HB**

**399**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
 Bill Version: HB 399  
 ( H ) Publish Date: 2/27/06  
 Dept. Affected: Health & Social Services

Revision Date/Time: (Note if correction):

Title ESTABLISHING THE OFFICE OF ELDER  
FRAUD AND ASSISTANCE

RDU Senior and Disabilities Svcs

Component Senior/Disabilities Svcs Admin

Sponsor CHENAULT

Requester HOUSE (STA)

Component No. 2663

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB399 will not impact (operational) expenses related to the Adult Protective Services Unit within the Division of Senior and Disability Services. The functional responsibility and authority proposed by HB 399 will be vested with The Office of Public Advocacy within the Department of Administration. DSDS is coordinating with OPA and other extensions of State Government that manage or respond to reports of elder abuse/fraud as appropriate to present an action model should the tenants of HB399 be passed as legislation to ensure all concerned entities operate accordingly within the bill provisions in a responsive manner.

Prepared by: Rod Moline, Director  
 Division: Senior and Disabilities Services  
 Approved by: Karleen Jackson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-1605  
 Date/Time 02/09/2006  
 Date 02/09/2006

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill version: HB399-DPS-AST-3-6-06  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title: "An Act establishing the office of elder fraud and assistance..." RDU: Alaska State Troopers  
Sponsor: Representative Chenault Component: AST Detachments  
Requester: House Finance Committee Component No.: 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

As written, this legislation will not have a fiscal impact on the Department of Public Safety.

Prepared by: Special Assistant Cliff Stone Phone 907-465-2649  
Division: Office of the Commissioner Date/Time 3/6/06 1:39 PM  
Approved by: Commissioner William Tandeske Date 3/6/2006  
Agency: Department of Public Safety

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB399-LAW-C&FB-3-3-0  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act establishing the office of elder fraud and RDU Civil  
assistance; and relating to fraud involving older Alaskans." Component Commercial and Fair Business  
Sponsor Representative Chenault  
Requester House Finance Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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 (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill adds the duty to investigate complaints involving fraud committed against Alaska's senior citizens to the Office of Public Advocacy's list of responsibilities in AS 44.21.410(a).

Passage of this legislation will not have fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetea, Director  
Division: Administrative Services Division  
Approved by: Kathryn Daughhetea for David Marquez, Attorney General  
Agency: Department of Law

Phone 465-3673  
Date/Time 3/6/06 8:22 AM  
Date 3/6/2006

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSF B 399 (FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act Relating to the Office of Elder Fraud... RDU Legal and Advocacy Services  
Component Office of Public Advocacy

Sponsor Chenault  
Requester Chenault Component No. 43

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	161.0					
Travel	10.0					
Contractual						
Supplies	8.0					
Equipment	10.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>189.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	189.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>189.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 100.0

Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would create the Office of Elder Fraud and Assistance within the Office of Public Advocacy. It would empower OPA to investigate complaints involving fraud committed against older residents of the State of Alaska who are 60 years of age and older.

This fiscal note is however smaller than that submitted by the Department of Administration in that it authorizes one Attorney III, a part time investigator and a part time paralegal. No national standards exist but elder fraud is becoming the number two crime against the elderly. To this date no known cases have been prosecuted in the State of Alaska.

Prepared by: Rep. Chenault

Phone 465-3779

Date 4/19/2006 2:15 p.m.

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CS HB 399 (FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 3/6/06 / 3:10 p.m. Dept. Affected: Administration  
Title: An act establishing the office of elder fraud and assistance, and relating to fraud... RDU: Legal and Advocacy Services  
Sponsor: Representative Chenault Component: Office of Public Advocacy  
Requester: (H) Finance Component No.: 43

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	450.1	450.1	450.1	450.1	450.1	450.1
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	132.0	132.0	132.0	132.0	132.0	132.0
Supplies	8.0	8.0	8.0	8.0	8.0	8.0
Equipment	33.5	4.0	4.0	4.0	4.0	4.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>638.6</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	638.6	609.1	609.1	609.1	609.1	609.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>638.6</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>	<b>609.1</b>

Estimate of any current year (FY2006) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would create the Office of Elder Fraud and Assistance within the Office of Public Advocacy. It would empower OPA to investigate complaints involving fraud committed against residents of the state who are sixty (60) years or older, and to bring civil actions on their behalf for injunctive and other relief. Other relief could include actions sounding in tort, unjust enrichment, property, contract, or small claims. (Continued on next page).

Prepared by: Joshua P. Fink, Director  
Division: Office of Public Advocacy  
Approved by: Michael Tibbles, Deputy Commissioner  
Agency: Administration

Phone: (907) 269-3501  
Date/Time: 3/6/06 / 3:10 p.m.  
Date: 3/6/2006

FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. CS HB 399 (FIN)

ANALYSIS CONTINUATION

In fiscal year 2005, Adult Protective Services (APS) received 500 complaints of financial abuse or exploitation (of the more than 1800 total complaints for abuse, neglect, and exploitation). A hand count of financial abuse cases from fiscal year 2004 indicated 397 financial exploitation cases reported. APS indicates that it has seen a "strong upward trend" in the number of financial abuse and fraud cases in the last five years.

Of the 500 cases investigated by APS in 2005, 87% of the cases were verified; approximately 65% of the 500 cases involved individuals over sixty (60). Based on the FY '05 numbers, and not factoring in the increasing trend, OPA would anticipate being referred at least 280 cases in its first year. These cases range from significant exploitation and misappropriate use of property and funds worth considerable sums, to smaller claims involving forged checks and misuse of credit cards. Fraud cases can be very complicated and involve significant civil discovery and auditing of paper trails. If significant sums are at issue, defendants often dig in and can increase costs.

It is difficult to project the costs necessary to establish this office. National organizations and numerous states have been contacted in an attempt to ascertain how many financial exploitation cases can be handled by an attorney in a calendar year. No national standards exist, and from the information OPA has obtained, its best estimation is that a single attorney can handle up to 65 cases a year with 3-5 of those 60 being complicated cases and the remaining less so.

Based upon that estimation, OPA anticipated it would need the following staff:

1 Attorney V	\$116.2
1 Attorney IV	\$109.2
1 Attorney III	\$ 96.7
1 Investigator II	\$ 63.6
1 Paralegal	<u>\$ 59.4</u>
	\$450.10
 Leasing Costs	 \$ 52.0
(General Services Est.)	

adopted 3/7/07 <sup>6</sup> am

24-LS1517F  
Mischel  
3/6/06

CS FOR HOUSE BILL NO. 399( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Lynn, Dahlstrom, Thomas, Croft, Ramras, Moses, Holm, Meyer, McGuire, Salmon, Guttenberg, Wilson, Keritula, Elkins, Foster, Kapsner, LeDoux

A BILL

FOR AN ACT ENTITLED

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

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

4 \* Section 1. AS 44.21.410(a) is amended to read:

5 (a) The office of public advocacy shall

6 (1) perform the duties of the public guardian under AS 13.26.360 -  
7 13.26.410;

8 (2) provide visitors and experts in guardianship proceedings under  
9 AS 13.26.131;

10 (3) provide guardian ad litem services to children in child protection  
11 actions under AS 47.17.030(e) and to wards and respondents in guardianship  
12 proceedings who will suffer financial hardship or become dependent upon a  
13 government agency or a private person or agency if the services are not provided at  
14 state expense under AS 13.26.025;

1 (4) provide legal representation in cases involving judicial bypass  
2 procedures for minors seeking abortions under AS 18.16.030, in guardianship  
3 proceedings to respondents who are financially unable to employ attorneys under  
4 AS 13.26.106(b), to indigent parties in cases involving child custody in which the  
5 opposing party is represented by counsel provided by a public agency, to indigent  
6 parents or guardians of a minor respondent in a commitment proceeding concerning  
7 the minor under AS 47.30.775;

8 (5) provide legal representation and guardian ad litem services under  
9 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on  
10 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or  
11 petitions for the termination of parental rights on grounds set out in  
12 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor  
13 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under  
14 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for  
15 protective orders on behalf of a minor; and in cases involving indigent persons who  
16 are entitled to representation under AS 18.85.100 and who cannot be represented by  
17 the public defender agency because of a conflict of interests;

18 (6) develop and coordinate a program to recruit, select, train, assign,  
19 and supervise volunteer guardians ad litem from local communities to aid in delivering  
20 services in cases in which the office of public advocacy is appointed as guardian ad  
21 litem;

22 (7) provide guardian ad litem services in proceedings under  
23 AS 12.45.046 or AS 18.15.355 - 18.15.395;

24 (8) establish a fee schedule and collect fees for services provided by  
25 the office, except as provided in AS 18.85.120 or when imposition or collection of a  
26 fee is not in the public interest as defined under regulations adopted by the  
27 commissioner of administration;

28 (9) provide visitors and guardians ad litem in proceedings under  
29 AS 47.30.839;

30 (10) provide legal representation to an indigent parent of a child with a  
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (11) investigate complaints and bring civil actions under  
3 AS 44.21.415(a) involving fraud committed against residents of the state who are  
4 60 years of age or older; in this paragraph, "fraud" has the meaning given in  
5 AS 44.21.415.

6 \* Sec. 2. AS 44.21 is amended by adding a new section to read:

7 Sec. 44.21.415. Office of elder fraud and assistance. (a) The office of elder  
8 fraud and assistance is established in the office of public advocacy to investigate  
9 complaints involving fraud committed against older Alaskans who are not otherwise  
10 able to bring a complaint without assistance, as defined in regulation, and to provide  
11 assistance to older Alaskans who are victims of fraud. The office shall work with  
12 local, state, and national law enforcement and social service agencies through  
13 cooperative agreements and may bring civil enforcement actions for injunctive and  
14 other relief for fraud committed against older Alaskans.

15 (b) In conducting an investigation under this section, the office of elder fraud  
16 and assistance may issue subpoenas, conduct interviews, and examine the business  
17 records, advances, transactions, and relevant records associated with the alleged fraud  
18 committed against an older Alaskan. The office may enter into contracts with  
19 attorneys and seek a court order to enforce a subpoena.

20 (c) In addition to the functions described under (a) and (b) of this section, the  
21 office of elder fraud and assistance shall provide information, referrals, and other  
22 assistance to older Alaskans who are victims of fraud and make recommendations to  
23 the commissioner for regulations on eligibility for assistance needed to implement this  
24 section.

25 (d) A cooperative agreement under (a) of this section must include a  
26 description of office operations and investigation protocols.

27 (e) Subject to the discretion of the court and taking into consideration the  
28 financial condition of the parties to a civil suit brought under this section, the office of  
29 public advocacy may seek recovery of all or part of litigation costs and fees, including  
30 costs incurred during the investigation of the case when the office of public advocacy  
31 is found to be a prevailing party after trial or settlement negotiation.

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(f) In this section,

(1) "fraud" means

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

(B) theft and related offenses under AS 11.46.100 - 11.46.740;

or

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

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

\* Sec. 3. AS 47.24.015(c) is amended to read:

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

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

[OR]

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

(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

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given in AS 44.21.415.

CONCEPTUAL AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: CS HB 399 ( )

Version 24-LS1517 *QF*

1 Page 4, lines ~~5~~ 5-6

2 Delete all material

3 Insert

4 (B) theft and related offenses under AS 11.46.100-11.46.210, AS 11.46.285,  
5 AS 11.46.290, AS 11.46.300-11.46.310, AS 11.46.500-11.46.510, AS 11.46.540, AS  
6 11.46.565-11.46.570, AS 11.46.600, AS 11.46.620, AS 11.46.720, and AS  
7 11.46.740; or

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CS FOR HOUSE BILL NO. 399( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Lynn, Dahlstrom, Thomas, Croft, Ramras, Moses, Holm, Meyer, McGuire, Salmon, Guttenberg, Wilson, Kerttula, Elkins, Foster, Kapsner, LeDoux

A BILL

FOR AN ACT ENTITLED

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

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

4 \* Section 1. AS 44.21.410(a) is amended to read:

5 (a) The office of public advocacy shall

6 (1) perform the duties of the public guardian under AS 13.26.360 -  
7 13.26.410;

8 (2) provide visitors and experts in guardianship proceedings under  
9 AS 13.26.131;

10 (3) provide guardian ad litem services to children in child protection  
11 actions under AS 47.17.030(e) and to wards and respondents in guardianship  
12 proceedings who will suffer financial hardship or become dependent upon a  
13 government agency or a private person or agency if the services are not provided at  
14 state expense under AS 13.26.025;

1 (4) provide legal representation in cases involving judicial bypass  
2 procedures for minors seeking abortions under AS 18.16.030, in guardianship  
3 proceedings to respondents who are financially unable to employ attorneys under  
4 AS 13.26.106(b), to indigent parties in cases involving child custody in which the  
5 opposing party is represented by counsel provided by a public agency, to indigent  
6 parents or guardians of a minor respondent in a commitment proceeding concerning  
7 the minor under AS 47.30.775;

8 (5) provide legal representation and guardian ad litem services under  
9 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on  
10 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or  
11 petitions for the termination of parental rights on grounds set out in  
12 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor  
13 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under  
14 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for  
15 protective orders on behalf of a minor; and in cases involving indigent persons who  
16 are entitled to representation under AS 18.85.100 and who cannot be represented by  
17 the public defender agency because of a conflict of interests;

18 (6) develop and coordinate a program to recruit, select, train, assign,  
19 and supervise volunteer guardians ad litem from local communities to aid in delivering  
20 services in cases in which the office of public advocacy is appointed as guardian ad  
21 litem;

22 (7) provide guardian ad litem services in proceedings under  
23 AS 12.45.046 or AS 18.15.355 - 18.15.395;

24 (8) establish a fee schedule and collect fees for services provided by  
25 the office, except as provided in AS 18.85.120 or when imposition or collection of a  
26 fee is not in the public interest as defined under regulations adopted by the  
27 commissioner of administration;

28 (9) provide visitors and guardians ad litem in proceedings under  
29 AS 47.30.839;

30 (10) provide legal representation to an indigent parent of a child with a  
31 disability; in this paragraph, "child with a disability" has the meaning given in

1 AS 14.30.350;

2 (11) investigate complaints and bring civil actions under  
3 AS 44.21.415(a) involving fraud committed against residents of the state who are  
4 60 years of age or older; in this paragraph. "fraud" has the meaning given in  
5 AS 44.21.415.

6 \* Sec. 2. AS 44.21 is amended by adding a new section to read:

7 **Sec. 44.21.415. Office of elder fraud and assistance.** (a) The office of elder  
8 fraud and assistance is established in the office of public advocacy to investigate  
9 complaints involving fraud committed against older Alaskans who are not otherwise  
10 able to bring a complaint without assistance, as defined in regulation, and to provide  
11 assistance to older Alaskans who are victims of fraud. The office shall work with  
12 local, state, and national law enforcement agencies through cooperative agreements  
13 and may bring civil enforcement actions for injunctive and other relief for fraud  
14 committed against older Alaskans.

15 (b) In conducting an investigation under this section, the office of elder fraud  
16 and assistance may issue subpoenas, conduct interviews, and examine the business  
17 records, advances, transactions, and relevant records of a person accused of  
18 committing fraud against an older Alaskan. The office may enter into contracts with  
19 attorneys and seek a court order compelling the production of relevant evidence.

20 (c) In addition to the functions described under (a) and (b) of this section, the  
21 office of elder fraud and assistance shall provide information, referrals, and other  
22 assistance to older Alaskans who are victims of fraud and make recommendations to  
23 the commissioner for regulations on eligibility for assistance needed to implement this  
24 section.

25 (d) A cooperative agreement under (a) of this section must include a  
26 description of office operations and investigation protocols.

27 (e) Subject to the discretion of the court and taking into consideration the  
28 financial condition of the parties to a civil suit brought under this section, the office of  
29 public advocacy may seek recovery of litigation costs and fees, including costs  
30 incurred during the investigation of the case.

31 (f) In this section,

- 1 (1) "fraud" means  
2 (A) robbery, extortion, and coercion under AS 11.41.500 -  
3 11.41.530;  
4 (B) theft and related offenses under AS 11.46.100 - 11.46.740;  
5 or  
6 (C) exploitation of another person or another person's resources  
7 for personal profit or advantage with no significant benefit accruing to the  
8 person who is exploited;

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

11 \* Sec. 3. AS 47.24.015(c) is amended to read:

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

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

25 [OR]

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  
29 refer the report made to the department under AS 47.24.010 to the office of  
30 public advocacy for investigation; in this paragraph, "fraud" has the meaning  
31 given in AS 44.21.15.

Conceptual  
Amendment to CS HB 399 (FIN):

#

2  
Adopted  
4/19

By Rep. Chenuault

Beginning at Page 3, line 27:

(e) Subject to the discretion of the court and regulations promulgated by the office of public advocacy, and taking into consideration the financial condition of the parties to a civil suit brought under this section, the office of public advocacy may seek recovery of partial or full litigation costs and fees from any party, including costs incurred during the investigation of the case, whether the office of public advocacy prevails or settles in the best interest of the client. The office of public advocacy shall enter a fee agreement with any party it represents in accordance with this section, the Alaska Rules of Court, and the Alaska Rules of Professional Responsibility.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 27, 2006

**SUBJECT:** Elder Fraud and Assistance (Work Order No. 24-LS1517A)

**TO:** Representative Mike Chenault  
Attn: Sue Wright

**FROM:** Jean M. Mischel  
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds to the duties of the office of public advocacy the investigation of complaints involving elder fraud as defined in sec. 2 of the bill.

Section 2. Establishes an office of elder fraud and assistance within the office of public advocacy to investigate complaints involving elder fraud and to provide assistance to older Alaskans. Specifies investigatory and assistance duties of the office and defines terms used.

Section 3. Authorizes the Department of Health and Social Services or its designee to refer cases involving elder fraud to the office established under sec. 2 of the bill.

JMM:ljw  
06-039.ljw

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# Proposed Federal Law

## The Elder Justice Act S.333 and H.R. 2490

Although the number of older Americans is fast growing, the problem of elder abuse, neglect and exploitation has long been invisible and presents among the gravest issues facing millions of American families. The Elder Justice Act would provide federal resources to support State and community efforts on the front lines dedicated to fighting elder abuse with scarce resources and fragmented systems. From a social perspective, elder justice means assuring adequate public-private infrastructure and resources to prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation. From an individual perspective, elder justice is the right of every older person to be free of abuse, neglect and exploitation. The Elder Justice Act would promote both aspects of elder justice with the following provisions:

- **Elevate elder justice issues to a national attention.** Creation of (1) Offices of Elder Justice at the Departments of Health and Human Services and Justice to serve programmatic, grant-making, policy and technical assistance functions relating to elder justice, (2) a public-private and a Coordinating Council to coordinate activities of all relevant federal agencies, States, communities and private and not-for-profit entities, and (3) a consistent funding stream and national coordination for Adult Protective Services (APS).
- **Improving the quality, quantity and accessibility of information.** An Elder Justice Resource Center and Library will provide information for consumers, advocates, researchers, policy makers, providers, clinicians, regulators and law enforcement and prevent "re-inventing" the wheel. A national data repository also will be developed to increase the knowledge base and collect data about elder abuse, neglect and exploitation.
- **Increasing knowledge and supporting promising projects.** Given the paucity of research, Centers of Excellence will enhance research, clinical practice, training and dissemination of information relating to elder justice. Priorities include a national incidence and prevalence study, jump-starting intervention research, developing community strategies to make elders safer, and enhancing multi-disciplinary efforts.
- **Developing forensic capacity.** There is scant data to assist in the detection of elder abuse, neglect and exploitation. Creating new forensic expertise (similar to that in child abuse) will promote detection and increase expertise. New programs will train health professionals in *both* forensic pathology and geriatrics.
- **Victim assistance, "safe havens," and support for at-risk elders.** Elder victims' needs, which are rarely addressed, will be better met by supporting creation of "safe havens" for seniors who are not safe where they live and development of programs focusing on the special needs of at-risk elders and older victims.
- **Increasing prosecution.** Technical, investigative, coordination, and victim assistance resources will be provided to law enforcement to support elder justice cases. Preventive efforts will be enhanced by supporting community policing efforts to protect at-risk elders.
- **Training.** Training to combat elder abuse, neglect and exploitation is supported both within individual disciplines and in multi-disciplinary (such as public health-social service-law enforcement) settings.
- **Special programs to support underserved populations including rural, minority and Indian seniors.**
- **Model State Laws and Practices.** A study will review state practices and laws relating to elder justice.
- **Increasing Security, Collaboration, and Consumer Information in Long-Term Care.**
  - Improving prompt reporting of crimes in long-term care settings
  - Criminal background checks for long-term care workers
  - Enhancing long-term care staffing
  - Information about long-term care for consumers through a Long-Term Care Consumer Clearinghouse
  - Promoting accountability through a new federal law to prosecute abuse and neglect in nursing homes
- **Evaluations and accountability.** Provisions to determine "what works" and assure funds are properly spent.

## Elder Justice Goals

- Elevate national *awareness* about elder abuse, neglect and exploitation
- Increase *knowledge* about elder abuse
- *Train* as many disciplines as possible
- *Prosecute*, where appropriate
- *Combat* elder abuse with new programs in LTC

### Increase Knowledge about Elder Abuse, Neglect and Exploitation:

- National Incidence and Prevalence Study
- Resource Center and Library
- National Data Repository
- Underserved Populations
- Model State Laws
- Grants, Demonstration Projects and Studies

### Increase Training about Elder Abuse, Neglect and Exploitation:

- Health professionals in forensic pathology and geriatrics
- Promising practices through demonstration grants
- All relevant professionals

### Grants, Demonstration Projects and Studies:

- 5 Centers of Excellence
- Data development
- Safe Havens
- Multi-disciplinary and inter-disciplinary grants
- Training Grants
- Healthcare professionals with geriatric training
- Special Needs Grants
- Public Awareness
- Forensic Centers
- Nursing Career Ladders
- LTC facility management and training
- Study the role/response by government and government funded entities
- CDC study - public health prospective
- Geriatric forensic training
- Elder Justice Innovation Fund

### Support Prosecutions of Elder Abuse, Neglect and Exploitation, as Appropriate:

- Technical, investigative, coordination, and victim assistance resources
- Prompt reporting of crimes in long-term settings

Require prompt reporting of crimes in long-term care settings

- LTC facilities - \$10,000
- Owner, operator, employee, agent, contractor
- Report "reasonable suspicion"
- To one or more LE
- 2 hrs – serious bodily injury
- 24 hrs – no serious bodily injury
- Penalty – up to \$200k and/or Medicare exclusion

Combat Elder Abuse, Neglect and Exploitation Through New LTC Programs

- Criminal Background Checks
- Long-Term Care Consumer Clearinghouse
- 60-Day Notice of LTC Closings
- Tax Incentives

Elevate Elder Abuse, Neglect and Exploitation to the National Stage

- Offices of Elder Justice at HHS & DOJ
- Public-Private Coordinating Council
- Federal Office for Adult Protective Services
- Reauthorization in 7 years



# Stolen 'Golden Years'

States address the silent epidemic of elderly financial victimization

By Carrie Abner

As many as 5 million elderly Americans are victims of financial exploitation each year, although estimates suggest that victims report the crime in only one of 25 cases. States are beginning to recognize this growing trend and are working to stop the abuse.

In a March 2005 address announcing a new initiative to combat financial exploitation against the elderly in Illinois, Gov. Rod Blagojevich said, "Our seniors have worked hard, raised their families, and they deserve a peaceful and safe retirement." The governor created a special statewide unit of investigators to provide a variety of services to seniors, including investigation of financial abuse cases, advocacy and education. The need for such state-led initiatives is growing.

In Missouri, a 91-year-old woman lives in a nursing home. Although mentally competent, she was taken to the facility for a visit and left there. While in the nursing home, she learned that one of her farms and a number of her household items had

been sold. Someone she trusted had obtained power of attorney when she was extremely ill and hospitalized. She had no memory of signing the document and had no intention of selling any of her property.

In Oregon, an elderly woman was living alone. At the age of 90, she was deaf, partially blind and in a wheelchair. She hired a full-time caregiver, who bilked her out of \$56,000 between March and September 1999, draining her accounts completely. Sadly, the woman's family and public officials only became aware of the abuse following her death.

While these true-life cases, reported to state and local officials, may seem extreme, they unfortunately represent a growing crisis in the United States. Too many Americans find them

"golden years"—a time to relax and enjoy family and friends—stolen from them as a result of financial exploitation and abuse.

## A Growing Crisis

The National Center on Elder Abuse (NCEA) defines elder financial exploitation as "the illegal or improper use of an elder's funds, property or assets." According to Paul Greenwood, the lead prosecutor on senior abuse cases in San Diego County, California, financial abuse takes many forms, including credit card fraud, real estate scams, identity theft and burglary.

And reports of elder financial exploitation, experts say, are on the rise.

Reported cases of elder financial exploitation have more than tripled in Oregon since 1993. Representatives of the Elder Safe Program in Washington County, Oregon, recently noted that senior citizens in that county lost almost \$2 million to financial exploitation and crime in 2004. And county officials estimate that actual losses may be even greater due to gross underreporting of such crimes. According to Joyce DeMonnin, coordinator for the program, "While the number is shockingly high, we know it is still a fraction of the amount of money seniors lost in Washington County last year." She adds that true losses to Washington County seniors could total \$10 million.

"Elder financial abuse is a crime of opportunity and it's on the rise," said Maine Attorney General Steven Rowe to participants at a May 2004 conference on elder abuse. "Seventy percent of the nation's net worth is owned by those aged 50 or older. This makes seniors a rich target. Forty percent of all reported elder abuse cases involve financial exploitation."

According to Rowe, Maine's Bureau of Elder and Adult Services referred substantiated cases totaling more than \$22 million to the Attorney General's Office between July 2001 and May 2004. The average victim reported losing \$39,000, Rowe said.

While reports of elder financial abuse are increasingly common, experts are unaware of the true scope of the crisis nationwide.

Like other forms of elder abuse, few cases of financial exploitation are reported to officials. A study conducted by NCEA in 1998 found that for every reported case of elder abuse, another five cases went unreported. And elders are less likely to report incidents of financial exploitation than any other category of abuse, according to a paper by The Archstone Foundation. NCEA recently cited estimates indicating that only 1 in 25 cases of elder financial abuse is reported to officials, suggesting that as many as 8 million seniors may be victims of financial exploitation each year.

And as the U.S. population ages, the incidence of elder financial abuse is likely to rise. In 2000, there were an estimated 35 million individuals age 65 or older in the United States, comprising nearly 13 percent of the total population. The Federal Interagency Forum on Aging-Related Statistics reports that the size of the older population is expected to double by 2030, growing to 70 million. This will create an even larger population of seniors vulnerable to financial exploitation.

According to a report issued in 2002 by the National Research Council, "The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and

"The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care."

—The National Research Council



"Elder financial abuse is a crime of opportunity and it's on the rise."

—Maine Attorney General Steven Rowe

relationships change, and increasing numbers of older persons require long-term care."

### The Cost of Abuse

While little is known about the exact costs associated with elder abuse, experts note they are likely significant. "When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs," noted Lori Stiegel of the American Bar Association's Commission on Law and Aging at a 2003 hearing of the U.S. Judiciary Committee. "When elder abuse victims need services from adult protection programs, long term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs." The cost to the elderly victims is equally troubling.

"Losing the fruits of a lifetime's labor through financial exploitation can be devastating," said a recent paper on elder financial crimes by NCEA and the Goldman Institute on Aging. "It may compromise victims' independence and security, destroy legacies and lead to depression, hopelessness or even suicide. Although financial crimes are committed against members of all age groups, the impact is particularly great on the elderly."

For seniors, victimization can mean the loss of lifelong savings and pension benefits. As a result, elder victims may find themselves suddenly dependent on public assistance programs or going without food, medication or other necessities.

At a 1999 hearing of the U.S. Senate Judiciary Committee, Susan Herman of the National Center for Victims of Crime noted that financial exploitation of the elderly can have serious, lifelong impacts for victims. "Generally, senior citizens do not have the time or opportunity for financial recovery: their prime earning years are behind them. At a time when one tries to conserve assets, a blow to financial security is often a permanent and life-threatening setback," she stated.

### Challenges for State Officials

As state and local officials try to address the incredibly complex problem of elder financial abuse, they face a number of challenges.

Experts point out that seniors are uniquely vulnerable to financial exploitation. Many live independently and are isolat-

**"When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs."**

Lori Stiegel  
ABA's Commission on Law and Aging

ed from the rest of the community. Elders tend to be home during the day, more trusting of strangers, less likely to report exploitation and increasingly dependent on others for daily tasks, such as home repairs. American seniors also hold a disproportionate percentage of the country's wealth and often have quick access to significant amounts of cash. Together, these factors render seniors at high risk of becoming victims of financial exploitation and fraud.

Yet, little is known about the extent of financial crimes against the elderly. While some research has been conducted on elderly victimization by telemarketing frauds, only limited information exists on other areas of elder financial abuse, including fraud and theft by family

members and domestic caregivers.

Further complicating the matter is the fact that few cases of elder financial abuse are reported to officials. According to experts, seniors may be reluctant to report such crimes against them out of shame or embarrassment. For other aging adults, financial matters remain a taboo subject—not one that is discussed openly. Some may fear being seen as incompetent, or worse, being deprived of their independence should they report having been defrauded. Elders who are victimized by family members, meanwhile, may be hesitant to report crimes against them, reluctant to get loved ones in trouble.

Experts also point out difficulties in regulating in-home care providers, one of the fastest-growing job segments in the country. Individual caregivers are rarely subjected to background checks, which poses a major risk to the well-being of elders. Greenwood reports, "The majority of cases I prosecute now are con-artists taking care of the elderly."

Another challenge for state leaders is the complexity of elder financial abuse and the need for interagency coordination at state and local levels. Like other forms of elder abuse, effective state responses to financial exploitation require collaboration by a range of state and local agencies, including law enforcement, adult protective services, victim service agencies and private partners. Without adequate mechanisms in place for interagency coordination, for example, incidents of elder fraud reported to APS may never be passed on to law enforcement officials, preventing prosecution of cases and restitution to elder victims. Yet, coordination remains a major challenge for states due to limited authority, mandates, finite resources, competing priorities and work force shortages.

Experts caution that the lack of coordination can be disastrous for elder victims. According to A. Ricker Hamilton, protective program administrator for Maine and past president of the National Adult Protection Services Association, the lack of interagency coordination means that "victims remain hidden. Elder abuse continues to be undetected and underreported. We need to develop a systemic response to elder abuse before we become victims."

## States Respond

Despite these and other challenges, states are becoming increasingly aware of elder financial abuse and are taking steps to address the problem through legislative and programmatic initiatives.

For instance, in a 2003 survey by the National Association of Adult Protective Services Administrators, 29 out of the 35 responding states noted that they had a mandatory reporting statute that included financial exploitation. According to a recent study by the University of Iowa, state mandatory report-

**"We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."**

ing laws are linked to significantly higher investigation rates of elder abuse cases among states.

In Maine, the Improvident Transfers of Title law allows seniors who have transferred property as a result of undue influence to get court orders for its return. The law applies to both financial and real property that has been transferred to someone with a confidential or fiduciary relationship to the victim, including family members, accountants, brokers, financial advisors, health care providers, attorneys, caregivers and friends.

According to Arizona law, individuals in a position of trust who use deception or intimidation to gain permanent control of a senior's assets are considered guilty of theft. Individuals guilty of violating their duties to elders are further subject to damages in civil actions equal to three times the amount of monetary damages to the elder and forfeit their claims to an elder's estate.

## State Initiatives: Getting Banks Involved

Some states are including banks in their efforts to combat elder financial abuse, recognizing the potential for frontline bank employees to detect suspected cases of financial exploitation of seniors on a daily basis.

The Oregon Elder Financial Exploitation Program is a partnership between the Oregon Department of Justice, local agencies serving the elderly, the Oregon Bankers Association and AARP. With funding from the U.S. Department of Justice's Office for the Victims of Crime, the program has developed training materials to educate bank personnel on recognizing the warning signs of elder financial exploitation and the appropriate mechanisms for reporting suspected cases. Oregon law grants immunity to banks and their staffs when reporting suspicions of elder financial abuse.

Meanwhile, the California Bankers Association is sponsoring AB 1664, the Elder Abuse Reporting Bill. Introduced by Assemblyman Mike Chirco, the bill authorizes the staff of financial institutions to report incidents of suspected financial abuse of an elder or dependent adult. The bill also authorizes APS officials to request and receive financial information of a bank client when investigating the financial abuse of an elder. The bill passed the House of Representatives and is currently under consideration in the Senate.



Continued on page 35

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## Stolen 'Golden Years'

—Continued from page 21

An Oregon law protects banks from liability when they report suspected cases of elder financial exploitation. While the law does not represent a mandatory reporting law for bank personnel, it provides protection for banking institutions and their employees when reporting suspicions of abuse.

States are also initiating programs to respond to elder financial abuse.

Illinois Gov. Rod Blagojevich's new program would enable investigators to develop liaisons with senior service providers, prosecutors, other law enforcement agencies and financial representatives to more effectively refer cases. In addition, the unit would provide educational programs for senior citizen groups and others throughout the state about the warning signs of financial abuse and fraud. Investigators would also provide support and guidance to elders throughout the investigation and prosecution process. Gov. Blagojevich said of the program and stopping elder financial abuse, "We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

Meanwhile, the primary force behind Florida's battle against elder fraud is the state's senior citizens themselves. As part of the Seniors vs. Crime Project, elders serve as volunteers to educate their peers on the dangers of consumer fraud and possible warning signs. The Senior Sleuths, as they are known, also assist the attorney general's office and other law enforcement agencies to detect fraud in their communities. With the help of more than 2,000 Senior Sleuths performing such tasks as checking to ensure that prescriptions are accurately filled and conducting undercover sting operations to detect businesses using false or deceptive practices, the attorney general's office has been successful in handling more than 2,000 complaints, prosecuting over 40 cases and recovering more than \$3 million since the program's inception.

For many states, becoming more aware of the threat of elder financial abuse represents the first step in developing innovative state responses. While limited information exists on the exact scope of the problem at the national level, individual cases like those of the abused women in Missouri and Oregon underscore the serious threats seniors face in protecting the assets on which they depend.

As the U.S. population ages, states will continue to face the challenges of elder financial abuse and exploitation. While states have already taken important steps to address this growing problem, much more remains to be done.

*Carrie Abner is a public safety and justice policy analyst at The Council of State Governments.*

## Fact File

- Nearly 33 percent of the complaints for telemarketing frauds in 2004 were made by individuals age 60 and older, up from 27 percent in 2002.
- The proportion of individuals losing \$5,000 or more through Internet fraud is higher for victims 60 years and older than for any other age group.
- From 1992 to 1997, seniors were the victims of 2.7 million property and violent crimes; 2.5 million burglaries, motor vehicle thefts and household thefts; 46,000 purse snatchings and pocket-pickings; and 165,000 non-lethal violent crimes including rape, robbery and aggravated and simple assault.
- Estimates indicate that only 1 in 25 cases of elder financial abuse is reported. There may be as many as 5 million elders victimized by financial exploitation each year.

*Sources: National Elder Financial Issues Center, "Elder Financial Abuse: A National Problem," U.S. Department of Justice, Bureau of Justice Statistics, October 2004; "Elder Financial Abuse," p. 10.*



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## Couple indicted on fraud charges

**GUARDIANS: Elderly father was target of alleged crimes.**

By LISA DEMER

Anchorage Daily News

*(Published: January 20, 2006)*

A federal grand jury says a Chugiak couple used their position as legal guardians to bilk the woman's aged father out of nearly \$500,000.

An indictment returned this week charges Frank and Phyllis Talas with conspiracy and misappropriation of funds by a fiduciary, or person entrusted with another's property or money. In addition, Frank Talas is charged with three counts of wire fraud.

According to the charges, it all began back in July 2001, when Frank R. Talas Jr. petitioned in state Superior Court for temporary guardianship of his father-in-law, Donald Mitchell, and was approved. On April 18, 2002, Talas and his wife, Phyllis, became full guardians for her father, the indictment says.

This isn't an isolated situation. The problem of vulnerable people being taken advantage of appears to be increasing in Alaska, says the state's public advocate.

Guardians manage their wards' money and property and make medical and other key life decisions "to promote and protect the well-being of the person," Alaska law says.

The Talases weren't supposed to accept money from Mitchell without prior court approval. According to his family, he is in his 70s and has Alzheimer's disease.

But, the charges say, they illegally siphoned \$495,010 and spent some of it creating a business that failed. The money also went to travel and other personal expenses, the indictment said.

The situation came to light when they failed to pay Mitchell's bill at the Chugiak Senior Center, an assisted living home where he lived, said Lisa Stanley, a court investigator appointed to review the case when matters started falling apart a couple of years ago. Mitchell since has been moved to a different home.

"I am glad to hear this was followed through on," Stanley said Friday.

Allegations of guardians preying on people are hard to prove, especially when it's all in the family or among supposed friends. If the victim has Alzheimer's or otherwise can't communicate well, it's even tougher, she said.

There is a tendency to think: "Oh, they are family. They are not going to hurt this person. But that is not always the case," Stanley said.

Frank Talas said Friday he didn't want to talk about the matter in detail until he had spoken with an attorney. He didn't even know he and his wife had been indicted, he said. The matter seemed to have blown over in 2003 when questions about the spending arose at the senior center and responsibility was transferred to a state public guardian, he said.

"Things happened," Talas, 52, said. But there was no big plan to go after Mitchell's money, he said.

The case was investigated by the inspector general's office in the U.S. Department of Veterans Affairs, and the U.S. Postal Inspection Service, officials said. Mitchell is retired from the Air Force, and his veterans benefits were

among the assets wrongly taken, according to the indictment.

Guardians appointed by judges hold tremendous power over the lives and property of adults who cannot make decisions for themselves because of incapacity or disability.

Most guardians are relatives or friends willing to serve for free. But not everyone has someone close to them able and willing to do the job. The state employs public guardians for people with low income. In other cases, professional guardians take on the job for a fee.

Around the state, there appears to be a growing problem of elderly and vulnerable individuals being exploited, said Josh Fink, director of the state Office of Public Advocacy, where public guardians work.

"There are charlatans out there that are really taking advantage of people," Fink said.

Family members or friends who serve as guardians get very little training and face little oversight.

Sometimes, cases of vulnerable people being ripped off are discovered only when guardianships are transferred from private guardians to the public guardians in his office, Fink said. Other times, shady characters take advantage of the individual, even moving into the ward's home, and it's up to the guardian to kick them out, he said.

Cases have popped up recently in Juneau, Fairbanks and on the Kenai Peninsula, Fink said.

His office can try to recover small amounts of money and property through Small Claims Court or can ask a private attorney to take complex cases on a contingency basis, if there's enough at stake. But other financial exploitation cases fall in between. The state hasn't put enough resources into this area, either to pursue them criminally or through civil avenues, Fink said.

Oversight comes mainly from judges. Guardians are supposed to make detailed annual reports to the courts. But in the case of the Talases, they had not even completed their first year as full guardians when the problems emerged, Stanley said.

At the time the Talases became his guardians, Mitchell had various assets worth more than \$300,000 and a steady retirement income: \$39,108 annually from the Air Force, \$6,096 from the civil service, and \$6,486 from Social Security, the indictment said.

On March 13, 2002, Frank Talas had \$58,290 belonging to Mitchell wired to an account in the Mat-Su that the couple controlled, the indictment said. The next day, he had \$144,391 transferred, the document said. Then, that same day, he opened a credit union account for Silver Wolf and Cub Enterprises, which Talas said was a handyman venture. About \$60,000 of Mitchell's money went into the failed business, the indictment said.

If convicted, the couple faces the possibility of prison time and hefty fines, according to the U.S. Attorney's Office.

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Daily News reporter Lisa Demer can be reached at [ldemer@adn.com](mailto:ldemer@adn.com) and 257-4390.

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## Types of guardians in Alaska

There are three types of guardians in Alaska. All must be appointed by a judge. They are:

- **FAMILY OR FRIENDS:** They must first take one hour of training.

- PAID, PROFESSIONAL GUARDIANS. Under reforms that took effect last year, they must be licensed by the state, pass criminal background checks, be certified by a national organization, and be able to prove they can be bonded and insured.
- PUBLIC GUARDIANS. They are state employees and usually serve as guardians for low- income people.

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## Laws can shield seniors from fraud

By REP. TOM ANDERSON

*(Published: February 11, 2006)*

Elders in Alaska are to be valued. With their lifelong contributions they have great experience and wisdom to share. Whether remarkable or not, they are the parental figures of our community; they are the ones who fought for us and brought us to where we are in the world today. They ought to be cherished.

One way we can do that is to give them more protection in the law. Too often these days, seniors in Alaska are vulnerable to fraud and manipulation. Though living longer, they often live alone and without immediate family, thus, being easy targets for schemers. Our laws constantly need to be fine-tuned to address the protection of disabled and incapacitated seniors.

Alaskans report fraud at the second highest rate in the nation. This type of crime includes identity theft, credit card heisting and defrauding citizens of their assets. These crimes can hit senior citizens the hardest. This newspaper recently reported about a couple from Chugiak who were indicted by a grand jury for bilking nearly \$500,000 out of an elderly man, whom they were serving as legal guardians.

They were acting through the guardianship program of the state run by the Office of Public Advocacy. This office oversees approximately 2,500 guardians and conservators in Alaska, monitoring them annually. Many guardians are either family or friends, others are professional guardians, while still others are public guardians appointed by the state.

Josh Fink, director of the state Office of Public Advocacy, sees a lot of abuse of the elderly. He has heard of numerous cases of scams and identity theft in Alaska. He says that those who face the greatest difficulties of managing life, amidst rapidly changing technologies, are the aged.

The OPA now requires licensing standards for guardians and conservators. In 2001, when the Chugiak couple had been involved in their alleged deceptions, there was no licensing requirement for guardians. No specific set of qualifications was necessary at that time to certify guardians in Alaska. This gap in the law left wide open the possibility for shysters to abuse their role as guardians.

Since then, the Legislature closed the gap, enacting a law that requires guardians and conservators to fulfill clear licensing standards. That law, HB 427 which passed in 2004, addressed the need for regulatory enforcement of private professional guardians. Several organizations, including the Alaska State Association for Guardianship and Advocacy, the Senior Advocacy Coalition and the Long-term Care Ombudsman's office, helped me in drafting and moving that legislation. It is one more tool to help protect vulnerable and incapacitated adults to receive the care they deserve.

Another law now being discussed in Juneau is HB 132; it increases the penalties for crimes committed against the elderly. It adds weight to the criminality of actions perpetrated against our longest cherished citizens. For example, it will change a class-A misdemeanor into a class-C felony when that same violation is committed against a senior citizen. This is another way we as Alaskans can honor and protect our elders.

The population of older citizens in Alaska is growing rapidly, as are the crimes that affect them. The physical, emotional and financial harm of a crime against an elderly person can be devastating. We have every reason to consider increasing our protections for them in law.