

HB

399

Alaska State Legislature

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Representative Carl Gatto

MEMORANDUM

To: House Finance Co-Chair Kevin Meyer
House Finance Co-Chair Mike Chenault
From: House State Affairs Vice-Chair Carl Gatto
Date: February 13, 2006
Re: Issues raised in regard to HB 399

A handwritten signature in black ink, appearing to read "Carl Gatto", with a long horizontal line extending to the right.

During the hearing in House State Affairs on HB 399 the House State Affairs committee raised a number of issues. HB 399 was sent from committee with the understanding that these issues would be addressed by the sponsor or the next committee of referral:

1. What problem are we trying to solve? Do we need another state agency providing services, or just better coordination between the existing agencies that provide services for elders/seniors who are victims of fraud or abuse? Numerous state agencies already exist to provide elder fraud/abuse services. What is the benefit of adding yet another agency to the mix? It can also be very confusing trying to navigate a system that includes all of the following agencies and potentially more:

Office of the Governor:

Attorney General's Office, Medicaid fraud unit

Department of Administration

Office of Public Advocacy, public guardians
Assisted Living Licensing

Department of Health and Human Services

Senior and Disability Services,
Senior Care Information Center
Adult Protective Services
Alaska Commission on Aging

Department of Revenue, Mental Health Trust Authority

Office of Long Term Care Ombudsman

Department of Community and Economic Development
"elder wise campaign"

Various non-profit agencies that receive state funds
Alaska Legal Services Corporation

2. There is a need to balance the desire for efficiency and streamlining efforts and the need for some checks and balance to exist between the many agencies that provide services.
3. There may be a conflict in housing the agency at OPA because OPA provides guardianship services, and it is highly likely that a guardian would eventually be the subject of an abuse/fraud complaint at some time.
4. The penalties imposed on those convicted of committing fraud against the elderly should be increased.

ALASKA STATE LEGISLATURE

News From The House Majority

web site: <http://www.akrepublicans.org>

House Majority Press
Renée Limoge - (907) 269-0164



FOR IMMEDIATE RELEASE: January 27, 2006

CONTACT: Renée Limoge (907) 465-5446

Chenault Sponsors Bill to Help Combat Elder Abuse

(ANCHORAGE) – Representative Mike Chenault (R-Nikiski) has introduced legislation in the House of Representatives to create a division within the Office of Public Advocacy to examine cases of elder abuse.

HB 399 would give the division the authority to investigate and turn over for prosecution, cases which fall under existing fraud statutes.

"In recent years the Kenai Peninsula has seen several cases of senior citizens being "fleeced," defrauded or otherwise taken advantage of financially by individuals, sometimes even relatives. Creating an office to look at these issues is a step that the Legislature can take to protect senior citizens in Alaska," said Representative Chenault.

Chenault went on to say, "Often times our senior citizens are embarrassed or too ashamed to ask for help when preyed upon by people they trust. This office will remove the stigma, which goes along with asking for help. It also insures our seniors can live safe happy lives without suffering financial hardship at the hands of those they may have trusted. After a lifetime of hard work and savings seniors should be able to experience the "Golden Years" while healthy and able. House Bill 399 sends a clear signal that Alaskan Senior Citizens will be protected from dishonorable individuals."

The most egregious case of senior abuse on the Peninsula is recent and is gratefully now in the hands of the Office of Public Advocacy.

HB 399 has been referred to the House State Affairs Committee.

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HB0399a -1- HB 399

New Text Underlined [DELETED TEXT BRACKETED]

24-LS1517A

HOUSE BILL NO. 399

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-LS1517\A)

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

State of Alaska Alaska Commission on Aging, PO Box, 110693, Juneau, AK 99811
907-465-3250, FAX 465-1398 www.alaskaaging.org

FAX



DATE 2/10/06

Number of pages including cover sheet: 4

TO: Louie Hova

Rep. Seaton

Phone: 2689

Fax: 3472

Linda Gohl

FROM: **LINDA GOHL**

Executive Director

Alaska Commission on Aging

E-Mail: linda_gohl@health.state.ak.us

REMARKS: Urgent Please Reply For your info

*Re: proposed federal law,
Elder Justice Act*

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 setting
- 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 their

"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 5 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-

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—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 convicted felons ... 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 agency 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

measures. 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-

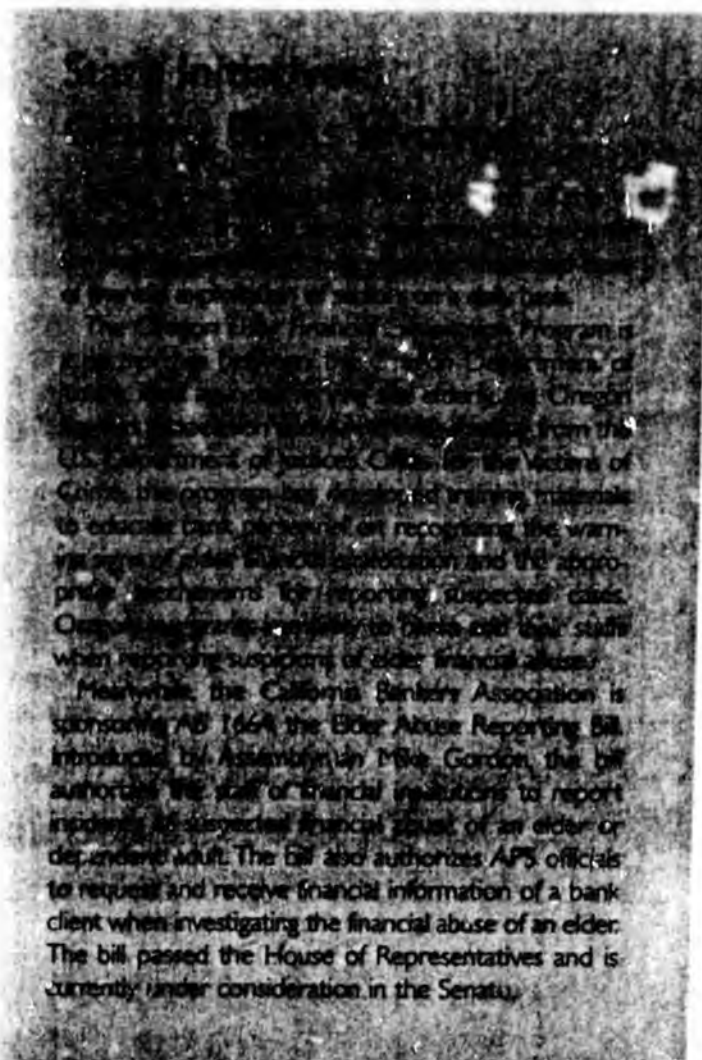
"We must do everything we can to guard the elderly from fraud and abuse and afford them the respect and security they deserve."

—Illinois Gov. Rod Blagojevich

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.



L.T.O.: - should be conducted in LTO after
"one stop shop"

~~string of~~
~~with~~

Like to toughen-up
see maps

OPA respects when L.T.O. did not
troubled but want w/o OPA.

win track

- ① Ethics - stages
- ② Gardner w/ Ombudsman - way to give respect to
which agency is best equipped → if ombudsman
- ③ Legislators in a working group - Greenberg
→ Max - wants to see records + working group that OPA/et al
are on.

→ in Juneau Legal Svcs Company and PA
Work in C.I.N.A. Cos

Lots of D. flt agents/lots of litig. business

Final Note

Question: how many civil fraud cases can an OPA attorney
handle in a year - look to get into/students

2 attorneys: net of .5 million
w/ staff
+ space

→ Kevin J. J. set up ready

→ Div. In of occupied license (assisted about nucleus)

to an LIC. in Delaware: the "Genesis" "Blessings Ranch" Craig (Walsted)

history there in 5-10 years

fleece

Wire - fraud

F.B.I. express that there are weaknesses

Dr. G. - Long term can obtain - short state

- an issue Subpoena

- request to legal counsel

- currently ^{2 cases} ~~perhaps~~ proceedings

Real Svcs (physical through network to court + CBS)

Conservator/Guardian

→ 900 adults OPA settings → so opa can take act if not
→ 10% suffered financial exploitation
Guardian of Prop

J-sh file fiscal Note still being worked out

- ② → Committee may need to look at an audit to needs based
- ① → Committee Mechanism to review actual costs if no financial hardship in part of these litigating for
- ③ → May want to need to extend definition of eligible to 65 from 55

6 "hard cases" = ~~that~~ ombudsman - Not watchdog or guardianship
2 missing facts cases long term case -
currently - 1 A.g. work with him

Don't want to duplicate what she's against dig
Get together in a working group

- ① who does what eligible funds
- ② how costs are borne
- ③ if a civil action brought should get full actual attorney fees (see consumer protection statute)

~~4/1~~

→ currently covered

④ → include language on page 3 lines 2-4
not the civil action - behalf of