

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 18, 2013)

Drafting Number: LLS 13-0311 **Date:** April 8, 2013
Prime Sponsor(s): Sen. Hudak **Bill Status:** Senate Second Reading
 Rep. Schafer ; Stephens **Fiscal Analyst:** Kerry White (303-866-3469)

TITLE: CONCERNING ABUSE OF AT-RISK ADULTS.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015	FY 2015-2016
State Revenue			
Cash Funds			
P.O.S.T. Board Cash Fund	\$12,500	\$12,500	\$7,500
Fines Collection Cash Fund		<5,000	<\$5,000
State Expenditures	<u>\$3,303,708</u>	<u>\$1,758,432</u>	<u>\$1,753,432</u>
General Fund	3,286,208	1,414,337	1,414,337
County Funds	0	331,595	331,595
Cash Funds			
P.O.S.T. Board Cash Fund	17,500	12,500	7,500
FTE Position Change	1.0 FTE	1.0 FTE	1.0 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.			
Appropriation Summary for FY 2013-2014: See State Appropriations section.			
Local Government Impact: See Local Government Impact section.			

Summary of Legislation

Colorado's Adult Protective Services (APS) system, enacted in 1991, is designed to protect vulnerable or at-risk adults who, because of age or mental or physical ability, are unable to obtain services or otherwise protect their own health, safety, and welfare. Under current law, an "at-risk adult" is any person over the age of 18 who meets this criteria. Colorado law encourages members of certain helping professions to make reports of known or suspected abuse and provides a telephone hotline for all citizens. Among its many provisions *and as amended by the Senate Appropriations Committee*, this bill creates a new class of protections for "at-risk elders," who are defined as any person age 70 or older. The bill also makes a number of changes to the APS system, as follows:

Mandatory reporting. Beginning July 1, 2014, members of helping professions listed in statute (mandatory reporters) are required to report known or suspected abuse of at-risk elders, and to make the report within 24 hours. Emergency medical service providers, physical therapists, clergy members, and chiropractors are added to the list of affected professionals.

Penalties. Failure to make a mandatory report is a class 3 misdemeanor. A person who files a report in good faith is immune from civil action or criminal prosecution. The bill also relocates existing penalties for theft-related crimes, caretaker neglect, and making a false report for offenses against at-risk elders.

Investigations. Law enforcement agencies are required to complete a criminal investigation when appropriate and to provide a summary of investigation reports to the relevant county department of social services and district attorney.

Training. The Peace Officer Standards Training (P.O.S.T.) Board in the Department of Law is required to develop and implement a training curriculum no later than January 1, 2014. Training is to assist peace officers in recognizing and responding to incidents of known or suspected abuse and exploitation of at-risk elders. On and after January 1, 2015, local law enforcement agencies are required to employ at least one officer that has completed the new P.O.S.T. training. The board is authorized to charge a fee to participants for the training.

Implementation of mandatory reporting. As of January 1, 2014, the Department of Human Services (DHS) is directed to implement a program to generate awareness among the public and mandatory reporters about the mistreatment, self-neglect, and exploitation of all at-risk adults, including at-risk elders. DHS is also tasked with preparing a report to certain committees of the General Assembly concerning the implementation of this bill by December 31, 2016.

Background

County departments of social services are mandated under Section 26-3.1-103, C.R.S., to investigate all reports of abuse, exploitation, or neglect of at-risk adults. Reports are evaluated and investigated according to the rules established by DHS. DHS rules currently classify responses as a referral, no response needed, urgent and requiring follow up, requiring a response within 24 hours, or requiring a response within 3 days, followed by appropriate services as needed. Services can range from assisting persons with obtaining public benefits and providing case management to seeking emergency placements and guardianship of the at-risk adult.

Colorado data shows that in FY 2011-12, a total of 11,000 new reports were filed. Of this number, 4,733, or 43 percent, required an investigation. In addition, a total of 1,750 investigations were carried forward from the prior fiscal year. Overall, cases requiring investigation have increased by an average of 2 percent per year.

Senate Bill 12-078 established a 17-member Elder Abuse Task Force, which met during the 2012 legislative interim. Task force members included representatives from the legal community, law enforcement, long-term care providers, health care professionals, banking, social services, and agencies of the state that serve at-risk elderly adults. The task force developed recommendations regarding various issues related to at-risk elders, including how to fund and implement a system of mandatory reporting for incidents of their mistreatment or exploitation; the provision of services; and the adequacy of existing criminal penalties levied for offenses against this population.

The task force's report suggested the state implement the following recommendations:

- reduce county caseloads from 34:1 to 25:1 at an estimated cost of \$2.7 million;
- implement mandatory reporting at an estimated cost of \$1.7 million;
- increase funding for services for at-risk adults to be used per county discretion at a cost of \$1 million;
- provide training and quality assurance activities in DHS at an estimated cost of \$165,000; and
- implement a new data collection system at a cost of \$250,000 (which is presently included in the DHS budget request for FY 2013-14).

State Revenue

Overall, this bill will increase state cash fund revenue by \$12,500 in FY 2013-14, by up to \$17,500 in FY 2014-15, and by up to \$12,500 per year beginning in FY 2015-16.

Fee Impact on Individuals, Families or Businesses. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Beginning in FY 2013-14, the Department of Law is authorized to recover training costs for training conducted by the P.O.S.T. board. Because of the delay to develop the curriculum and requirement to complete the training by January 1, 2015, this analysis assumes that five classes for 25 persons will be offered in each of FY 2013-14 and FY 2014-15. Each training participant will pay a fee of \$100. Total revenue is anticipated to be \$12,500 for each of the first two years. Beginning in FY 2015-16, the fiscal note assumes 75 peace officers will receive training per year. Table 1 identifies the fee impact of this bill.

Table 1. Fee Impact on the Department of Law Under SB13-111				
Type of Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Training on At-risk Elders FY 2013-14	\$100.00	\$100.00	125	\$12,500
Training on At-risk Elders FY 2014-15	\$100.00	\$100.00	125	\$12,500
Training on At-risk Elders FY 2015-16 and future years	\$100.00	\$100.00	75	\$7,500
TOTAL				\$32,500

Criminal fines. Beginning in FY 2014-15, cash fund revenue collected by the Judicial Department may increase by up to \$5,000 per year as a result of persons convicted of a class 3 misdemeanor for failing to make a mandatory report. Per Section 18-1.3-501 (1)(a), C.R.S., the fine penalties for this crime is \$50 to \$750. Unless otherwise provided by law, the fines are to be deposited into the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of imposing a fine, and the timing of payments are established on a per-offender basis, the impact to the cash fund and the General Fund cannot be determined.

State Expenditures

This bill will increase state expenditures by \$3,303,708 and 1.0 FTE in FY 2013-14, by \$1,758,432 and 1.0 FTE in FY 2014-15, and, beginning in FY 2015-16, by \$1,753,432 and 1.0 FTE per year. Table 2 and the discussion that follows describe the costs to implement the bill's requirements. Costs are based on the assumption that caseload will increase by 15 percent per year, which aligns with the findings of the Elder Abuse Task Force.

Table 2. Expenditures Under SB13-111 Mandatory Reporting			
Cost Components	FY 2013-14	FY 2014-15	FY 2015-16
Department of Human Services			
Personal Services	\$70,967	\$77,419	\$77,419
FTE	1.0	1.0	1.0
Operating Expenses and Capital Outlay	5,653	950	950
Travel	9,588	9,588	9,588
County Caseworker Increases (22.0 FTE)	0	1,657,975	1,657,975
County Caseworker Caseload Reductions	2,200,000	0	0
County Services	1,000,000	0	0
Department of Law			
Training Development	5,000	0	0
Training Implementation	12,500	12,500	7,500
TOTAL	<u>\$3,303,708</u>	<u>\$1,758,432</u>	<u>\$1,753,432</u>
General Fund	286,208	1,414,337	1,414,337
County Funds	0	331,595	331,595
Cash Funds	17,500	12,500	7,500

Department of Human Services. Costs for DHS will increase by \$86,208 and 1.0 FTE in FY 2013-14 and, beginning in FY 2014-15, by \$1,745,932 and 1.0 FTE per year. Personal services, operating, capital outlay, and travel costs are required for 1.0 FTE to provide training and quality assurance activities. Beginning in FY 2014-15, costs will increase by \$1,657,975 per year to increase county administration by 22 FTE. Of the total costs, and in accordance with current law, 80 percent will be paid with General Fund moneys and 20 percent will be paid from county funds. The bill includes an appropriation for FY 2013-14 of \$2.2 million to assist counties in reducing existing caseload ratios and of \$1 million to increase services provided to at-risk adults.

Department of Law. Beginning in FY 2013-14, the Department of Law is authorized to provide training for peace officers through the P.O.S.T. Board. Costs to develop this training are \$5,000. As discussed in the state revenue section, this analysis assumes that five classes for 25 persons will be offered in each of FY 2013-14 and FY 2014-15. Beginning in FY 2015-16, the fiscal note assumes 75 peace officers will receive training per year. Costs are estimated at \$100 per person. All costs will be paid with cash funds from the P.O.S.T. Board Cash Fund, for which sufficient spending authority and funds exist and, therefore, no increase in appropriations is required.

Judicial Department. An increase in the number of reported cases of abuse, neglect, or self-neglect may lead to increased court cases (civil or criminal). The number of cases will depend upon such factors as the severity of abuse and whether the condition of the at-risk elder makes the opening of a probate or mental health case necessary. Additionally, the courts appoint counsel in mental health and probate cases when there is a finding of indigence. To the extent that this bill results in an increase in the number of mental health and probate cases with indigent clients, there will be increased expenditures for court-appointed counsel. The fiscal note assumes that any increase in costs will be minimal and can be accomplished within existing appropriations.

Office of the State Public Defender (OSPD). The OSPD may experience an increase in workload due to new case filings and increases in the time to litigate cases. The number of case filings associated with crimes created under the bill is expected to be low and not require an increase in appropriations.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be minimal.

Other departments. An increase in reported cases of abuse, neglect, or self-neglect may also lead to an increase in caseload for public assistance programs, such as Medicaid. As of this writing, no information about the potential increase in caseload for these programs is available. This analysis assumes any increase in costs will be addressed through the annual budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under SB13-111*			
Cost Components	FY 2013-14	FY 2014-15	FY 2015-16
Employee Insurance	\$6,756	\$6,756	\$6,756
Supplemental Employee Retirement Payments	4,752	5,376	6,001
TOTAL	\$11,508	\$12,132	\$12,757

*More information is available at: <http://colorado.gov/fiscalnotes>

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. Senate Bill 13-111 adds a new crime for failure to file a mandatory report. A mandatory

reporter commits failure to file a report by violating his or her duty to file such a report with a law enforcement agency within 24 hours. This offense may not be charged under a comparable statute in current law. This analysis assumes filings will be minimal.

Local Government Impact

Overall, this bill is anticipated to increase costs for local governments in several ways and decrease costs in others. First, the bill increases the number of adult protective services reports that are received and must be followed up with an investigation. As described above, the county share of costs is estimated to be \$331,595 per year (20 percent), beginning in FY 2014-15. Staffing requirements will vary by county, but total 22.0 FTE.

Second, costs may increase as a result of counties enrolling previously unidentified but eligible at-risk adults in public assistance programs, including low-income housing, food stamps, and Medicaid, among others. The impact of these costs to the counties cannot be estimated as of this writing.

Third, the bill creates a class 3 misdemeanor for false failure to file a mandatory report. The penalty for a class 3 misdemeanor is up to six months imprisonment in a county jail, a fine of \$50 to \$750, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined, but is assumed to be minimal. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$50.44 to house state inmates.

Finally, for FY 2013-14, the bill appropriates an additional \$3.3 million to be used to assist counties in reducing caseloads among caseworkers and to increase services provided to at-risk adults.

State Appropriations

For FY 2013-14, the Department of Human Services is appropriated \$3,286,208 General Fund and 1.0 FTE. This includes:

- \$2.2 million for the reduction of county APS caseworker caseloads;
- \$1 million for the county provision of adult protective services to at-risk adults; and
- \$86,208 and 1.0 FTE for adult protective services training and quality assurance activities.

The Department of Law has sufficient spending authority from the P.O.S.T. Board Cash Fund and does not require an increase in appropriations.

Departments Contacted

Corrections	Counties	District Attorneys
Health Care Policy and Financing	Human Services	Judicial
Law	Local Affairs	Municipalities
Public Health and Environment		