

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0480.01 Brita Darling x2241

HOUSE BILL 12-1226

HOUSE SPONSORSHIP

Barker,

SENATE SPONSORSHIP

Aguilar,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A SURCHARGE ON PERSONS CONVICTED OF CRIMES**
102 **AGAINST AT-RISK PERSONS, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill imposes a surcharge on persons convicted of crimes against at-risk adults and at-risk juveniles. Once collected, the surcharge is transferred to the crimes against at-risk persons surcharge fund. The state office on aging shall distribute moneys from the fund to a fiscal

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

agent who will oversee the award of moneys to programs that provide respite services for caregivers of at-risk adults or at-risk juveniles. Programs receiving moneys from the fund must comply with provisions concerning the use of funds and reporting requirements.

The court is permitted to waive some or all of the surcharge if the person convicted of the crime is indigent or unable to pay the surcharge.

The surcharge applies to offenses committed on or after July 1, 2012.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-6.5-102, **add** (1.7)
3 and (1.8) as follows:

4 **18-6.5-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (1.7) "CONVICTED" AND "CONVICTION" MEAN A PLEA OF GUILTY
7 ACCEPTED BY THE COURT, INCLUDING A PLEA OF GUILTY ENTERED
8 PURSUANT TO A DEFERRED SENTENCE UNDER SECTION 18-1.3-102, A
9 VERDICT OF GUILTY BY A JUDGE OR JURY, OR A PLEA OF NO CONTEST
10 ACCEPTED BY THE COURT.

11 (1.8) "CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE"
12 MEANS ANY OFFENSE LISTED IN SECTION 18-6.5-103, OR CRIMINAL
13 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THOSE
14 OFFENSES.

15 **SECTION 2.** In Colorado Revised Statutes, **add** 18-6.5-107 as
16 follows:

17 **18-6.5-107. Surcharge - collection and distribution of funds -**
18 **crimes against at-risk persons surcharge fund - creation - report.**

19 (1) EACH PERSON WHO IS CONVICTED OF A CRIME AGAINST AN AT-RISK
20 ADULT OR AT-RISK JUVENILE OR WHO IS CONVICTED OF IDENTITY THEFT
21 PURSUANT TO SECTION 18-5-902, WHEN THE VICTIM IS AN AT-RISK ADULT

1 OR AT-RISK JUVENILE, SHALL BE REQUIRED TO PAY A SURCHARGE TO THE
2 CLERK OF THE COURT FOR THE JUDICIAL DISTRICT IN WHICH THE
3 CONVICTION OCCURS.

4 (2) SURCHARGES PURSUANT TO SUBSECTION (1) OF THIS SECTION
5 SHALL BE IN THE FOLLOWING AMOUNTS:

6 (a) FOR EACH CLASS 2 FELONY OF WHICH A PERSON IS CONVICTED,
7 ONE THOUSAND FIVE HUNDRED DOLLARS;

8 (b) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED,
9 ONE THOUSAND DOLLARS;

10 (c) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED,
11 FIVE HUNDRED DOLLARS;

12 (d) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED,
13 THREE HUNDRED SEVENTY-FIVE DOLLARS;

14 (e) FOR EACH CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED,
15 TWO HUNDRED FIFTY DOLLARS;

16 (f) FOR EACH CLASS 1 MISDEMEANOR OF WHICH A PERSON IS
17 CONVICTED, TWO HUNDRED DOLLARS;

18 (g) FOR EACH CLASS 2 MISDEMEANOR OF WHICH A PERSON IS
19 CONVICTED, ONE HUNDRED FIFTY DOLLARS; AND

20 (h) FOR EACH CLASS 3 MISDEMEANOR OF WHICH A PERSON IS
21 CONVICTED, SEVENTY-FIVE DOLLARS.

22 (3) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE
23 REQUIRED PURSUANT TO THIS SECTION AS FOLLOWS:

24 (a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK OF THE
25 COURT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS
26 SUBSECTION (3). SUCH AMOUNT RETAINED SHALL BE TRANSMITTED TO THE
27 STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH

1 FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

2 (b) NINETY-FIVE PERCENT SHALL BE TRANSFERRED TO THE STATE
3 TREASURER, WHO SHALL CREDIT THE SAME TO THE CRIMES AGAINST
4 AT-RISK PERSONS SURCHARGE FUND CREATED PURSUANT TO SUBSECTION
5 (4) OF THIS SECTION.

6 (4) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
7 CRIMES AGAINST AT-RISK PERSONS SURCHARGE FUND, REFERRED TO IN
8 THIS SECTION AS THE "FUND", THAT CONSISTS OF MONEYS RECEIVED BY
9 THE STATE TREASURER PURSUANT TO THIS SECTION. THE MONEYS IN THE
10 FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
11 ASSEMBLY TO THE STATE OFFICE ON AGING IN THE DEPARTMENT OF
12 HUMAN SERVICES, CREATED PURSUANT TO SECTION 26-11-202, C.R.S.,
13 FOR DISTRIBUTION TO A FISCAL AGENT THAT IS AN AFFILIATE OF A
14 NATIONAL ORGANIZATION THAT SERVES INDIVIDUALS AFFECTED BY A
15 DISABILITY AND CHRONIC CONDITION ACROSS THE LIFE SPAN AND IS
16 WORKING WITH THE STATE OF COLORADO TO IMPLEMENT THE LIFESPAN
17 RESPITE CARE PROGRAM, REFERRED TO IN THIS SECTION AS THE "FISCAL
18 AGENT". PROVIDED THAT PROGRAMS SELECTED TO RECEIVE MONEYS FROM
19 THE FUND MEET THE GUIDELINES FOR DISTRIBUTION PURSUANT TO
20 PARAGRAPH (b) OF THIS SUBSECTION (4), THE FISCAL AGENT SHALL AWARD
21 MONEYS TO PROGRAMS SELECTED BY A STATEWIDE COALITION OF
22 NONPROFIT OR NOT-FOR-PROFIT ORGANIZATIONS THAT FOCUS ON THE
23 NEEDS OF CAREGIVERS OF AT-RISK ADULTS OR AT-RISK JUVENILES.

24 (b) THE STATE OFFICE ON AGING IN THE DEPARTMENT OF HUMAN
25 SERVICES SHALL ESTABLISH GUIDELINES FOR THE DISTRIBUTION OF THE
26 MONEYS FROM THE FUND, INCLUDING BUT NOT LIMITED TO:

27 (I) PROCEDURES FOR PROGRAMS TO USE IN APPLYING FOR AN

1 AWARD OF MONEYS FROM THE FUND;

2 (II) PROCEDURES FOR THE FISCAL AGENT TO USE IN REPORTING TO
3 THE STATE OFFICE ON AGING PURSUANT TO PARAGRAPH (e) OF THIS
4 SUBSECTION (4); AND

5 (III) ACCOUNTABILITY AND PERFORMANCE STANDARDS FOR
6 PROGRAMS THAT RECEIVE MONEYS FROM THE FUND.

7 (c) NOTWITHSTANDING ANY PROVISIONS OF PARAGRAPH (a) OF
8 THIS SUBSECTION (4) TO THE CONTRARY, THE FISCAL AGENT MAY USE A
9 PORTION OF THE MONEYS THAT IT RECEIVES PURSUANT TO PARAGRAPH (a)
10 OF THIS SUBSECTION (4) FOR TRAINING AND TO FACILITATE THE
11 COORDINATION OF PROGRAMS THAT PROVIDE RESPITE SERVICES FOR
12 CAREGIVERS OF AT-RISK ADULTS OR AT-RISK JUVENILES. THE FISCAL
13 AGENT SHALL DISTRIBUTE THE REMAINDER OF THE MONEYS DIRECTLY TO
14 THE PROGRAMS.

15 (d) EACH PROGRAM THAT RECEIVES MONEYS FROM THE FUND
16 SHALL:

17 (I) PROVIDE RESPITE SERVICES THAT ALLOW A CAREGIVER TO HAVE
18 A BREAK FROM CAREGIVING;

19 (II) HAVE A SIGNED AGREEMENT AND PROTOCOL WITH THE FISCAL
20 AGENT;

21 (III) CONDUCT A FINGERPRINT-BASED CRIMINAL HISTORY RECORD
22 CHECK OF STAFF AND PROVIDERS; AND

23 (IV) SATISFY THE ACCOUNTABILITY AND PERFORMANCE
24 STANDARDS ESTABLISHED BY THE STATE OFFICE ON AGING PURSUANT TO
25 SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (4).

26 (e) THE FISCAL AGENT SHALL REPORT TO THE STATE OFFICE ON
27 AGING IN THE DEPARTMENT OF HUMAN SERVICES ON A REGULAR BASIS TO

1 BE SPECIFIED BY THE STATE OFFICE ON AGING. THE REPORT SHALL
2 INCLUDE, BUT NEED NOT BE LIMITED TO:

3 (I) A LIST OF ALL PROGRAMS THAT RECEIVED MONEYS FROM THE
4 FUND IN THE PRECEDING FISCAL YEAR;

5 (II) A DESCRIPTION OF HOW EACH PROGRAM THAT RECEIVED
6 MONEYS FROM THE FUND IN THE PRECEDING FISCAL YEAR USED THOSE
7 MONEYS; AND

8 (III) DOCUMENTATION DEMONSTRATING THAT EACH PROGRAM
9 THAT RECEIVED MONEYS FROM THE FUND IN THE PRECEDING FISCAL YEAR
10 SATISFIED ALL OF THE CRITERIA SPECIFIED IN PARAGRAPH (d) OF THIS
11 SUBSECTION (4).

12 (f) THE STATE OFFICE ON AGING SHALL NOT EXPEND ANY MONEYS
13 UNTIL THE FUND HAS ENOUGH MONEY TO PAY THE EXPENSES NECESSARY
14 TO ADMINISTER THE FUND.

15 (g) ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT
16 OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY MONEYS
17 NOT APPROPRIATED BY THE GENERAL ASSEMBLY SHALL REMAIN IN THE
18 FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND
19 OF THE STATE AT THE END OF ANY FISCAL YEAR.

20 (5) THE COURT MAY WAIVE ALL OR ANY PORTION OF THE
21 SURCHARGE REQUIRED BY SUBSECTION (1) OF THIS SECTION IF THE COURT
22 FINDS THAT A PERSON CONVICTED OF A CRIME AGAINST AN AT-RISK ADULT
23 OR AT-RISK JUVENILE IS INDIGENT OR FINANCIALLY UNABLE TO PAY ALL OR
24 ANY PORTION OF THE SURCHARGE. THE COURT MAY WAIVE ONLY THAT
25 PORTION OF THE SURCHARGE THAT THE COURT FINDS THAT THE PERSON
26 CONVICTED OF A CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE
27 IS FINANCIALLY UNABLE TO PAY.

1 **SECTION 3.** In Colorado Revised Statutes, 18-1.3-204, **add** (2.5)
2 (i.7) as follows:

3 **18-1.3-204. Conditions of probation.** (2.5) The order of priority
4 for any payments required of a defendant pursuant to subparagraph (IV),
5 (V), (VI), or (VI.5) of paragraph (a) of subsection (2) of this section shall
6 be as follows:

7 (i.7) PAYMENT OF A SURCHARGE FOR A CRIME AGAINST AN AT-RISK
8 PERSON PURSUANT TO SECTION 18-6.5-107.

9 **SECTION 4. Appropriation.** In addition to any other
10 appropriation, there is hereby appropriated, out of any moneys in the
11 crimes against at-risk persons cash fund created in section 18-6.5-107 (4),
12 Colorado Revised Statutes, not otherwise appropriated, to the department
13 of human services, for the fiscal year beginning July 1, 2012, the sum of
14 \$5,726, or so much thereof as may be necessary, for allocation to adult
15 assistance programs, community services for the elderly, for distributions
16 to a fiscal agent related to the implementation of this act.

17 **SECTION 5. Act subject to petition - effective date -**
18 **applicability.** (1) This act takes effect August 15, 2012; except that, if
19 a referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within the ninety-day period after final adjournment of the general
22 assembly, then the act, item, section, or part will not take effect unless
23 approved by the people at the general election to be held in November
24 2012 and, in such case, will take effect on the date of the official
25 declaration of the vote thereon by the governor.

26 (2) The provisions of this act apply to convictions on or after the
27 applicable effective date of this act.