

Senate Bill 15-109 Task Force

Findings and Recommendations

November 30, 2015



Page Table of Contents

4.	SB 15-109 Task Force Members
5.	Letter regarding recommendations of the SB15-109 Task Force
6.	Executive Summary
8.	Introduction
	Findings and Recommendations
9.	I. Recommendations concerning the provision of protective services by county departments to adults with intellectual and developmental disabilities who are mistreated, abused, neglected, or exploited.
12.	II. Recommendations concerning conforming changes to the statutory or regulatory provisions either in civil or criminal areas as they relate to mandatory reporting and investigating mistreatment, abuse, neglect, or exploitation of an at-risk adult with an intellectual and developmental disability, including definitions of mistreatment and neglect.
31.	III. Recommendations concerning the estimated costs of implementation of SB15-109, including workload impacts and services, to be incurred by the State Departments, county departments, Community Centered Boards, and law enforcement agencies of the state as a result of requiring mandatory reporters, as identified in Section 18-6.5-108, C.R.S., to report known or suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities. Recommendations for training of State Departments, county departments, and Community Centered Boards to use outcome-based best practices in the provision of protective services to at-risk adults with intellectual and developmental disabilities. Recommendations regarding the training of mandatory reporters in identifying suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities.
47.	IV. Recommendation identifying sustainable sources of funding, including new or existing revenues, that may be used to offset the costs to be

incurred by state departments, county departments, community-centered boards, and law enforcement agencies of the state as a result of requiring certain persons to report known or suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities.

- 49. V. Additional Discussions and Needs
- 51. Appendix 1 – SB 15-109
- 61. Appendix 2 – Sample Language of “Incident or Accident” for Training Purposes
- 62. Appendix 3 – Federal Guidance for Financial Services Industries Related to Reporting of Mistreatment Under the Gramm-Leach-Bliley Act
- 67. Appendix 4 – Reporting Requirements
- 68. Appendix 5 – Current Funding Sources
- 70. Appendix 6 – Possible Funding Sources; Identified by the SB12-078 Task Force
- 72. Appendix 7 – Minority Report from the Colorado Bankers Association Member
- 75. Appendix 8 – Minority Report from Colorado Counties, Inc. and Colorado Human Services Directors Association
- 77. Appendix 9 – Minority Report from the Colorado Cross-Disability Coalition
- 81. Appendix 10 – Minority Report from the Colorado District Attorneys Council

SB 15-109 Task Force Members

NAME	TITLE	ORGANIZATION	REPRESENTING
Mindy Kemp	Division Director	CO Department of Human Services	CDHS Executive Director Reggie Bicha or Designee
Lori Thompson	Program Services Section Manager, Community Living Office	CO Department of Health Care Policy and Financing	HCPF Executive Director Susan Birch or Designee
Randy Kuykendall	Division Director, Health Facilities and Emergency Medical Services Division	CO Department of Public Health and Environment	CDPHE Executive Director Dr. Larry Wolk or Designee
David Ervin	Executive Director	The Resource Exchange	Statewide Organization of Community Centered Boards
Scott Storey	Senior Chief Deputy DA	1st District Jefferson (Golden)	Statewide Organization of District Attorneys
Stacey Buso	Area Director	Bethesda Lutheran Services	Statewide Organization of LTC Providers for for Adults with I/DD
Kasey Daniel	Attorney Coordinator	Disability Law Colorado	Statewide Organization that Provides Legal Advice for Adults with I/DD
Heidi Prentup	Commander	Boulder County Sheriffs	Statewide Organization of Law Enforcement Officers
Marijo Rymer	Executive Director	Arc of Colorado	Statewide Organization that Advocates on Behalf of Persons with I/DD
Darla Stuart	Executive Director	Arc of Aurora	Statewide Cross-disability Organization
Vickie Clark	Director, Routt County	Colorado Human Services Directors Association	County Department with Experience Providing Protective Services to Adults with I/DD
Jennifer Kelly	Director	Bridges of Colorado	Representative of an Agency that Provides Non-medical Home Care for Adults with I/DD
Nancy Sharpe	Commissioner, Arapahoe County	Colorado Counties, Inc.	Statewide Organization that Represents Counties
Anne Patton	Parent		A Parent/Guardian of an Adult with I/DD
Jenifer Waller	Sr. Vice President	Colorado Bankers Association	Statewide Organization of Financial Institutions

Letter regarding recommendations of the SB15-109 Task Force

November 30, 2015

Dear Members of the Colorado General Assembly:

On behalf of the members of the SB15-109 Task Force, please find attached to this letter the final report on the best approaches to implementing the expansion of mandatory reporting of mistreatment of at-risk adults to individuals with intellectual and developmental disabilities and related necessary statutory changes.

The Task Force worked diligently between July and November 2015, meeting nine times and creating subcommittees as needed. Task Force participants reviewed materials and engaged in vigorous debate.

The Task Force uniformly endorses the passage of mandatory reporting for at-risk adults with intellectual and developmental disabilities. However, the Task Force is united in the belief that adequate resources are necessary to ensure a smooth transition and implementation of this expansion to current mandatory reporting laws.

The Task Force looks forward to working with the members of the General Assembly to implement the Task Force recommendations. We stand ready to assist you in every way we can.

Sincerely,

Members of the SB15-109 Task Force

Cc: Reggie Bicha, Executive Director, Colorado Department of Human Services
Julie Krow, Deputy Executive Director, Colorado Department of Human Services

EXECUTIVE SUMMARY

The At-Risk Adults with Intellectual and Developmental Disabilities Mandatory Reporting Implementation Task Force (Task Force) was established by SB15-109 to study and prepare recommendations for the implementation of mandatory reporting of mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities. This report details the Task Force's findings and recommendations.

Summary of Findings and Recommendations:

1. Consistent with the current language in SB15-109, the Task Force recommends that law enforcement and Adult Protective Services (APS) are key agencies with authority to investigate allegations of abuse, caretaker neglect, and exploitation of at-risk adults with an Intellectual and Development Disability (IDD).
2. The Task Force recommends that the Community Centered Boards (CCBs) continue to review incidents and accidents in accordance with existing rules and regulations.
3. The Task Force recommends that it continue to meet as an informal working group, beginning in January 2016 to develop:
 - a. Common, working language for incidents and accidents to be used by law enforcement, APS, and CCBs in developing training materials for those agencies' staff, mandatory reporters, and the community.
 - b. Recommendations regarding cooperative agreements related to the local coordination of investigations and related services between law enforcement, APS, and the CCBs to ensure the best outcomes for adults with IDD experiencing mistreatment.
 - c. Methods for ensuring that law enforcement and APS are sharing critical report and investigative information in a timely manner.
4. The Task Force recommends changes to statutory language that align key definitions across the Criminal (Title 18, Article 6.5), Adult Protective Services (APS) (Title 26, Article 3.1), and Intellectual and Developmental Disabilities (IDD) (Title 25.5, Article 10, Part 2) sections of the Colorado Revised Statutes (C.R.S.) to ensure that all agencies are operating under the same legal guidelines, whenever possible.
5. The Task Force recommends the list of mandatory reporters be updated and expanded to ensure a more comprehensive list of professionals who routinely interact with at-risk adults with IDD and at-risk elders are identified as mandatory reporters.

6. The Task Force further recommends additional conforming statutory changes in all statutes to ensure that any new or modified definitions are incorporated throughout each statute.
7. The Task Force recommends funding be provided to support administrative and personnel costs of investigating reports and providing protective services for county departments, the State Department, law enforcement, and judicial districts.
8. The Task Force recommends mandatory training for APS, law enforcement, CCBs, and also that training is available for mandatory reporters and the community and that funding be provided for all training costs.
9. The Task Force recommends fully funding the administrative and training costs identified in this report with a sustainable revenue stream, including funding for a SFY2015-16 supplemental and ongoing funding beginning in SFY2016-17.
10. The Task Force further recommends that if the General Assembly is unable to fully fund the administrative and training costs identified in this report with a sustainable revenue stream, that SB15-109 be repealed or delayed and that mandatory reporting for at-risk adults with an intellectual and developmental disability not be implemented until such time as the General Assembly can meet the Task Force's funding recommendation.
11. The Task Force agrees that the two most promising sources of new revenue to support the costs of law enforcement and APS investigating, prosecuting, and providing protective services to vulnerable adults in Colorado are utilizing the increased revenues generated through marijuana taxes or from the Victims of Crime Act (VOCA).

Finally, the Task Force had additional discussions and identified needs beyond the recommendations. These are areas in which the Task Force recommends further discussion be had.

INTRODUCTION

The 2015 Colorado General Assembly established the At-Risk Adults with Intellectual and Developmental Disabilities Mandatory Reporting Implementation Task Force (Task Force) through SB15-109 (Appendix 1). The Task Force was charged with studying and preparing recommendations for the implementation of mandatory reporting of mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities. The recommendations requested by the General Assembly include but are not limited to provision of protective services by counties, changes in statutes or regulations, evaluation of costs and funding sources associated with implementing mandatory reporting and training, and suggestions for training. On July 1, 2016, Section 18-6.5-109, C.R.S., which created the Task Force will be repealed and the mandatory reporting requirement for suspected mistreatment of at-risk adults with intellectual and developmental disabilities, established in Section 18-6.5-108, C.R.S., will be in effect.

This report is respectfully submitted to the Governor, the Joint Budget Committee, the Health and Human Services Committee of the Senate, and the Public Health Care and Human Services Committee of the House of Representatives. Areas of concern and focus for the task force have been around ensuring counties and local communities are prepared for the increase in reports and have the training and resources needed to be effective at implementing SB15-109 effective July 1, 2016. The task force was specifically interested in ensuring the capacity and role of County Adult Protective Services programs to investigate and provide services and law enforcement and District Attorneys to investigate and prosecute crimes against at-risk adults with IDD. It is important to note that not all Task Force members agreed that the implementation date should remain as July 1, 2016, advocating for a delay in implementation to January 1, 2017. See Appendices 7, 8, and 10 for minority reports.

In the pages that follow are the findings and recommendations developed by the Task Force, with consensus or supermajority approval, to ensure SB15-109 is implemented effectively and ensure protection for at-risk adults with IDD in Colorado.

Recommendation I

Recommendations concerning the provision of protective services by county departments to adults with intellectual and developmental disabilities who are mistreated, abused, neglected, or exploited.

- 1. Consistent with the current language in SB15-109, the Task Force recommends that law enforcement and Adult Protective Services (APS) are key agencies with authority to investigate allegations of abuse, caretaker neglect, and exploitation of at-risk adults with an Intellectual and Development Disability (IDD).**
- 2. The Task Force further recommends that the Community Centered Boards (CCBs) continue to review incidents and accidents in accordance with existing rules and regulations at 10 CCR 2505-10, 8.600.**
- 3. The Task Force recommends that it continue to meet as an informal working group, beginning in January 2016 to develop:**
 - a. A definition for incidents and accidents to be used by law enforcement, APS, and CCBs in developing training materials for those agencies' staff, mandatory reporters, and the community.**
 - b. Recommendations regarding cooperative agreements related to the local coordination of investigations and related services between law enforcement, APS, and the CCBs to ensure the best outcomes for adults with IDD experiencing mistreatment.**
 - c. Methods for ensuring that law enforcement and APS are sharing critical report and investigative information in a timely manner.**

Background

The Task Force agrees that the two key agencies with authority to investigate reports related to abuse, neglect, and exploitation, a.k.a., "mistreatment", of at-risk adults with IDD should rest with law enforcement and APS. This dual approach to investigation of these reports ensures that law enforcement can focus on the crime and APS can focus on the victim and providing support and protective services to prevent further mistreatment. Additionally, the Task Force agrees that there is a conflict of interest when the Community Centered Boards (CCBs) investigate reports of mistreatment within their own agency. APS and law enforcement are independent agencies, eliminating the conflict of interest. Public comment gathered during

Task Force meetings also supports the need to ensure that an independent agency or agencies is investigating these reports. Not all Task Force members agreed with this recommendation. See Appendix 9 for a minority report.

The Task Force also agrees that there are acts conducted by caretakers and other persons or injuries that occur to at-risk adults with IDD that do not rise to the level of or meet the definition of abuse, neglect, or exploitation and therefore are not reportable to law enforcement or APS under the requirements of mandatory reporting. These incidents and accidents occur frequently but do not generally indicate poor quality of care on the part of a facility or individual caretaker. For example, if an at-risk adult with IDD requires restraint during a behavioral outburst, even if the restraint is in keeping with the adult's care plan and no injury occurred as a result of the restraint, the caretakers are required to complete and submit an incident report to the CCB to document the occurrence. Another example would be an adult who trips while on a day outing and falls to the ground, skinning knees and hands in the fall. This also requires an incident report but does not rise to the level of mistreatment. The Task Force believes that these types of incidents and accidents should continue to be reviewed by the CCB and do not require a report to law enforcement and APS. These same types of minor incidents and accidents occur with at-risk elders, particularly those residing in long-term care facilities. Those facilities have similar incident report requirements and these types of incidents are also generally investigated internally, unless the incident meets other statutory or rule requirements to be reported to an outside agency. Not all Task Force members agreed with this recommendation. See Appendix 9 for a minority report.

In both systems for at-risk elders and at-risk adults with IDD, there are specific incident categories defined by various statutes and rules that are reportable to outside agencies, including the Health Facilities and Emergency Medical Services Division (HFEMS), Division for Intellectual and Developmental Disabilities (DIDD), law enforcement, and APS. The Task Force believes that these reporting requirements should remain in place, without any change to statute, to ensure that independent agencies are notified of these more critical lapses in care and situations of potential abuse, caretaker neglect, and exploitation.

It is, however, the Task Force's belief that there is a need to have a common, working language of "incident or accident" that can be used across all agencies (law enforcement, APS, DIDD, the CCBs, and HFEMS) in training materials developed for each agency's direct stakeholders, staff, and provider networks. This same language would be used by APS in developing training materials specifically designed for mandatory reporters and the community. It is not the intent of the Task Force for this language to replace current statutory or rule definitions of incident. Therefore, the Task Force recommends it continue to meet as an informal work group beginning in January 2016 to develop this language. The Task Force believes that this group should be informal so that other stakeholders and consumers are able to participate and provide input. The Task Force developed sample language but was unable, given the time constraints of SB15-109, to finalize this language. See Appendix 2 for the sample language.

During Task Force discussions related to the investigation of reports by law enforcement and APS and subsequent provision of protective services by APS to adults with IDD, the Task Force concluded that additional work is needed to ensure sufficient community-level collaboration exists to support APS and law enforcement investigations and service provision. The Task Force agreed that a system designed to ensure individuals with IDD are protected must extend beyond the submission of a mandatory report. In order to provide the protection that clients need and meet the expectations of the public, reports must be properly investigated and services must be available to respond to the clients' needs. As a result, the Task Force has identified a need to establish a cooperative agreement between law enforcement, APS, and the CCBs.

The Task Force recommends that the working group make recommendations regarding the cooperative agreement(s), which could include but is not limited to defining each agency's role in:

- Conducting the investigation;
- Providing investigative and other support;
- Ensuring that ongoing services and supports are in place to prevent future mistreatment; and
- Any other decisions the working group deems necessary.

The working group should also make recommendations on how the cooperative agreement(s) is to be implemented throughout the state and between each of the three agencies.

Now that Colorado has had a little over a year of mandatory reporting, the Task Force identified some broken processes related to the sharing of reports and coordination of investigations between APS and law enforcement. For example, law enforcement may not take or provide APS a complete report of the concerns of the reporter or may not share a report with APS at all. APS does not always share reports with law enforcement timely, particularly if the report comes to APS on a Friday after business hours, so law enforcement is delayed in responding to the crime. Law enforcement may not separate reports related to mistreatment from all calls they receive on a person age 70, sending APS every call, including calls such as reports of petty vandalism. APS may respond to a report that alleges a crime without law enforcement and possibly compromise the criminal case; while on the other hand, there are still many law enforcement officers and agencies that do not investigate mistreatment of at-risk elders as a crime, at all, in which case, APS must respond to provide protective services.

These issues related to each agency getting the right reports at the right time and coordinating appropriately around the investigation are better solved through increased training and oversight and possibly by improvements in technology. The Task Force recommends that the working group that will begin meeting in January 2016 identify solutions for these concerns and a method for implementing the solutions, whether through the cooperative agreement(s), the required training for law enforcement and APS, or another avenue.

Recommendation II

Recommendations concerning conforming changes to the statutory or regulatory provisions either in civil or criminal areas as they relate to mandatory reporting and investigating mistreatment, abuse, neglect, or exploitation of an at-risk adult with an intellectual and developmental disability, including definitions of mistreatment and neglect.

4. **The Task Force recommends changes to statutory language that align key definitions across the Criminal (Title 18, Article 6.5), Adult Protective Services (APS) (Title 26, Article 3.1), and Intellectual and Developmental Disabilities (IDD) (Title 25.5, Article 10, Part 2) of the Colorado Revised Statutes to ensure that all agencies are operating under the same legal guidelines, whenever possible.**
5. **The Task Force recommends the list of mandatory reporters be updated and expanded to ensure a more comprehensive list of professionals who routinely interact with at-risk adults with IDD and at-risk elders are identified as mandatory reporters.**
6. **The Task Force further recommends additional conforming statutory changes in all statutes to ensure that any new or modified definitions are incorporated throughout each statute.**

Background Information

The Task Force strongly believes it is important to ensure all definitions are aligned, wherever possible, between the criminal statute (Title 18, Article 6.5), APS statute (Title 26, Article 3.1), and the IDD statute (Title 25.5, Article 10, part 2) of the Colorado Revised Statutes. These three agencies will often be working together to conduct the investigation and provide necessary services to ensure safety into the future for the victim of these crimes. Therefore, it is critical to the successful implementation of mandatory reporting, the investigation of these crimes, and the provision of protective services that the agencies are applying the same definitions throughout the coordinated response. It is the expectation of the Task Force that any changes in statute as a result of these recommendations will require corresponding changes in the APS and DIDD rules and may require changes in contracts between DIDD, the CCBs, and other contract providers.

The General Assembly previously agreed with this need to have uniformity to the definitions for the criminal and APS statutes and in SB13-111 applied the definitions of the various forms of mistreatment to both the APS and criminal statutes to ensure this uniformity in language. In the 2014 Legislative session, some minor changes were made to the criminal definitions, but the

conforming statute changes for APS were not made. Therefore, the Task Force is asking that the changes be made prior to the implementation of SB15-109 so that once again, APS and the criminal statutes align. The Task Force is also asking that the General Assembly ensure that these same definitions are added to the IDD statutes. With that in mind, the Task Force recommends statutory changes to the definitions, as outlined later in this section of the report.

The Task Force also recommends the addition of professional groups as mandatory reporters for both at-risk elders and at-risk adults with IDD. Additionally, the Task Force recommends some modifications of the list of current named mandatory reporters to more clearly meet other statutes related to licensing of certain professions, specifically social workers and mental health professionals. The Task Force further recommends a reorganization of the list of named reporters to consolidate like professions. This simple change will assist mandatory reporters to identify their specific profession and will keep the list to a reasonable length. Both the criminal code and the APS statute must be updated to reflect this recommended list so that both agencies are operating under the same guidelines and so that named reporters have consistency between law enforcement reporting and APS reporting. Not all Task Force members agreed on this recommendation. See Appendix 7 for a minority report.

Additionally, the Task Force noted when reading through Title 18, Article 6.5 of the Colorado Revised Statutes that the language throughout has become very complex and lengthy in defining the various “at-risk” populations now served by the statute, either through the enhanced prosecutorial penalties or through the mandatory reporting requirements. Additionally, it appears that some enhanced penalties and definitions were not amended with conforming changes to ensure that all “at-risk” populations defined in the statute are protected through all areas of the statute. For example, the definitions of abuse, caretaker neglect, exploitation, and undue influence were not amended to include adults with IDD or at-risk juveniles, who can also be exploited. And Section 18-6.5-103, C.R.S. was not amended to add at-risk adults with an intellectual and developmental disability.

Subsequently, the Task Force recognizes that the proposed definitional changes to population and types of mistreatment will require subsequent conforming changes to the APS statute (Title 26, Article 3.1, C.R.S.) and the IDD statutes (Title 25.5, Article 10, Part 2, C.R.S.). The Task Force recommends that the General Assembly work with bill drafters, the Colorado District Attorney’s Council (CDAC), and the Colorado Bar to make amendments to the statutes that ensure:

1. The language throughout Title 18, Article 6.5, C.R.S. is simplified in identifying the at-risk populations served by this law. For example, add an “umbrella” definition, such as *“At-risk Person” means an at-risk juvenile, at-risk adult, at-risk elder, and at-risk adult with an intellectual and developmental disability.* Use this term throughout statute instead of referencing all four populations in each subsection of the statute.
2. The entirety of Title 18, Article 6.5, C.R.S. is reviewed and appropriately amended to ensure that conforming changes needed as a result of the new definitions and the addition of the at-risk adult with IDD population are made to all areas of the statute

to ensure that there is no loss of prosecutorial authority or mandatory reporting requirement.

3. The entirety of Title 26, Article 3.1, C.R.S. is reviewed and appropriately amended to ensure that conforming changes needed as a result of the new definitions are made to all areas of the statute to ensure no loss of authority for the APS program to respond to the mistreatment of at-risk adults as defined in Title 26, Article 3.1, C.R.S.
4. The entirety of Title 25.5, Article 10, Part 2, C.R.S. is reviewed and appropriately amended to ensure that conforming changes needed as a result of the new definitions are made to all areas of the statute to ensure no loss of authority for the IDD program.

A specific example identified by the Task Force related to conforming changes throughout Title 18, Article 6.5 of Colorado Revised Statutes is the need to update the Crimes Against At-risk Adults and At-risk Juveniles section of the statute. Specifically, in Section 18-6.5-103(7.5)(a), C.R.S., the Task Force recommends the following change as it pertains to adults with an intellectual and developmental disability:

A person commits criminal exploitation of an at-risk elder OR AT-RISK ADULT WITH IDD when he or she knowingly uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk elder OR AT-RISK ADULT WITH IDD of the use, benefit, or possession of anything of value.

(b) Criminal exploitation of an at-risk elder OR AT-RISK ADULT WITH IDD is a class 3 felony if the thing of value is five hundred dollars or greater. Criminal exploitation of an at-risk elder OR AT-RISK ADULT WITH IDD is a class 5 felony if the thing of value is less than five hundred dollars.

Detailed Statutory Changes

***Please note:** In providing the proposed statutory changes, the Task Force uses ALL CAPS to indicate new language to be added to current statute; ~~strike through~~ to indicate current language to be removed from statute; and normal text formatting to indicate current language to remain in statute as is.*

Defining the Target Population

The Task Force has determined that conforming changes to align the definitions of the target populations for the criminal, APS, and IDD statutes cannot and should not be made at this time. The criminal statute has been amended to expand mandatory reporting of mistreatment to include at-risk elders, as established by SB13-111 and now at-risk adults with an intellectual and developmental disability, as established by SB15-109. There are still a large number of

vulnerable persons in Colorado that are not subject to mandatory reporting but who should continue to be eligible for protective services within the APS program.

Therefore, for the criminal definition, located at Section 18-6.5-102(2.5), C.R.S., the Task Force simply recommends a change to simplify the term used for at-risk adults with an intellectual and developmental disability, as follows:

~~At-risk Adult with an Intellectual and Developmental Disability~~ “AT-RISK ADULT WITH IDD” means a person who is eighteen years of age or older and is a person with an intellectual and developmental disability, as defined in Section 25.5-10-202(26)(a), C.R.S.

The vulnerable adults not covered by mandatory reporting under either SB13-111 or SB15-109 are those adults age 18 to 69 who have physical, cognitive, and/or medical deficits and disabilities that also make them vulnerable to mistreatment. APS has provided services to these vulnerable populations and the IDD population for decades through “urged reporting” by the same group of professionals now named as mandatory reporters for the elder and IDD populations. (Section 26-3.1-102, C.R.S.) The Task Force wants to ensure that APS can continue to serve these vulnerable citizens through urged reporting.

Therefore, the Task Force recommends that the APS definition of “at-risk adult” should be unchanged, with the exception of a simple conforming change as a result of a recommended change to the definition of “mistreatment”, detailed below. The recommended change to Section 26-3.1-101(1), C.R.S., follows:

“At-risk adult” means an individual eighteen years of age or older who is susceptible to mistreatment OR self-neglect ~~, or exploitation~~ because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.”

The Task Force recommends that the IDD statute, at Section 25.5-10-202(26)(a), C.R.S., remain unchanged from the current definition.

Mistreatment

In all statutes, the term “mistreatment” is recommended to be used as a term that encompasses the three types of maltreatment that can lead to criminal charges, specifically abuse, caretaker neglect, and exploitation and to include other forms of mistreatment that might not fit neatly into the definitions of “abuse”, “caretaker neglect”, or “exploitation” but cause adverse risk to health and safety for vulnerable populations. The term “mistreatment” should be used as an umbrella term to help ensure concise language throughout the statute, subsequent rule development, and training materials.

Currently, “mistreatment” does not exist in the criminal statute and would need to be added as a definition. Additionally, conforming language changes would need to be made throughout Section 18-6.5-101, C.R.S., et seq. to ensure that all language related to enhanced penalties and mandatory reporting that is currently written as “abuse” or “abuse and exploitation” or other similar phrasing, is replaced with “mistreatment” to ensure there is no lapse in the mandatory reporting law requirements or inadvertent loss of a prosecutor’s ability to enhance charges and penalties for these crimes. The suggested definition for the criminal code, at 18-6.5-101, C.R.S., (inserted between subsection (10), “Exploitation” and subsection (11), “Person with a Disability”) follows:

“MISTREATMENT” INCLUDES, BUT IS NOT LIMITED TO:

- A. ABUSE,
- B. CARETAKER NEGLECT,
- C. EXPLOITATION,
- D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT, AT-RISK ELDER, OR AT-RISK ADULT WITH IDD, OR
- E. AN ACT OR OMISSION THAT EXPOSES THE AT-RISK ADULT, AT-RISK ELDER, OR AT-RISK ADULT WITH IDD TO A SITUATION OR CONDITION THAT POSES AN IMMEDIATE RISK OF BODILY INJURY.

The current APS statute defines “mistreatment”. The Task Force recommends changes to the current language to conform to the definition in the criminal statute; there is little substantive change with the exception of adding “exploitation” as a form of mistreatment and removing the “abuse” definition at (a) and “caretaker neglect” at (b) as it is redundant language; abuse will be added as a new definition in the APS statute. Suggested changes to the APS statute definition of “mistreatment” at Section 26-3.1-101 (7), C.R.S., follows:

~~“Mistreatment” means an act or omission that threatens the health, safety, or welfare of an at risk adult or that exposes an at risk adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the at risk adult. “Mistreatment” includes, but is not limited to:~~

~~(a) Abuse _____ that _____ occurs:~~

- ~~(i) _____ Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, _____ soft tissue swelling, _____ or suffocation;~~
- ~~(ii) _____ Where unreasonable confinement or restraint is imposed; or~~
- ~~(iii) _____ Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the “Colorado Criminal Code”, Title 18, C.R.S.~~

~~(b) — Caretaker neglect.~~

“MISTREATMENT” INCLUDES, BUT IS NOT LIMITED TO:

- A. ABUSE,
- B. CARETAKER NEGLECT,
- C. EXPLOITATION,
- D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT, OR
- E. AN ACT OR OMISSION THAT EXPOSES THE AT-RISK ADULT TO A SITUATION OR CONDITION THAT POSES AN IMMEDIATE RISK OF BODILY INJURY.

Currently, “mistreatment” does not exist in the IDD statute, only in rule. The Task Force strongly recommends that the definition of mistreatment be added to statute and apply to all persons (children and adults) with an intellectual or developmental disability as the IDD statute covers all ages. Suggested definition of “mistreatment” to be added to Section 25.5-10-202, C.R.S., (between subsection (29), “Least Restrictive Environment” and subsection (30), “Office”) follows:

“MISTREATMENT” INCLUDES, BUT IS NOT LIMITED TO:

- A) ABUSE,
- B) CARETAKER NEGLECT,
- C) EXPLOITATION,
- D) AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF A PERSON WITH IDD, OR
- E) AN ACT OR OMISSION THAT EXPOSES THE PERSON WITH IDD TO A SITUATION OR CONDITION THAT POSES AN IMMEDIATE RISK OF BODILY INJURY.

Abuse

Currently, the criminal statute defines “abuse” to include caretaker neglect and exploitation. The Task Force recommends that “caretaker neglect” and “exploitation” be stricken from the abuse definition so that “abuse” is defined strictly as physical or sexual abuse situations. Additionally, conforming language changes would need to be made throughout Section 18-6.5-101, C.R.S., et seq. to ensure that all language related to enhanced penalties and mandatory reporting that is currently written as “abuse” or “abuse and exploitation” or other similar phrasing, is replaced appropriately to ensure there is no lapse in the mandatory reporting law requirements or inadvertent loss of a prosecutor’s ability to enhance charges and penalties for these crimes. The recommended changes to the definition of abuse for the criminal statute (Section 18-6.5-102(1), C.R.S.) follows:

“Abuse” means any of the following acts or omissions committed against an at-risk elder OR AT-RISK ADULT WITH IDD:

- (a) The non-accidental infliction of bodily injury, serious bodily injury, or death;

- (b) Confinement or restraint that is unreasonable under generally accepted caretaking standards; AND,
- (c) Subjection to sexual conduct or contact classified as a crime under this title.
- ~~(d) Caretaker neglect; and~~
- ~~(e) Exploitation.~~

The current definition of “abuse” in the APS statute, while located under “mistreatment” currently, is very similar to the definition in the criminal statute. The Task Force recommends creating a stand-alone definition of “abuse” in the APS statute at Section 26-3.1-101 (1), C.R.S., and renumbering all definitions following. The Task Force recommends the following changes to the APS statute (Section 26-3.1-101(1), C.R.S.):

“Abuse” means any of the following acts or omissions committed against an at-risk adult:

- ~~(I)~~ (a) ~~Where there is~~ THE NON-ACCIDENTAL infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;
- ~~(II)~~ (b) ~~Where Unreasonable confinement or restraint is imposed~~ CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; ~~OR~~ AND
- ~~(III)~~ (c) ~~Where there is~~ THE subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18, C.R.S.

Currently, there is no definition of abuse in the IDD statutes and the Task Force recommends the addition of a definition of abuse that conforms to the criminal and APS statute definitions, to be located at Section 25.5-10-202(1), C.R.S., and any necessary renumbering of all definitions following. The Task Force recommends the following definition be added to the IDD statute at Section 25.5-10-202(1), C.R.S.:

“ABUSE” MEANS ANY OF THE FOLLOWING ACTS OR OMISSIONS COMMITTED AGAINST AN PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY:

- (A) THE NON-ACCIDENTAL INFLICTION OF PHYSICAL PAIN OR INJURY, AS DEMONSTRATED BY, BUT NOT LIMITED TO, SUBSTANTIAL OR MULTIPLE SKIN BRUISING, BLEEDING, MALNUTRITION, DEHYDRATION, BURNS, BONE FRACTURES, POISONING, SUBDURAL HEMATOMA, SOFT TISSUE SWELLING, OR SUFFOCATION;
- (B) CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; OR AND
- (C) THE SUBJECTION TO NONCONSENSUAL SEXUAL CONDUCT OR CONTACT CLASSIFIED AS A CRIME UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S.

Caretaker Neglect

The Task Force reviewed the current definition of “caretaker neglect” in the criminal statute and determined the statute to be largely comprehensive. However, the Task Force recommends a slight change that will create a fully comprehensive definition. The changes to be made at 18-6.5-102(6), C.R.S., follows:

“Caretaker Neglect” means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSITIES ~~is~~ ARE not secured for an at-risk adult WITH IDD or an at-risk elder or ~~is~~ ARE not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, and artificial nutrition and hydration, in accordance with any valid medical directive or order or as described in a palliative plan of care shall not be deemed caretaker neglect. As used in this subsection (6), "medical directive or order" includes but is not limited to a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to article 18.7 of title 15, C.R.S., and a CPR directive executed pursuant to article 18.6 of title 15, C.R.S. ARTICLE 18.6 OF TITLE 15, C.R.S.

The Task Force recommends conforming changes to the APS statute at 26-3.1-101(2.3), C.R.S., to ensure uniformity across statutes, as follows:

“Caretaker Neglect” means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSITIES ~~is~~ ARE not secured for an at-risk adult or ~~is~~ ARE not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding, withdrawing, or refusing of any MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, and artificial nutrition and hydration, in accordance with any valid medical directive or order or as described in a palliative plan of care shall not be deemed caretaker neglect. As used in this subsection (6), "medical directive or order" includes but is not limited to a medical durable power of attorney, a declaration as to medical treatment executed pursuant to section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to article 18.7 of title 15, C.R.S., and a CPR directive executed pursuant to article 18.6 of title 15, C.R.S. ARTICLE 18.6 OF TITLE 15, C.R.S.

Again, the IDD statutes currently do not have a definition of caretaker neglect or, even, neglect. The Task Force recommends the addition of the “caretaker neglect” definition that conforms to

the criminal and APS definitions to ensure uniformity across these statutes. The definition to be added between Section 25.5-10.-201(29), C.R.S., “Least Restrictive Environment” and Section 25.5-10-202(30), C.R.S., “Office”, follows:

“CARETAKER NEGLECT” MEANS NEGLECT THAT OCCURS WHEN ADEQUATE FOOD, CLOTHING, SHELTER, PSYCHOLOGICAL CARE, PHYSICAL CARE, MEDICAL CARE, OR SUPERVISION IS NOT SECURED FOR A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY OR IS NOT PROVIDED BY A CARETAKER IN A TIMELY MANNER AND WITH THE DEGREE OF CARE THAT A REASONABLE PERSON IN THE SAME SITUATION WOULD EXERCISE; EXCEPT THAT THE WITHHOLDING, WITHDRAWING, OR REFUSING OF ANY MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY TREATMENT, INCLUDING BUT NOT LIMITED TO RESUSCITATION, CARDIAC PACING, MECHANICAL VENTILATION, DIALYSIS, AND ARTIFICIAL NUTRITION AND HYDRATION, IN ACCORDANCE WITH ANY VALID MEDICAL DIRECTIVE OR ORDER OR AS DESCRIBED IN A PALLIATIVE PLAN OF CARE SHALL NOT BE DEEMED CARETAKER NEGLECT. AS USED IN THIS SUBSECTION (6), "MEDICAL DIRECTIVE OR ORDER" INCLUDES BUT IS NOT LIMITED TO A MEDICAL DURABLE POWER OF ATTORNEY, A DECLARATION AS TO MEDICAL TREATMENT EXECUTED PURSUANT TO SECTION 15-18-104, C.R.S., A MEDICAL ORDER FOR SCOPE OF TREATMENT FORM EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15, C.R.S., AND A CPR DIRECTIVE EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15, C.R.S.ARTICLE 18.6 OF TITLE 15,C.R.S.

Exploitation

The Task Force reviewed the definition of “exploitation” that is part of both the current criminal and APS statutes. While this definition is comprehensive related to situations in which an at-risk adult with IDD or an at-risk elder could be financially exploited (loss of assets, property, and money), the Task Force finds that the definition lacks language that would allow for investigation and prosecution of non-financial forms of exploitation that are often committed against vulnerable populations.

These types of exploitation include sexual innuendo or verbal sexual threats made in an effort to exert power over the vulnerable person; using intimidation or undue influence to get a vulnerable person to do something they would not ordinarily do, such as to panhandle or prostitute themselves; or conducting illegal activities in the vulnerable person’s living environment, such as distribution of illegal drugs. These types of exploitation create a situation that is often hostile and in which the vulnerable person lives in a state of fear from day to day or even hour to hour. Similar to persons living in domestic violence situations, these vulnerable persons are always left to wonder when the perpetrator will act again.

This type of exploitation is especially concerning for at-risk adults with IDD, at-risk elders, and other vulnerable populations who must rely upon the perpetrator for care, when the perpetrator lives in the victim’s home, or whom the perpetrator regularly visits. These vulnerable persons are usually unable to remove themselves from the situation or remove the

perpetrator, causing the person to live in a constant state of fear and undue stress. Therefore, the Task Force strongly recommends the addition of language to the definition of “exploitation” that would incorporate these types of non-financial exploitation into both the criminal and APS definitions of “exploitation”.

The Task Force understands that this will require creation of totally new language, rather than simple minor changes in definitions previously recommended. Therefore, the Task Force is providing placeholder language for this change only and the expectation of the Task Force is that the General Assembly will work with the bill drafters, the Colorado District Attorney’s Council (CDAC), and the Colorado Bar to write language that is legally sound. The change to the criminal definition of “exploitation”, using placeholder language, at Section 18-6.5-101(10), C.R.S., follows:

"Exploitation" means an act or omission committed by a person who:

- (a) Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk elder OR AT-RISK ADULT WITH IDD of the use, benefit, or possession of anything of value;
- (b) In the absence of legal authority:
 - (I) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk elder OR AT-RISK ADULT WITH IDD; or
 - (II) Forces, compels, coerces, or entices an at-risk elder OR AT-RISK ADULT WITH IDD to perform services for the profit or advantage of the person or another person against the will of the at-risk elder OR AT-RISK ADULT WITH IDD; or
 - (III) USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ELDER OR AT-RISK ADULT WITH IDD WHO RELIES ON THE PERSON TO PROVIDE CARE, LIVES WITH THE PERSON, OR IS REGULARLY VISITED BY THE PERSON.”
- (c) Misuses the property of an at-risk elder OR AT-RISK ADULT WITH IDD in a manner that adversely affects the at-risk elder's OR AT-RISK ADULT WITH IDD’S ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

The Task Force recommends that the place holder language for exploitation, once drafted, is incorporated into the APS statute definition, as well. Additionally, the Task Force recommends that another slight change is made to the APS definition to align it with the criminal definition. The changes to Section 26-3.1-101(4), C.R.S., follows:

“Exploitation” means an act or omission committed by a person who:

- a. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of ~~his or her money, assets, or property~~ ANY THING OF VALUE;
- b. In the absence of legal authority:
 - (I) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; or
 - (II) Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or
 - (III) USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ADULT WHO RELIES ON THE PERSON TO PROVIDE CARE, LIVES WITH THE PERSON, OR IS REGULARLY VISITED BY THE PERSON.”
- c. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult’s ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

Similarly, the Task Force recommends the definition of “exploitation” be added to the IDD statute, as currently there is no definition for exploitation. As with the criminal and APS statutes, it is the expectation of the Task Force that, when drafted, the placeholder language for non-financial exploitation will be incorporated into this definition. The definition to be added between Section 25.5-10-202(15), C.R.S., “Enrolled” and Section 25.5-10-202(16), C.R.S., “Family”, follows:

“EXPLOITATION” MEANS AN ACT OR OMISSION COMMITTED BY A PERSON WHO:

- (A) USES DECEPTION, HARASSMENT, INTIMIDATION, OR UNDUE INFLUENCE TO PERMANENTLY OR TEMPORARILY DEPRIVE A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY OF THE USE, BENEFIT, OR POSSESSION OF ANYTHING OF VALUE;
- (B) IN THE ABSENCE OF LEGAL AUTHORITY:
 - (I) EMPLOYS THE SERVICES OF A THIRD PARTY FOR THE PROFIT OR ADVANTAGE OF THE PERSON OR ANOTHER PERSON TO THE

DETRIMENT OF THE PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; OR

(II) FORCES, COMPELS, COERCES, OR ENTICES A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY TO PERFORM SERVICES FOR THE PROFIT OR ADVANTAGE OF THE PERSON OR ANOTHER PERSON AGAINST THE WILL OF THE PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; OR

(III) USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY WHO RELIES ON THE PERSON TO PROVIDE CARE, LIVES WITH THE PERSON, OR IS REGULARLY VISITED BY THE PERSON.”

(C) MISUSES THE PROPERTY OF A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY IN A MANNER THAT ADVERSELY AFFECTS THE PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY’S ABILITY TO RECEIVE HEALTH CARE OR HEALTH CARE BENEFITS OR TO PAY BILLS FOR BASIC NEEDS OR OBLIGATIONS.

Caretaker

The Task Force recommends that all statutes have a similar definition for “caretaker” so that the caretaker relationship is well-defined and closely aligns across the criminal, APS, and IDD statutes.

As such, the Task Force recommends the following changes to Section 18-6.5-101(5), C.R.S.:

“Caretaker” means a person who:

- (a) Is responsible for the care of an at-risk adult, at-risk juvenile, AT-RISK ADULT WITH IDD, or at-risk elder as a result of a family or legal relationship;
- (b) Has assumed responsibility for the care of an at-risk adult, at-risk juvenile, AT-RISK ADULT WITH IDD, or at-risk elder; or,
- (c) Is paid to provide care or services to an at-risk adult, at-risk juvenile, AT-RISK ADULT WITH IDD, or at-risk elder.

The Task Force believes that there is an addition to the definition of “caretaker” that should be included in the civil APS and IDD statutes. The Task Force recognizes that within agencies that provide care to at-risk elders, at-risk adults with IDD, and other vulnerable populations served by APS, there are persons with decision-making authority who do not provide direct care, such

as the agency/facility owner, manager, or administrator, and other persons with decision-making authority. While these decision-makers often do not provide direct care, decisions made by them directly impact the direct care-provider's ability to provide adequate care.

For example, if the owner of a board and care home limits the budget for food to such an extent that the residents are not provided adequate daily nutrition, the Task Force believes that owner is culpable as the caretaker, rather than the direct care provider. Additionally, decision-makers have responsibility to appropriately and timely resolve personnel concerns that impact the health and safety of the persons under their care. For example, if an administrator has received a report of possible sexual contact by a care provider with a resident and the administrator simply moves the care provider to a different board and care home or to a different work shift, the Task Force believes that the administrator is culpable of mistreatment by omission, as the failure of the administrator to take appropriate action, such as investigating the report, notifying law enforcement and APS, and ensuring the direct care provider does not have further interaction with residents until the investigation is concluded, threatens the safety and welfare of all residents.

Therefore, the Task Force recommends the following addition to the APS statute definition of "caretaker", at Section 26-3.1-101(2), C.R.S., as follows:

"Caretaker" means a person who:

- (a) Is responsible for the care of an at-risk adult as a result of a family or legal relationship;
- (b) Has assumed responsibility for the care of an at-risk adult; or,
- (c) Is paid to provide care, ~~or~~ services, OR OVERSIGHT OF SERVICES to an at-risk adult.

Similarly, the Task Force believes it is important that the definition of "caretaker" be added to the IDD statutes, to conform to the definition in the APS statute. The recommended definition, to be located between Section 25.5-10-202(1), C.R.S., "Authorized Representative" and Section 25.5-10-202(2), C.R.S., "Case Management Services", follows:

"CARETAKER" MEANS A PERSON WHO:

- (A) IS RESPONSIBLE FOR THE CARE OF A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP;
- (B) HAS ASSUMED RESPONSIBILITY FOR THE CARE OF A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; OR,

(C) IS PAID TO PROVIDE CARE, SERVICES, OR OVERSIGHT OF SERVICES TO A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY.

Undue Influence

Undue influence was added as a definition to the criminal statute with SB13-111, at Section 18-6.5-101(13), C.R.S. The Task Force recommends that this definition be modified to include at-risk adults with IDD, as follows:

“Undue Influence” means the use of influence to take advantage of an at-risk elder’s OR AT-RISK ADULT WITH IDD’S vulnerable state of mind, neediness, pain, or emotional distress.

Because “undue influence” is a key component of the definition of exploitation, the Task Force believes it critical to define this term in both the APS and IDD statutes, as well; currently those terms are not included in either statute. The recommended language for the APS statute at Section 26-3.1-101(11), C.R.S., follows:

“UNDUE INFLUENCE” MEANS THE USE OF INFLUENCE TO TAKE ADVANTAGE OF AN AT-RISK ADULT’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

Typically in the IDD statute, the laws apply to “persons” with an intellectual and developmental disability to ensure that the protections of the law apply to both adults and children. However, for this particular definition the Task Force feels strongly that the definition should only apply to adults with an intellectual and developmental disability. The Task Force believes that typical parenting techniques could be inadvertently construed as “undue influence” if the distinction is not clearly made in statute. Therefore, the recommended language for the definition of “undue influence, to be placed between Section 25.5-10-202(37), C.R.S., “Sterilization” and Section 25.5-10-202(38), C.R.S., “Waiting List”, is as follows:

“UNDUE INFLUENCE” MEANS USE OF INFLUENCE TO TAKE ADVANTAGE OF AN ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

Mandatory Reporters

Changes are recommended in order to ensure conformity between the named mandatory reporters and other state statutes. The named professional group, “Social Work Practitioner”, is not recognized in statute. Social Worker is defined in Section 12-43-403, C.R.S., which defines social work practice as being completed only by persons with a social work degree. There is similar conflict with the named “psychologists and other mental health professionals”.

In addition to conforming the list of mandatory reporters to other state statutes, above, the Task Force identified a number of other professions who routinely work with the IDD and at-risk elder populations who are currently not included as mandatory reporters. The Task Force agreed to changes to add these additional groups.

Finally, the Task Force strongly recommends that the changes made to “personnel of banks, savings and loan associations...” in SB15-109, be rolled back and that additional financial services professions be added to the list. The Task Force does not agree that financial institutions are at any greater handicap in identifying an at-risk adult with IDD as many other named professionals on the list. Additionally, all eight Federal agencies that regulate the various financial services industries have provided clear guidance to financial institutions that reporting suspected exploitation to appropriate local, state, and federal agencies does not violate privacy provisions of the Gramm-Leach-Bliley Act or its implementing regulations. (See Appendix 3.) Finally, with the implementation of CAPS (the APS data/case management system) for the first time, APS was able to collect data on the estimated loss of assets in the 432 cases with a substantiated exploitation allegation. In SFY2014-15, APS clients in Colorado lost \$57.4 million, with an average loss per client of \$133,000. Exploitation is the only mistreatment category that has consistently increased in prevalence over the years, from 16% of all mistreatment reported to APS in SFY 2006-07 to 25% in SFY 2014-15. Exploitation is a growing epidemic in Colorado and across the nation; therefore, it is critical for financial services professionals to report.

In the criminal statute, at Section 18-6.5-108(1)(a), C.R.S., the following changes should be made:

On and after July 1, ~~2014~~**2015**, a person specified in paragraph (b) of this Subsection (1) who observes the ~~abuse or exploitation~~ MISTREATMENT of an at-risk elder or ~~an at-risk adult with an intellectual and developmental disability~~ AT-RISK ADULT WITH IDD, or who has reasonable cause to believe that an at-risk elder or ~~an at-risk adult with an intellectual and developmental disability~~ AT-RISK ADULT WITH IDD has been ~~abused or has been exploited~~ MISTREATED or is at imminent risk of MISTREATMENT ~~abuse or exploitation~~, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.

Changes to the APS statute at Section 26-3.1-102(1)(a) and (a.5), C.R.S., follow. Please note, additional changes to the criminal statute citation references in (a.5) may be required once the previously described changes to definitions are incorporated into the criminal code.

(a) A person specified in paragraph (b) of this subsection (1) who observes the mistreatment OR self-neglect, ~~or exploitation~~ of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated OR is self-neglected, ~~or has been exploited~~ and is at imminent risk of mistreatment OR self-neglect, ~~or exploitation~~ is urged to report such fact to a county department not more than twenty-four hours after making the observation or discovery.

(a.5) As required by Section 18-6.5-108, C.R.S., ~~certain persons specified in paragraph (b) of this subsection (1) who observes the abuse or exploitation, as defined in Section 18-6.5-102(1) and (10), C.R.S.,~~ MISTREATMENT of an at-risk elder, as defined in Sections 18-6.5-102(3), C.R.S., or an at-risk adult with IDD ~~an intellectual and developmental disability, as defined in Section 18-6.5-102 (2.5), C.R.S.,~~ or who have reasonable cause to believe that an at-risk elder or an at-risk adult with IDD ~~an intellectual and developmental disability~~ has been ~~abused or exploited~~ MISTREATED or is at imminent risk of ~~abuse or exploitation~~ MISTREATMENT shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.

Changes to the list of mandatory reporters should be made in both the criminal statute and the APS statute, to ensure uniformity in the lists of named reporters. This list should replace the current list at Section 18-6.5-108(1)(b), C.R.S., follows:

The following persons, whether paid, ~~or~~ unpaid, OR VOLUNTEERS shall report as required by paragraph (a) of this Subsection (1):

- ~~Physicians, surgeons, physicians' assistants, osteopaths, physicians in training, podiatrists, occupational therapists, and physical therapists;~~ ANY PERSON PROVIDING HEALTH CARE OR HEALTH CARE RELATED SERVICES, INCLUDING, BUT NOT LIMITED TO, GENERAL MEDICAL, SURGICAL, OR NURSING SERVICES; MEDICAL, SURGICAL, OR NURSING SPECIALITY SERVICES; DENTAL SERVICES; VISION SERVICES; PHARMACY SERVICES; CHIROPRACTIC SERVICES; AND PHYSICAL, OCCUPATION, MUSIC, OR OTHER THERAPY SERVICES;
- Hospital and long-term care facility personnel engaged in the admission, care, or treatment of patients;
- FIRST RESPONDERS, INCLUDING emergency medical service providers, FIRE PROTECTION PERSONNEL, AND LAW ENFORCEMENT OFFICIALS AND PERSONNEL, INCLUDING VICTIM ADVOCATES EMPLOYED BY, CONTRACTING WITH, OR VOLUNTEERING WITH ANY LAW ENFORCEMENT AGENCY;
- CODE ENFORCEMENT OFFICERS;
- Medical examiners and coroners;
- VETERINARIANS;
- ~~Registered nurses, licensed practical nurses, and nurse practitioners;~~
- ~~Chiropractors;~~
- Psychologists, ~~and other mental health professionals~~ MARRIAGE AND FAMILY THERAPISTS, LICENSED PROFESSIONAL COUNSELORS, REGISTERED PSYCHOTHERAPISTS, AND LICENSED ADDICTION COUNSELORS, AS DEFINED IN SECTION 12-43-201, C.R.S.;
- ~~Social work practitioners~~ SOCIAL WORKERS, AS DEFINED IN SECTION 12-43-401, C.R.S.;
- Community-centered board staff;

- PROGRAM APPROVED SERVICE AGENCY (PASA), AS DEFINED IN 10 CCR 2505-10 8.500, EMPLOYEE, CONSULTANT, AND/OR INDEPENDENT CONTRACTOR;
- A caretaker, ~~staff member~~, employee, or consultant for a licensed OR UNLICENSED or certified OR NON-CERTIFIED care facility, agency, home, or governing board, including but not limited to LONG-TERM CARE FACILITIES, HOME CARE AGENCIES, AND home health providers; ~~and~~
- A caretaker, ~~staff member~~, employee of, or a consultant for, a home care placement agency, as defined in Section 25-27.5-102 (5), C.R.S.
- ANY PERSONS PERFORMING CASE MANAGEMENT OR ASSISTANCE SERVICES FOR AT-RISK ELDERS OR AT-RISK ADULTS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY;
- STAFF OF COUNTY DEPARTMENTS OF HUMAN/SOCIAL SERVICES;
- STAFF OF THE COLORADO DEPARTMENTS OF HUMAN SERVICES, PUBLIC HEALTH AND ENVIRONMENT, AND HEALTH CARE POLICY AND FINANCING;
- STAFF OF SENIOR CONGREGATE CENTERS AND SENIOR RESOURCE AND OUTREACH ORGANIZATIONS;
- STAFF OF AREA AGENCIES ON AGING (AAAs), INCLUDING STAFF OF THE AAA'S CONTRACTED PROVIDERS, WITH THE EXCEPTION OF THE LONG-TERM CARE OMBUDSMEN;
- EMPLOYEES, CONTRACTORS, AND VOLUNTEERS OPERATING SPECIALIZED TRANSPORTATION SERVICES FOR AT-RISK ELDERS AND AT-RISK ADULTS WITH IDD;
- LANDLORDS AND STAFF OF HOUSING FOR AT-RISK ELDERS AND AT-RISK ADULTS WITH IDD, AND HOUSING AUTHORITY AGENCIES;
- Court-appointed guardians and conservators;
- SCHOOL PERSONNEL;
- Clergy members; except that the reporting requirement described in paragraph (a) of this Subsection (1) shall not apply to a person who acquires reasonable cause to believe that an at-risk elder or an at-risk adult with IDD ~~and intellectual and developmental disability~~ has been mistreated or has been exploited or is at imminent risk of mistreatment or exploitation during a communication about which the person may not be examined as a witness pursuant to Section 13-90-107(1) (c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication; AND,
- ~~Dentists;~~
- ~~Law enforcement officials and personnel;~~
- ~~Fire protection personnel;~~
- ~~Pharmacists;~~
- PERSONS WORKING IN FINANCIAL SERVICES INDUSTRIES, INCLUDING BUT NOT LIMITED TO, personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions; ~~except that the reporting requirement described in paragraph (a) of this subsection (1) only applies to a person described in this subparagraph (XVI) who directly observes in person the abuse~~

~~or exploitation of an at-risk adult with an intellectual and developmental disability or who has reasonable cause to believe that an at-risk adult with an intellectual and developmental disability has been abused or has been exploited or is at imminent risk of abuse or exploitation by reason of actual knowledge of facts or circumstances indicating the abuse or exploitation;~~ CERTIFIED PUBLIC ACCOUNTANTS; MORTGAGE BROKERS; LIFE INSURANCE AGENTS; AND FINANCIAL PLANNERS.

This list should replace the current list at Section 26-3.1-102(b), C.R.S., to ensure uniformity between the APS and criminal statutes in the list of named reporters:

The following persons, whether paid, ~~or~~ unpaid, OR VOLUNTEERS are urged to report as described in paragraph (a) of this subsection (1):

- ~~Physicians, surgeons, physicians' assistants, osteopaths, physicians in training, podiatrists, occupational therapists, and physical therapists;~~ ANY PERSON PROVIDING HEALTH CARE OR HEALTH CARE RELATED SERVICES, INCLUDING, BUT NOT LIMITED TO, GENERAL MEDICAL, SURGICAL, OR NURSING SERVICES; MEDICAL, SURGICAL, OR NURSING SPECIALITY SERVICES, DENTAL SERVICES; VISION SERVICES; PHARMACY SERVICES; CHIROPRACTIC SERVICES; AND PHYSICAL, OCCUPATION, MUSIC, OR OTHER THERAPY SERVICES;
- Hospital and long-term care facility personnel engaged in the admission, care, or treatment of patients;
- FIRST RESPONDERS, INCLUDING emergency medical service providers, FIRE PROTECTION PERSONNEL, AND LAW ENFORCEMENT OFFICIALS AND PERSONNEL, INCLUDING VICTIM ADVOCATES EMPLOYED BY, CONTRACTING WITH, OR VOLUNTEERING WITH ANY LAW ENFORCEMENT AGENCY;
- CODE ENFORCEMENT OFFICERS;
- Medical examiners and coroners;
- VETERINARIANS;
- ~~Registered nurses, licensed practical nurses, and nurse practitioners;~~
- ~~Chiropractors;~~
- Psychologists, ~~and other mental health professionals~~ MARRIAGE AND FAMILY THERAPISTS, LICENSED PROFESSIONAL COUNSELORS, REGISTERED PSYCHOTHERAPISTS, AND LICENSED ADDICTION COUNSELORS, AS DEFINED IN SECTION 12-43-201, C.R.S.;
- ~~Social work practitioners~~ SOCIAL WORKERS, AS DEFINED IN SECTION 12-43-401, C.R.S.;
- Community-centered board staff;
- PROGRAM APPROVED SERVICE AGENCY (PASA), AS DEFINED IN 10 CCR 2505-10 8.500, EMPLOYEE, CONSULTANT, AND/OR INDEPENDENT CONTRACTOR;
- A caretaker, ~~staff member~~, employee, or consultant for a licensed OR UNLICENSED or certified OR NON-CERTIFIED care facility, agency, home, or

- governing board, including but not limited to LONG-TERM CARE FACILITIES, HOME CARE AGENCIES, AND home health providers; ~~and~~
- A caretaker, ~~staff member~~, employee of, or a consultant for, a home care placement agency, as defined in Section 25-27.5-102 (5), C.R.S.
 - ANY PERSONS PERFORMING CASE MANAGEMENT OR ASSISTANCE SERVICES FOR AT-RISK ADULTS;
 - STAFF OF COUNTY DEPARTMENTS OF HUMAN/SOCIAL SERVICES;
 - STAFF OF THE COLORADO DEPARTMENTS OF HUMAN SERVICES, PUBLIC HEALTH AND ENVIRONMENT, AND HEALTH CARE POLICY AND FINANCING;
 - STAFF OF SENIOR CONGREGATE CENTERS AND SENIOR RESOURCE AND OUTREACH ORGANIZATIONS;
 - STAFF OF AREA AGENCIES ON AGING (AAAs), INCLUDING STAFF OF THE AAA'S CONTRACTED PROVIDERS, WITH THE EXCEPTION OF THE LONG-TERM CARE OMBUDSMEN;
 - EMPLOYEES, CONTRACTORS, AND VOLUNTEERS OPERATING SPECIALIZED TRANSPORTATION SERVICES FOR AT-RISK ADULTS;
 - LANDLORDS AND STAFF OF HOUSING FOR AT-RISK ADULTS, AND HOUSING AUTHORITY AGENCIES;
 - Court-appointed guardians and conservators;
 - SCHOOL PERSONNEL;
 - Clergy members; except that the reporting requirement described in paragraph (a) of this Subsection (1) shall not apply to a person who acquires reasonable cause to believe that an at-risk adult has been mistreated or has been exploited or is at imminent risk of mistreatment or exploitation during a communication about which the person may not be examined as a witness pursuant to Section 13-90-107(1) (c),C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication; AND,
 - ~~Dentists;~~
 - ~~Law enforcement officials and personnel;~~
 - ~~Fire protection personnel;~~
 - ~~Pharmacists;~~
 - PERSONS WORKING IN FINANCIAL SERVICES INDUSTRIES, INCLUDING BUT NOT LIMITED TO, personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions; ~~except that the reporting requirement described in paragraph (a) of this subsection (1) only applies to a person described in this subparagraph (XVI) who directly observes in person the abuse or exploitation of an at risk adult with an intellectual and developmental disability or who has reasonable cause to believe that an at risk adult with an intellectual and developmental disability has been abused or has been exploited or is at imminent risk of abuse or exploitation by reason of actual knowledge of facts or circumstances indicating the abuse or exploitation;~~ CERTIFIED PUBLIC ACCOUNTANTS; MORTGAGE BROKERS; LIFE INSURANCE AGENTS; AND FINANCIAL PLANNERS.

Recommendation III

Recommendations concerning the estimated costs of implementation of SB15-109, including workload impacts and services, to be incurred by the State Departments, county departments, Community Centered Boards, and law enforcement agencies of the state as a result of requiring mandatory reporters, as identified in Section 18-6.5-108, C.R.S., to report known or suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities.

Recommendations for training of State Departments, county departments, and Community Centered Boards to use outcome-based best practices in the provision of protective services to at-risk adults with intellectual and developmental disabilities.

Recommendations regarding the training of mandatory reporters in identifying suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities.

- 7. The Task Force recommends funding be provided to support administrative and personnel costs of investigating reports and providing protective services for county departments, the State Department, law enforcement, and judicial districts.**
- 8. The Task Force recommends mandatory training for APS, law enforcement, CCBs, and also that training is available for mandatory reporters and the community and that funding be provided for all training costs.**
- 9. The Task Force recommends fully funding the administrative and training costs identified in this report with a sustainable revenue stream, including funding for a SFY2015-16 supplemental and ongoing funding beginning in SFY2016-17.**
- 10. The Task Force further recommends that if the General Assembly is unable to fully fund the administrative and training costs identified in this report with a sustainable revenue stream, that SB15-109 be repealed or delayed and that mandatory reporting for at-risk adults with an intellectual and developmental disability not be implemented until such time as the General Assembly can meet the Task Force's funding recommendation.**

Background Information and Supporting Data Related to Administration Funding Recommendations

During the 2013 legislative session, SB13-111 was signed into law, implementing mandatory reporting for suspected elder abuse, neglect, and exploitation effective July 1, 2014. Funding for the County APS programs and services in State Fiscal Year (SFY) 2014-2015 was based on an anticipated 15% increase in APS reports due to mandatory reporting, as determined by the SB12-078 Task Force. That Task Force believed the number of reports received would spike in the initial months of mandatory reporting and then quickly wane to an overall 15% increase in reports for the year. However, while Colorado initially saw a 50% increase in reports during the first two months of implementation, the overall decline expected by the SB12-078 Task Force did not occur. Reports leveled off to a 41% increase in reports by November and no further decline occurred; and at the end of SFY 2014-15, Colorado's APS program had a documented 41% increase in reports statewide. Projecting from data on the total number of reports received over the first four months of SFY 2015-16, APS will see an overall increase in reports during this fiscal year of 7% over the SFY 2014-15 total reports received, further indication that a "leveling off" of reports should not be anticipated.

The implementation of mandatory reporting for the intellectual and developmental disability population will increase the number of reports received by law enforcement and county APS programs. All reports that law enforcement receives as a result of this law are required to be shared with APS. This statutory requirement is fully supported by the Task Force as each agency has a different role to play – law enforcement to focus on the crime and APS to focus on the adult and services he or she needs to prevent further mistreatment and improve safety. APS has a statutory requirement to evaluate all reports received and determine the appropriate response, thus leading to an increase in the number of reports that require evaluation, investigation, and provision of protective services. Based upon the increase in the number of reports seen from the implementation of mandatory reporting as a result of SB 13-111, which required mandatory reporting for persons ages 70 and over in Colorado, the Task Force anticipates an increase in the number of reports and investigations from adding the IDD population to this statute as detailed below.

As illustrated in Table 1, the effects of mandatory reporting for at-risk elders (persons age 70 and older) in SFY 2014-15, the first year of implementation, was not limited to persons age 70 and older. While the number of reports received related to that age group increased by 48% over prior years' historical averages, the number of reports received related to the under 70 age group also increased by 34%. This "cross-over" or "trickle down" effect is likely due to a combination of factors: 1) the increased awareness and training related to mistreatment of vulnerable populations generally and mandatory reporting specifically, prompting named reporters and others to appreciate the ethical responsibility of their position and begin reporting situations they may not have reported prior to the law; 2) misunderstanding of the law's requirement to report only on persons age 70 and older; and 3) concern by mandatory reporters related to the criminal penalties for failing to report, causing them to report on all

situations that they believed might be covered under the law, whether or not the situation technically did meet the legal requirement for reporting.

Through the first four months of SFY 2015-16 (July through October) APS continues to experience an increase in the numbers of reports for all populations served. However, in the current fiscal year, as shown in Table 1, the increase in the number of reports for the 70 and older population is increasing by just 4% while the increase for the under 70 population is 10%, with a projected overall increase in reports of 7% for SFY 2015-16. The greater increase in the percentage of reports received on persons age 18-69 is likely due to similar factors as was seen with elder reporting: 1) the increased awareness, training, and ethical responsibility, in part generated by the SB15-109 expansion of mandatory reporting on the IDD population; 2) misunderstanding of the law's implementation date; and 3) continued awareness of the criminal penalty for not reporting. This projected 7% increase this fiscal year is commensurate with the 5% increase in reports experienced by APS in the year prior to implementation of at-risk elder mandatory reporting. Prior to that, the historical average increase in reports from year to year for APS was 1-2% over the previous year's total number of reports.

When implementation of SB15-109 begins on July 1, 2016, the Task Force strongly believes that APS will experience a similar cross-over or trickle-down effect; i.e., mandatory reporters will make an increased number of reports of mistreatment on more than just at-risk elders and at-risk adults with IDD. Unless the named reporter has access to an adult's diagnosis, they may be unable to determine whether the adult has an intellectual and developmental disability or has a different, unrelated physical, medical, or cognitive deficit or disability. Therefore, mandatory reporters will report on any person they believe might meet the standard of the law. And, of course, reporters who have made the decision to report mistreatment on all vulnerable populations as a result of training or due to personal adoption of ethical considerations will continue to report.

In trying to determine the estimated increase in reports as a result of expansion of mandatory reporting for adults with IDD, the State APS manager and Division Data Manager looked at various data to determine a reasonable, data driven projection for the increase in reports expected with this expansion of mandatory reporting. The Elder Abuse Task Force, created by SB12-078, based its 15% estimate of the increase in reports for elder reporting on other states' experience when those states moved from "urged" to "mandatory" reporting. However, that estimate proved to be much lower than the actual increase of 41% that Colorado actually experienced, most likely due to the cross-over or trickle-down factors discussed above.

The Task Force believes that while there will be an increase in the age 70 and older population due to the cross-over or trickle-down effect, described above, the increase will not be as substantive for this demographic as was seen in the under age 70 demographic when at-risk elder mandatory reporting was implemented. First and foremost, the named reporters will have been operating under a mandatory reporting law for the 70+ population for two years when SB15-109 is implemented. The likely increases in this age group will come from the expanded list of named mandatory reporters that the Task Force is recommending. (See

Recommendation II, 5.) Second, data from the first four months of SFY 2015-16 shows a sharp decline in the increase in reports for the 70 and older population. Given that, the Task Force is estimating an 8% increase in reports on the 70+ population, a doubling of the SFY 2015-16 projected increase for this population.

In FY2014-15, APS saw a 48% increase in the number of reports on clients age 70 and older (the target population for at-risk elder reporting) and this increase is expected to be similar for the 18-69 year old population with the expansion of SB15-109. Additionally, in FY2015-16, APS is seeing another 10% increase in reports on the 18-69 year old population over the FY2014-15 numbers, or a 58% overall increase projected for this population. To then calculate the percent increase in total reports as a result of SB15-109, the current fiscal year projected number of reports received on the 18-69 year old population was multiplied by the 58% and the projected number of reports on clients age 70 and older was multiplied by 8% for a total of 23,166 projected reports for SFY 2016-17. Therefore, the Task Force is projecting a 30% increase in reports as a result of SB15-109 implementation, as illustrated in Table 1.

Not all Task Force members agreed with recommendations 7 through 10. See Appendix 9 for a minority report.

Table 1				
Effects of Mandatory Reporting				
	FY 2013-14 Actuals¹	FY 2014-15 Actuals	FY 2015-16 Projected²	FY 2016-17 Projected²
Reports on <70 years of age	5,377	7,179	7,887	12,438
Reports on >=70 years of age	6,441	9,517	9,933	10,728
Total Reports	11,818	16,696	17,820	23,166
Percent Increase <70		34%	10%	58%
Percent Increase >=70		48%	4%	8%
Percent Increase in Total Reports		41%	7%	30%

¹ Estimates based upon CBMS data available

² Estimates based upon year to date actuals in FY 2015-16

County APS Administration Funding Recommendation

In order to effectively implement mandatory reporting for adults with IDD, the county departments will need funding to ensure adequate staffing with the anticipated 30% increase in reports. The National Adult Protective Services Association (NAPSA) recommends a caseload average of no more than 25:1 and this standard was adopted by Colorado in SB13-111 at

Section 1(3)(b). This standard is inclusive of all at-risk populations served by APS, including adults with IDD. This caseload average allows county APS programs to have adequate staffing resources to ensure that all reports meeting criteria can be investigated fully and that quality protective services are provided. This caseload average also helps to ensure that APS staff are able to attend ongoing educational training opportunities to continue to hone their expertise in responding to reports of mistreatment of adults with IDD and the myriad of other specialized and vulnerable populations served by the APS program, such as persons with dementia/Alzheimer's Disease, traumatic brain injuries, neurological deficits, severe and persistent mental illness, complex physical disabilities, and persons who are medically fragile.

As shown in Table 2, the anticipated increase in reports results in a need for 47 new county FTE in SFY 2016-17 and beyond in order to implement mandatory reporting of abuse for individuals with IDD. The fiscal impact of this request is \$3,753,289 total funds in FY 2016-17. The methodology used to determine the increase in caseload associated with this bill is based on the methodology used to determine the caseload increase for SB 13-111, which required mandatory reporting for persons ages 70 and over in Colorado. The 25:1 ratio translates to one county worker handling an average of 84 reports per year. The Task Force recommends that funding be provided to meet the need for new county FTE based on the SFY projected number of reports (Row 1 in Table 2, highlighted). APS is experiencing a 7% increase over the new baseline number of reports set in SFY 2014-15 and the Task Force agrees that using the number of reports received in the prior year (SFY2014-15) would result in the county departments starting the new mandatory reporting law with a 7% deficit in needed staff. The Task Force is providing the costs for funding based on the SFY 2014-15 actual reports only for comparison. Both costs are projected to ensure a 25:1 caseload average with this increase in reports.

Further, the Task Force recommends that the General Assembly consider providing State General Fund at a level greater than the 80/20 ratio that was established in SB13-111. The 20% match required of the county departments was difficult or impossible for some counties to find in their budgets. As a result, some counties were unable to draw down the additional funds and hire additional APS staff, even though they received additional funding in their APS allocation. The Task Force recommends that the General Assembly consider funding the additional FTE for the implementation of SB15-109 using one of two methods: 1) 100% State General Fund; or 2) 90/10 ratio for most counties and 100% SGF for the tax-base relief counties, the method used to fund the recent addition of child welfare FTE.

The Task Force is further recommending a supplemental appropriation be approved for the current fiscal year (SFY2015-16) to provide limited funding to county APS programs to begin initial hiring of additional caseworkers and supervisors. County budgets are set on a calendar year and so have not budgeted for any increase in funding that might be required for a match to State General Fund. If a match is required, counties would not be able to begin hiring staff until January 2017, fully six months after the implementation of SB15-109. Even if funding for SB15-109 was provided at the 100% SGF level, or for counties that could find a match in their budget if there is a match requirement, hiring new caseworkers takes approximately two to three months and training of that new worker to a level where they could be assigned to

investigations is another two months, minimum. Therefore, in order to have the smoothest transition to the new level of reporting expected as a result of implementation of SB15-109, county departments need some lead time to begin increasing staffing. The Task Force recommends providing 25% of the total cost for county FTE in FY2016-17 as the supplemental funding in SFY2015-16, or \$938,322, as shown in Table 2.

The Task Force recommends that the new county APS administration funds be redistributed from the Department to the counties through an allocation method developed through the Policy Advisory Committee's (PAC) APS Allocation Task Group, which meets monthly. This task group is comprised of county financial officers, county APS program staff, and state APS program staff. This process could be complete within two months of an approved supplemental. Once funds are allocated, counties then determine the APS staff positions to be hired in order to best meet their individual APS program needs.

Table 2 County FTE Costs for Expansion of Mandatory Reporting¹											
Funding	New Reports	Total Cases	Total FTE	Add. CW³ FTE² (98.5 now)	CW³ Cost (\$71,622)	Add. Sup³ FTE (6:1)	Sup Cost (\$87,077)	Cty³ Atty FTE (10:1)	Cty³ Atty Cost (\$153,054)	Total Cost	Supplemental
30% Increase from FY15-16 Projected Reports	5,346	2680	136	37.0	\$2,650,014	6.2	\$536,975	3.7	\$566,300	\$3,753,289	\$938,322
30% Increase from FY14-15 Actual Reports	5,009	2671	133	35.0	\$2,506,770	5.8	\$507,949	3.5	\$535,689	\$3,550,408	\$887,602

¹ All costs include salary, and estimated fringe, operating, and travel.

² FTE calculations assume an average of 84 reports per caseworker per year.

³ CW = Caseworker; Sup = Supervisor; Cty Atty = County Attorney

State APS Administration Funding Recommendation

The Task Force recommends that staffing at the State level for the APS program is critical to ensuring that adequate county support is available in areas such as training, technical assistance and case consultation, data system support, and oversight to ensure quality casework is provided to vulnerable adults in Colorado. The Task Force is recommending that two additional FTE be provided for the State Department in SFY 2016-17 and beyond to

effectively implement the expanded mandatory reporting requirements and provide the increased level of support, training, and oversight to the county APS programs that will result from the implementation of SB15-109.

One FTE would be dedicated to a program specialist position who has specialized experience in intellectual and developmental disabilities in order to support county APS caseworkers through training and case consultation. The second FTE would be housed with the Department’s Quality Assurance unit and would be dedicated to ensuring that quality casework that is in compliance with rule and best practice is conducted by county APS program staff. This quality assurance role is critical to providing county APS program staff the training, technical assistance, and consultation necessary to continue growing their skills and expertise in serving the APS population.

In addition to the personal services costs, the State administration allocation will need to be increased by \$17,745 annually to purchase additional annual licenses for the Colorado Adult Protective Services (CAPS) data and case management system for the new county and state FTE.

Further, the Task Force recommends that a supplemental appropriation be provided in SFY 2015-16 to allow the State to hire and train the IDD program specialist prior to the July 1, 2016 implementation.

Table 3 State FTE Personal Services and Operating Calculations				
Item	FY 2015-16 Supplemental	FY 2016-17	FY 2017-18	FY 2018-19
FTE	0.33	2.0	2.0	2.0
Salaries (including Medicare and PERA)	\$22,055	\$132,328	\$132,328	\$132,328
AED	\$870	\$5,217	\$5,217	\$5,217
SAED	\$840	\$5,039	\$5,039	\$5,039
STD	\$44	\$261	\$261	\$261
HLD	\$2,642	\$15,854	\$15,854	\$15,854
Operating Expenses (FY15-16 includes one-time start-up costs; FY16-17 and beyond includes ongoing costs)	\$11,356	\$1,950	\$1,950	\$1,950
CAPS Licenses	\$900	\$17,745	\$17,745	\$17,745
Total	\$38,706	\$178,395	\$178,395	\$178,395

Law Enforcement and District Attorney Administration Funding Recommendation

Law enforcement agencies are experiencing much greater numbers of calls that they must respond to as a result of mandatory reporting of at-risk elder abuse, neglect, and mistreatment. One large city police department is experiencing a ten-fold increase in calls for service for all at-risk adults since the implementation of SB13-111, with calls increasing from approximately 50 calls per month to more than 500 calls per month. Similarly, this police department has seen a tripling of reports assigned to its elder abuse unit, increasing from approximately 10 referrals per month prior to mandatory reporting to more than 35 per month post mandatory reporting implementation. This police department and the Task Force anticipate this volume of calls will continue to increase with the expansion of mandatory reporting to at-risk adults with IDD. One of the state's judicial districts, not attached to the city PD identified above, is reporting a 22% increase in cases referred for prosecution, which naturally translates to a much higher percentage increase of calls to law enforcement agencies in the judicial district, since many reports are investigated but not referred for prosecution.

If law enforcement is going to be able to adequately respond to this increase in reports, they will need additional resources. The Task Force recommends finding a way to provide increased funding for these local jurisdictions. The Task Force is aware that funding for law enforcement and judicial districts in Colorado is primarily supported through county and municipal budgets. However, the Task Force strongly believes that State funding must be provided to these agencies to respond to the increased calls as a result of this legislation. These agencies need to be able to have law enforcement officers specially trained to investigate these complex cases and judicial districts should develop specialized expertise within the District Attorney's Offices to prosecute the crimes.

One option that the Task Force discussed was establishing an implementation grant fund using State General Fund for local agencies that want to hire officers with expertise in investigating these types of crimes or in setting up specialized investigation or prosecution units for crimes against vulnerable populations. It is recommended that a minimum of \$1 million be allocated to this fund (enough to hire and equip approximately ten (10) officers annually). The Task Force envisions the grants to be implementation grants with the expectation that local governments would continue to fund the positions in future years.

County APS Administration Deficit Funding Recommendation

The Task Force is recommending that the General Assembly allocate additional funding for county APS administration costs to close the deficit in funding created by the much larger than anticipated increase in reports as a result of the implementation of mandatory reporting of mistreatment of at-risk elders, as established by SB13-111. In SB13-111 funding was provided to allow counties to hire staff prior to the implementation of mandatory reporting to reduce the then 32:1 caseload averages to nearer the recommended 25:1 average established in SB13-111. Additional funding was allocated to allow counties to maintain the 25:1 caseload average with the anticipated 15% increase in reports once implementation of mandatory reporting

began. As previously discussed, the increase was actually a 41% increase in reports, 26% higher than originally anticipated or funded. This deficit in funding has caused the caseloads in Colorado APS programs to once again grow to 32:1 statewide and 34:1 among the ten large counties, which receive and respond to 78% of reports statewide. Large county caseload averages range from a low of 22:1 to a high of 51:1.

While this funding is unrelated to the specific changes in law as a result of SB15-109, the Task Force believes it is critical to provide this deficit funding in conjunction with the funding for SB15-109. The Task Force believes that this is the only way to fully fund the county need and ensure that Colorado is not inadvertently causing more harm to vulnerable citizens. High caseloads mean the caseworker has less time to investigate, assess needs, and implement services for clients and less time to attend specialized training to increase knowledge and hone skills. A deficit in funding means that counties do not have an adequate number of supervisors to review casework and provide guidance to caseworkers. The deficit in funding also means that county attorneys may not be available to provide legal advice in very complex cases. The Task Force believes strongly in the need to provide the deficit funding and considers this part of its recommendation to fully fund mandatory reporting.

SB13-111 appears to also support this request to provide increased funding related to the deficit experienced as a result of the 41% increase in reports, 26% of which was unfunded, as a result of implementation of SB13-111. In SB13-111 at Section 1, Legislative Declaration, subsection (3) states, "Now, therefore, the general assembly hereby declares that, in addition to actions taken within this act to address specific recommendations of the task force, the general assembly expects that either the current general assembly **or a future general assembly** [emphasis added] will take further action, as follows: (b) The general assembly should take such action as is necessary, including but not limited to the appropriation of additional moneys to reduce the caseload ratio of county social workers to a maximum of twenty-five cases per social worker; (c) The general assembly should identify means by which additional moneys may be allocated to county departments of social services to be used by the departments to secure adult protective services for at-risk adults; (f) The general assembly should identify assured and sustainable sources of funding to support the enforcement of mandatory reporting and the overall adult protective services infrastructure."

Table 4 details the costs to fill the funding deficit created with the implementation of mandatory reporting of at-risk elders, using the same methodology outlined previously, so that county APS programs statewide are able to reduce caseloads to the recommended 25:1 across the board. Again, the Task Force recommends that the deficit funding be based on the SFY15-16 projected number of reports (Row 1 of Table 4, highlighted), as APS continues to see an increase in the overall number of new reports of 7% over the SFY14-15 new baseline. The Task Force is concerned that if deficit funding is only set to the SFY14-15 level, there will be a continuing gap in funding for county APS programs. Without full funding to close the deficit created by SB13-111, caseload averages will not be reduced significantly and APS programs will continue to struggle to keep up with rising demand for protective services. The Task Force recommends using the method for distributing the funds to the county, as previously described.

Table 4
Costs to Remedy Deficit Funding from SB13-111
and to Reduce Caseload Averages to 25:1 ¹

Funding	New Reports	Total Cases	Total FTE	Add. CW³ FTE² (98.5 now)	CW³ Cost (\$71,622)	Add. Sup³ FTE (6:1)	Sup Cost (\$87,077)	Cty³ Atty FTE (10:1)	Cty³ Atty Cost (\$153,054)	Total Cost	Supplemental
25:1 based on Projected Reports for FY15-16	17,820	8858	124	25.5	\$1,826,361	4.3	\$370,077	2.6	\$390,288	\$2,586,726	\$646,682
25:1 based on Actual FY14-15 Reports	16,696	8,932	119	25	\$1,468,251	3.4	\$297,513	2.1	\$313,761	\$2,079,525	\$519,881

¹ All costs include salary, and estimated fringe, operating, and travel.

² FTE calculations assume an average of 84 reports per caseworker per year.

³ CW = Caseworker; Sup = Supervisor; Cty Atty = County Attorney

Background Information and Supporting Data Related to Training Funding Recommendations

In addition to administrative costs for county and state APS FTE and law enforcement and judicial districts, the Task Force recognizes the need for training for law enforcement and APS, which are the two agencies tasked with responding to reports of mistreatment of at-risk adults with IDD, at-risk elderly, and other at-risk adults experiencing mistreatment or self-neglect. The Task Force further agrees that there is a need for training for district attorneys (DAs), district attorney investigators, and law enforcement based victim advocates, who are charged with prosecuting these crimes and supporting the victims through the prosecution activities. The Task Force agrees that a mandatory report is only as good as the response to the report. Conducting investigations; communicating with, interviewing persons with IDD, the elderly with dementia or other cognitive or medical disabilities, and other vulnerable populations; and prosecuting these crimes requires knowledge and understanding into those adults' conditions and skill in employing the correct methods of communication and interviewing.

While State APS was provided \$85,000 through SB13-111 to conduct training for county APS staff, this minimal training budget does not support the level of training needed for APS caseworkers and supervisors to continue to develop specialized expertise in the myriad of disabilities that vulnerable adults in Colorado face. SB13-111 also required the Peace Officers

Standards and Training (POST) Board to develop training related to mandatory reporting of at-risk elder mistreatment, but did not provide funding to POST. The bill, instead, allowed POST to charge officers a fee to attend the training, though ultimately, POST was awarded a small grant and number of district attorneys and law enforcement officers assisted in the development of the curriculum and the delivery of the training statewide.

The Task Force recommends fully funding the training needs detailed below as part of fully funding SB15-109.

APS Training Recommendations

The Task Force recommends that the APS training allocation be increased from the current \$85,000 to \$150,000 annually in order to provide Training Academy and data system training for all new county APS staff, specialized casework training related to the various vulnerable populations served by the APS program, and online interactive training modules for APS staff, mandatory reporters, and the general public.

APS State staff are working in conjunction with experts in the field of intellectual and developmental disabilities to develop curriculum for a one-day training on communicating with and interviewing adults with IDD. This training will be provided regionally across the state between March 2016 and June 2016 in order to ensure that county APS staff are ready to respond to the anticipated increased number of reports of mistreatment of adults with IDD. While APS already provides services to this population (about 8% of reports to APS involve an at-risk adult with IDD), this specialized high-level training will enhance their current skills. This curriculum will be added to the APS Training Academy, required for all new APS caseworkers and encouraged for all new supervisors. This expands Training Academy to five days, increasing the cost for this training that is currently a four-day training provided quarterly. The Task Force agrees that APS needs funds to continue to contract with experts that have specialized skills to provide regionally-based training to APS workers in future years.

The Task Force has further identified the need for online, web-based interactive training modules for APS caseworkers. New workers must complete pre-training prior to attending Training Academy. This pre-training ensures that new workers have a foundational understanding of the APS statute, rules, and populations served. Having this foundational knowledge improves the transference of knowledge and skills during Training Academy. The worker that has completed the pre-Academy learning has a better understanding of what they don't know and are able to ask relevant questions throughout Training Academy, giving them more confidence in their abilities to implement concepts learned throughout Training Academy. This pre-Academy training should be available to new county APS workers from day one on the job through interactive online modules. This will also ensure that training across the state is uniform for all new APS workers. Online learning modules can be developed for other casework related topics to provide targeted, accessible training to APS staff across the state. This is a key objective, especially for counties outside the metro area who may have just one or two caseworkers who conduct both APS and child protective services (CPS) investigations. Online

training ensures they have access to training from their county at any time that is convenient to them.

Additional online learning modules will be created by State APS staffs for other stakeholders and citizens of Colorado. Providing online learning on APS and mandatory reporting requirements is key to ensuring a low-cost, effective method for training the hundreds of thousands of professionals who are named as mandatory reporters as well as law enforcement and the citizens of Colorado. Training can help ensure that incidents of mistreatment of vulnerable adults are reported timely so that law enforcement can conduct a criminal investigation and APS can provide protective services to the victim to prevent future mistreatment. Adequate training for mandatory reporters and the public may also help reduce reports that are not related to mistreatment, thus ensuring that limited resources in both agencies are directed to those at-risk adults with IDD and at-risk elders experiencing mistreatment. For example, if all care taking standards are in place and yet an adult with IDD takes an accidental fall or incurs an accidental injury due to bumping into furniture in their group home, a report to law enforcement and APS is not required as this is not mistreatment. These online learning modules would be housed on a website that has already been developed and is designed specifically for providing education to APS staff, law enforcement personnel, mandatory reporters, and the citizens of Colorado.

Law Enforcement and District Attorney Training Recommendations

The Task Force recommends that adequate and timely training be provided to and required of all law enforcement officers, district attorneys (DAs), district attorney investigators, and law enforcement based victim advocates. The Task Force recommends providing the Peace Officer's Standards and Training (POST) Board with funding in the amount of \$150,000 in SFY 2016-17 and beyond for POST to develop and conduct training related to investigating and prosecuting mistreatment of at-risk adults with IDD and at-risk elders. Further, the Task Force recommends a \$75,000 supplemental budget appropriation in SFY2015-16 to allow POST to develop the curriculum and begin providing training to law enforcement officers and district attorneys prior to the July 1, 2016 implementation date. The requested annual allocation includes the cost for POST to develop and deliver the training and to provide funding for the local agencies to backfill the costs of law enforcement officers and law enforcement based victim advocates to attend the training, i.e., travel and/or overtime costs. The Task Force recommends a \$55,000 annual training allocation for district attorneys and district attorney investigators.

The Task Force recommends that the current training related to at-risk elders be expanded to include training on at-risk adults with IDD to create a full-day training. Further, there is agreement among Task Force members that this training should go further than simply defining mistreatment and the mandatory reporting requirement to include substantive training related to communicating with and interviewing these two specialized populations during the investigation. The Task Force recommends that all current officers and new and current DAs, DA investigators, and law enforcement based victim advocates attend this training within five years of employment. The Task Force agrees that the requirement established by SB13-111 of

requiring one officer in each agency to attend training is inadequate, especially in large agencies.

The Task Force further recommends that POST develop online learning modules developed specifically for law enforcement officers, DAs and DA investigators, and law enforcement based victim advocates that further develop specialized skill for these professionals who are charged with investigating and prosecuting these crimes. These modules could be housed on the same website developed by APS to create a central location for mandatory reporting related resources and education or could be posted to the POST website.

Community Awareness Training Recommendations

The Task Force recommends that the General Assembly establish mandatory training requirements for all named mandatory reporters. Colorado's reporting laws, both mandatory, per Title 18, Article 6.5, and urged, per Title 26, Article 3.1 of the Colorado Revised Statutes are complex and vary by population, age, and type of mistreatment or self-neglect as to who the reporter should call to make the report. (See Appendix 4.) Therefore, training will be critical for named reporters. This training could be provided by the professional's employer using an approved training curriculum or could be provided through an online learning module, as described previously. The Task Force further recommends required training on mandatory reporting responsibilities for all staff that work with adults with an IDD, including staff of Community Centered Boards, the provider networks, and all regional center staff, to be conducted during new hire orientation and annually thereafter. The cost to develop the online learning module and approved training curriculum could be absorbed into the APS training budget. This includes the development of online training modules.

The Task Force recommends an allocation of \$250,000 for the creation of two FTE or contract positions that would be dedicated to providing facilitated training on mandatory reporting across the state. This funding is considered by the Task Force to be critical to the successful implementation of SB15-109. The contract would cover the costs of the FTE/contract positions and the costs of travel to training sites and the costs associated with renting training facilities. These two positions would focus on providing facilitated training on mandatory reporting requirements for named professionals, elders, adults with IDD who are self-advocates, and the general public. Even though it has been more than a year since mandatory reporting of mistreatment of at-risk elders became law, there are many named reporters who are unaware of the law and their responsibility to report suspected mistreatment. And many more citizens of Colorado lack a basic knowledge of these growing crimes of mistreatment or that there are agencies in place to step in and help stop the crimes and prevent future mistreatment. In addition to the information on mandatory reporting, these two positions will incorporate into the training details on the intersecting roles of law enforcement, APS, and provider networks that work with vulnerable adults.

The Task Force believes that this training model is critical to continued buy-in for mandatory reporters and the public. There is much misunderstanding of APS, in particular, related to

adults' right to self-determination and their ultimate right to folly if they choose. Unlike child welfare which has authority to remove a child from unsafe situations, APS can offer services but the competent adult may refuse and choose, instead, to continue to live with safety concerns. There is also confusion among professionals and the public about law enforcement's standard of proof that must be met in a criminal investigation. It is often difficult in these crimes to develop enough evidence for a district attorney to be able to prove during prosecution that the crime met the "beyond a reasonable doubt" standard; therefore, many reports may not be prosecuted. These two scenarios may cause mandatory reporters to stop reporting because "nothing happens". But, even if the adult refuses protective services, or law enforcement cannot prosecute, simply getting eyes on the client may cause the perpetrator to stop mistreating for fear of prosecution and/or continued law enforcement and APS intervention.

The Task Force further recommends a minimum of \$250,000 be allocated to develop a statewide public awareness campaign. Additionally, the Task Force recommends \$125,000 for a contract position to focus on developing strong working relationships between APS, law enforcement, the Community Centered Board and its provider network, and other agencies in a specific community to ensure investigations and provision of services are coordinated and targeted to produce the best outcome for the at-risk adult with IDD. While the Task Force considers these two allocations to be important, it does not consider this to be critical funding necessary for the implementation of SB15-109.

The public awareness campaign would focus on improving awareness of reporting requirements among the hundreds of thousands of named reporters and among the public in general of the epidemic of mistreatment being experienced by at-risk elders and at-risk adults with IDD. The Task Force believes that this undertaking should include public service announcements, radio and TV spots, and development of marketing materials that are developed by a professional marketing firm.

The FTE/contract position would focus on ensuring that APS, law enforcement, the Community Centered Board and its provider network, and other agencies in a specific community come together to establish strong working relationships to ensure coordinated response to reports of mistreatment. Key to prosecuting offenders and providing adequate and appropriate services to prevent future mistreatment is a coordinated approach to investigations and provision of services. The APS program, while enacted in 1983, has not had adequate allocations to develop a strong resource network in most communities in Colorado. And the investigation of mistreatment is a new expectation of law enforcement. Further, there has been limited success in past years in developing strong collaborative networks between the many agencies that respond to and manage services needed for vulnerable adults experiencing mistreatment and self-neglect, often because of limited resources within these agencies.

Total Costs Related to Administration and Training Recommendations

The total cost of implementation of SB15-109, as detailed in Table 5 is \$9,812,119, including the SFY 2015-16 supplemental (\$1,773,710) and the costs for SFY 2016-17 and beyond

(\$7,038,410). This includes increased FTE for county department APS programs, increased FTE for the state APS program, new administrative funding for law enforcement and district attorneys, and increased costs for CAPS licenses. This figure also includes increased FTE for county department APS programs to close the deficit in funding that resulted when SB13-111 resulted in a 41% increase in reports, rather than the 15% increase that was projected and funded. The costs identified in Table 5 also include training costs for APS, law enforcement, district attorneys, mandatory reporters, self-advocating adults with IDD, and the citizens of Colorado. This does not include the \$375,000 for the public awareness campaign and the FTE/contract position to help communities establish a coordinated response protocol.

The Task Force is united that without adequate and sustainable funding identified throughout this report and indicated as “Total Costs for SB15-109”, highlighted in blue in Table 5, the implementation of SB15-109 should not move forward. The changes to Title 18, Article 6.5, C.R.S., as the result of SB15-109 and expansion of mandatory reporting of mistreatment of at-risk adults with IDD should be repealed or delayed until sustainable funding can be secured, as recommended in Table 5. While not critical to the implementation of SB15-109, the Task Force believes that additional funding for a public awareness campaign and a position to help build coordinated response teams across the state is important and should be considered by the General Assembly.

Table 5 Total of All Costs¹			
	FY 2015-16	FY 2016-17	Comments
Total County Cost - IDD	\$938,322	\$3,753,289	Supplemental is 25% of 16-17
Total State FTE Cost	\$37,806	\$160,650	Supplemental is for 2 months
Total IT Licensing Cost	\$900	\$17,745	CAPS Licensing
LE/DA Implementation Grant Fund		\$1,000,000	minimum allocation
Subtotal SB109 Admin	\$977,028	\$4,931,684	
Total APS Training		\$65,000	This is in addition to the \$85,000 currently allocated for training for a total training budget of \$150K.
Total LE Training	\$75,000	\$150,000	Supplemental is 50% of SFY16-17
Total DA Training		\$55,000	
FTE/Contract for Facilitated Training of Mandatory Reporters	\$75,000	\$250,000	
Subtotal Training	\$150,000	\$520,000	
Subtotal SB109 Admin Costs	\$977,028	\$4,931,684	
Subtotal Training	\$150,000	\$520,000	Supplemental is 25% of 16-17
County FTE - Deficit Funding	\$646,682	\$2,586,726	
Total Costs for SB109	\$1,773,710	\$8,038,410	Task Force considers this to be the "fully funded" allocation necessary for implementation of SB15-109
For Additional Consideration			
Public Awareness Campaign		\$250,000	Annual appropriation
FTE/Contract for Establishing Coordinated Response		\$125,000	Could be limited to two years

¹ Based upon FY 2015-16 Projections

Recommendation IV

Recommendation identifying sustainable sources of funding, including new or existing revenues, that may be used to offset the costs to be incurred by state departments, county departments, community-centered boards, and law enforcement agencies of the state as a result of requiring certain persons to report known or suspected mistreatment, abuse, neglect, or exploitation of at-risk adults with intellectual and developmental disabilities.

- 11. The Task Force agrees that the two most promising sources of new revenue to support the costs of law enforcement and APS investigating, prosecuting, and providing protective services to vulnerable adults in Colorado is utilizing the increased revenues generated through marijuana taxes or from the Victims of Crime Act (VOCA).**

The Adult Protective Services program is primarily funded by State General Fund and local funds. The Colorado General Assembly appropriates approximately \$1.7 million of the state's federal Social Services Block Grant (SSBG or Title XX) to the APS program annually. (See Appendix 5.) Aside from state's option of utilizing Title XX funds for APS, there is no other targeted federal funding for APS activities. The federal Elder Justice Act (P.L. 111-148, Title VI, H) was passed in 2010 as a subsection of the Patient Protection and Affordable Care Act. But, while \$100 million dollars was authorized for state APS programs, Congress has never appropriated any funds. Even if Congress fully funded the \$100 million authorization, that funding must be allocated across all 50 states plus U.S. Territories. When the Elder Justice Act was passed, the National Adult Protective Services Association estimated that Colorado would receive just \$1.27 million. Clearly, relying on Congress to fund the Elder Justice Act and subsequently the APS program in Colorado in any substantial manner is not a practical solution.

Law enforcement and District Attorney Offices are primarily funded using local funds. (See Appendix 5.) There are some limited federal grants available to law enforcement, but grant funding is unreliable and unsustainable in the long term. The Task Force, as outlined in Recommendation III, strongly advocates for developing a method for supporting law enforcement agencies and District Attorneys with additional state-level funding.

The Task Force reviewed the revenue sources identified in the report written by the SB12-078 Task Force. The Task Force agrees that most of the options previously identified are still options for the General Assembly to consider. (See Appendix 6.) In addition to these options, the Task Force identified two new possible sources of revenue to support law enforcement, district attorneys, and APS in responding to reports of mistreatment of at-risk elders and at-risk adults with IDD in Colorado: 1) a dedicated portion of the marijuana taxes; or 2) a dedicated portion of the state's federal VOCA funding.

The Task Force understands that the first \$40 million of revenue generated from the state excise tax on marijuana must be directed toward education related expenses, per the Constitutional amendment approved by the voters. However, the General Assembly acknowledges in Section 39-28-501, C.R.S. that the taxes may be used for any purpose and can request that the State Treasurer transfer funds from the Marijuana Cash Fund to State General Fund. Given this and recent estimates that marijuana tax revenues are increasing over FY2014-15 revenues, the Task Force recommends that the General Assembly consider dedicating a fixed dollar amount of the annual marijuana taxes to support the implementation of SB15-109 and ongoing funding for law enforcement, District Attorneys, and APS.

A second option for funding would tap into federal VOCA funds to be used for the APS program. In 2014, Congress substantially increased the allocation for VOCA funding from the previous \$745 million to \$2.631 billion. VOCA funds, under the Victim Assistance Guidelines, may be used to support the Adult Protective Services program's provision of services to elders who are victims of mistreatment and to underserved populations, including persons with disabilities, who are victims of crime. The Task Force recommends that the General Assembly direct the state's VOCA administrator to apply for additional grant funds to support APS and law enforcement activities related to at-risk elder and at-risk adult with IDD mistreatment. While this option may not provide a consistent and sustainable source of funding, grant moneys received could be used to offset State General Fund or local funds.

Additional Discussions and Needs

During the many hours of discussion during the SB15-109 Task Force and sub-committee meetings, Task Force members identified additional needs for possible future study, of which the Task Force wanted the General Assembly to be aware so the General Assembly could determine whether further action is necessary. The Task Force is clear that any expansion of services would necessarily involve a need for additional resources and funding. These additional needs follow.

Expansion of Necessary Services

Colorado's ability to adequately respond to mistreatment of at-risk elders, at-risk adults with IDD, and other vulnerable populations served by APS, is reliant upon the availability of services through a complete and adequate service system. A lack of services, whether statewide or within a specific county or region of the state, results in poorer outcomes for vulnerable adults, even with mandatory reporting and law enforcement and APS intervention. Areas identified by Task Force members where services may be unavailable include:

- General safety net services, such as food, shelter, transportation, and/or medical care;
- Respite care for caregivers;
- Mental health services;
- Services for persons with a developmental disability, particularly for adults who have not previously been identified and are in need of emergency or short-term services while the determination process is completed; and
- Long-term care placements for clients with difficult and/or violent behaviors and/or criminal histories.

Expansion of Mandatory Reporting

Approximately 55% of APS reports involve a person who is 70 or older and 8% involve an at-risk adult with IDD, the two populations that will be covered under mandatory reporting as of July 2016. This means that approximately 37% of Colorado's vulnerable adults served by APS are not protected by the mandatory reporting law. These adults have early onset dementia, traumatic brain injuries, are medically fragile, have advanced neurological disease, such as ALS, MS, or Parkinson's, have a complex physical disabilities or a condition that requires total physical care, or have a major and persistent mental illness that impairs their capacity. The Task Force did not believe it had the time or expertise to consider whether an expansion of mandatory reporting to all vulnerable populations is appropriate. However, it does recognize that Colorado remains as an outlier across the nation by not having a complete system of mandatory reporting, but also recognizes that expanding mandatory reporting to this population would drive costs and

the need for services. Therefore, the Task Force believes this possibility should be further evaluated.

Authority for APS and Law Enforcement to Access Records and Victims

Often, APS receives a report of mistreatment of an at-risk adult and while trying to conduct an investigation is blocked from receiving evidence needed to complete the investigation or develop plan for protective services. Other times, APS is prevented from seeing a client by the alleged perpetrator or facility staff.

In the Federal Draft Guidelines for State APS Systems released in July 2015, the Administration for Community Living (ACL) recommends that states provide the APS program with statutory authority that clearly:

- Delineates the APS program's authority to access alleged victims of mistreatment and to prevent another person's interference in an APS case. This access should include the authority to conduct a private interview with the alleged victim.
- Delineates the APS program's authority to access documents from individuals and institutions for the purpose of investigating alleged maltreatment. The access should include the power of APS to subpoena records.

Law enforcement finds similar problems in that some mandatory reporters will call to make the required report but refuse to provide the critical evidence and information for law enforcement to begin an investigation because the statute does not provide enough authority to compel the sharing of critical information.

Not all Task Force members agreed with this discussion. See Appendix 7 for a minority report.

Office of Public Guardianship

The State of Colorado does not have a public guardianship program for the thousands of persons in need of guardianship and who do not have appropriate family or friends available to act as the guardian. Additionally, the State does not have the resources available to provide a professional guardian to these individuals. Currently, the State relies on a patchwork system of private and volunteer guardians and Adult Protective Services staff to provide guardianship services for adults with no other appropriate guardian available. The report and recommendations developed by the Office of Public Guardianship Task Force in 2014 is available here:

https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm?Committee_ID=41

Appendix 1

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 15-109

BY SENATOR(S) Grantham, Lambert, Steadman, Aguilar, Crowder, Guzman, Heath, Hodge, Johnston, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Todd, Ulibarri; also REPRESENTATIVE(S) Young, Hamner, Rankin, Conti, Danielson, Esgar, Fields, Ginal, Kagan, Kraft-Tharp, Lee, Lontine, Melton, Mitsch Bush, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Singer, Tyler, Vigil, Williams, Winter, Hullinghorst.

CONCERNING THE MANDATORY REPORTING OF MISTREATMENT AGAINST AN ADULT WITH A DISABILITY.

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

SECTION 1. In Colorado Revised Statutes, **add** 18-6.5-109 as follows:

18-6.5-109. At-risk adults with intellectual and developmental disabilities mandatory reporting implementation task force - report - repeal. (1) THERE IS CREATED IN THE DEPARTMENT OF HUMAN SERVICES THE AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES MANDATORY REPORTING IMPLEMENTATION TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK FORCE", WHICH SHALL MEET DURING THE INTERIM AFTER THE FIRST REGULAR SESSION OF THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SEVENTIETH GENERAL ASSEMBLY.

(2) THE TASK FORCE SHALL STUDY AND PREPARE RECOMMENDATIONS FOR THE IMPLEMENTATION OF MANDATORY REPORTING OF MISTREATMENT, ABUSE, NEGLECT, OR EXPLOITATION OF AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, WHICH RECOMMENDATIONS, AT A MINIMUM, SHALL INCLUDE:

(a) RECOMMENDATIONS CONCERNING THE PROVISION OF PROTECTIVE SERVICES BY COUNTY DEPARTMENTS TO ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES WHO ARE MISTREATED, ABUSED, NEGLECTED, OR EXPLOITED;

(b) RECOMMENDATIONS CONCERNING CONFORMING CHANGES TO THE STATUTORY OR REGULATORY PROVISIONS IN EITHER CIVIL OR CRIMINAL AREAS AS THEY RELATE TO MANDATORY REPORTING AND INVESTIGATING MISTREATMENT, ABUSE, NEGLECT, OR EXPLOITATION OF AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, INCLUDING DEFINITIONS OF MISTREATMENT AND NEGLECT;

(c) AN ESTIMATE OF THE COSTS, INCLUDING WORKLOAD IMPACTS AND SERVICES, TO BE INCURRED BY STATE DEPARTMENTS, COUNTY DEPARTMENTS, COMMUNITY-CENTERED BOARDS, AND LAW ENFORCEMENT AGENCIES OF THE STATE AS A RESULT OF REQUIRING MANDATORY REPORTERS, AS IDENTIFIED IN SECTION 18-6.5-108, ON AND AFTER JULY 1, 2016, TO REPORT KNOWN OR SUSPECTED MISTREATMENT, ABUSE, NEGLECT, OR EXPLOITATION OF AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(d) IDENTIFICATION OF SUSTAINABLE SOURCES OF FUNDING, INCLUDING NEW OR EXISTING REVENUES, THAT MAY BE USED TO OFFSET THE COSTS TO BE INCURRED BY STATE DEPARTMENTS, COUNTY DEPARTMENTS, COMMUNITY-CENTERED BOARDS, AND LAW ENFORCEMENT AGENCIES OF THE STATE AS A RESULT OF REQUIRING CERTAIN PERSONS, ON AND AFTER JULY 1, 2016, TO REPORT KNOWN OR SUSPECTED MISTREATMENT, ABUSE, NEGLECT, OR EXPLOITATION OF AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(e) RECOMMENDATIONS FOR TRAINING EMPLOYEES OF STATE DEPARTMENTS, COUNTY DEPARTMENTS, AND COMMUNITY-CENTERED

BOARDS, TO USE OUTCOME-BASED BEST PRACTICES IN THE PROVISION OF PROTECTIVE SERVICES TO AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES; AND

(f) RECOMMENDATIONS REGARDING THE TRAINING OF MANDATORY REPORTERS IN IDENTIFYING SUSPECTED MISTREATMENT, ABUSE, NEGLECT, OR EXPLOITATION OF AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(3) THE TASK FORCE SHALL CONSIST OF THE FOLLOWING MEMBERS:

(a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES OR HIS OR HER DESIGNEE;

(b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING OR HIS OR HER DESIGNEE;

(c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR HIS OR HER DESIGNEE; AND

(d) THE FOLLOWING MEMBERS, TO BE APPOINTED JOINTLY BY THE EXECUTIVE DIRECTORS OF THE DEPARTMENT OF HUMAN SERVICES, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

(I) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF COMMUNITY-CENTERED BOARDS;

(II) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF DISTRICT ATTORNEYS;

(III) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF LONG-TERM CARE PROVIDERS FOR ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(IV) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF PERSONS WHO PROVIDE LEGAL ADVICE TO ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(V) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF LAW

ENFORCEMENT OFFICERS;

(VI) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION THAT ADVOCATES ON BEHALF OF ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(VII) A REPRESENTATIVE OF A STATEWIDE, CROSS-DISABILITY ORGANIZATION THAT ADVOCATES ON BEHALF OF PERSONS WITH A DISABILITY;

(VIII) A REPRESENTATIVE OF COUNTY DEPARTMENTS WHO HAS EXPERIENCE IN THE PROVISION OF PROTECTIVE SERVICES TO AT-RISK ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(IX) A REPRESENTATIVE OF ONE OR MORE AGENCIES THAT PROVIDE NONMEDICAL HOME CARE TO ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(X) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION THAT REPRESENTS COUNTIES;

(XI) A PARENT OR GUARDIAN OF AN ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; AND

(XII) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF FINANCIAL INSTITUTIONS.

(e) ALL APPOINTMENTS TO THE TASK FORCE SHALL BE MADE WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(4) (a) THE TASK FORCE SHALL SUBMIT A WRITTEN REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, AND TO THE PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, ON OR BEFORE DECEMBER 1, 2015. UPON REQUEST OF A MEMBER OF THE TASK FORCE, SUMMARIES OF DISSENTING OPINIONS SHALL BE PREPARED AND ATTACHED TO THE FINAL REPORT OF FINDINGS AND RECOMMENDATIONS.

(b) IN ADDITION TO THE REPORT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (4), THE TASK FORCE SHALL SUBMIT TO THE OFFICE OF STATE PLANNING AND BUDGETING AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY A PRELIMINARY REPORT ON THE COSTS OF IMPLEMENTATION SO THAT THE AMOUNT MAY BE INCLUDED IN THE GOVERNOR'S BUDGET REQUEST.

(5) (a) THE FIRST MEETING OF THE TASK FORCE SHALL OCCUR NO LATER THAN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE TASK FORCE SHALL MEET AT LEAST FOUR TIMES.

(b) MEETINGS OF THE TASK FORCE SHALL BE PUBLIC MEETINGS.

(6) THE TASK FORCE SHALL SOLICIT AND ACCEPT REPORTS AND PUBLIC TESTIMONY AND MAY REQUEST OTHER SOURCES TO PROVIDE TESTIMONY, WRITTEN COMMENTS, AND OTHER RELEVANT DATA TO THE TASK FORCE.

(7) MEMBERS OF THE TASK FORCE SHALL SERVE WITHOUT COMPENSATION AND SHALL NOT BE ENTITLED TO REIMBURSEMENT FOR EXPENSES.

(8) THE LEGISLATIVE COUNCIL STAFF AND THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL NOT PROVIDE STAFF SUPPORT TO THE TASK FORCE.

(9) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016.

SECTION 2. In Colorado Revised Statutes, 18-6.5-102, **add** (2.5) as follows:

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

(2.5) "AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY" MEANS A PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER AND IS A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202 (26) (a), C.R.S.

SECTION 3. In Colorado Revised Statutes, 18-6.5-108, **amend** (1) (a), (1) (b) (IX), (1) (b) (XVI), (1) (d), (2), (3), (4), and (5) as follows:

18-6.5-108. Mandatory reports of abuse and exploitation of at-risk adults - list of reporters - penalties. (1) (a) On and after ~~July 1, 2014~~ JULY 1, 2016, a person specified in paragraph (b) of this subsection (1) who observes the abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, or who has reasonable cause to believe that an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY has been abused or has been exploited or is at imminent risk of abuse or exploitation, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.

(b) The following persons, whether paid or unpaid, shall report as required by paragraph (a) of this subsection (1):

(IX) Clergy members; except that the reporting requirement described in paragraph (a) of this subsection (1) shall not apply to a person who acquires reasonable cause to believe that an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY has been mistreated or has been exploited or is at imminent risk of mistreatment or exploitation during a communication about which the person may not be examined as a witness pursuant to section 13-90-107 (1) (c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication;

(XVI) Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions; EXCEPT THAT THE REPORTING REQUIREMENT DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) ONLY APPLIES TO A PERSON DESCRIBED IN THIS SUBPARAGRAPH (XVI) WHO DIRECTLY OBSERVES IN PERSON THE ABUSE OR EXPLOITATION OF AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY OR WHO HAS REASONABLE CAUSE TO BELIEVE THAT AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY HAS BEEN ABUSED OR HAS BEEN EXPLOITED OR IS AT IMMINENT RISK OF ABUSE OR EXPLOITATION BY REASON OF ACTUAL KNOWLEDGE OF FACTS OR CIRCUMSTANCES INDICATING THE ABUSE OR EXPLOITATION;

(d) Notwithstanding the provisions of paragraph (a) of this

subsection (1), a person described in paragraph (b) of this subsection (1) is not required to report the abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY if the person knows that another person has already reported to a law enforcement agency the same abuse or exploitation that would have been the basis of the person's own report.

(2) (a) A law enforcement agency that receives a report of abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY shall acquire, to the extent possible, the following information from the person making the report:

(I) The name, age, address, and contact information of the at-risk elder OR AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY;

(II) The name, age, address, and contact information of the person making the report;

(III) The name, age, address, and contact information of the CARETAKER OF THE at-risk ~~elder's caretaker~~ ELDER OR AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, if any;

(IV) The name of the alleged perpetrator;

(V) The nature and extent of ANY INJURY, WHETHER PHYSICAL OR FINANCIAL, TO the at-risk ~~elder's injury, whether physical or financial, if any;~~ ELDER OR AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY;

(VI) The nature and extent of the condition that required the report to be made; and

(VII) Any other pertinent information.

(b) Not more than twenty-four hours after receiving a report of abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, a law enforcement agency shall provide a notification of the report to the county department

~~of~~ FOR THE COUNTY IN WHICH the at-risk ~~elder's residence~~ ELDER OR AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY RESIDES and the district attorney's office of the location where the abuse or exploitation occurred.

(c) The law enforcement agency shall complete a criminal investigation when appropriate. The law enforcement agency shall provide a summary report of the investigation to the county department ~~of~~ FOR THE COUNTY IN WHICH the at-risk ~~elder's residence~~ ELDER OR AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY RESIDES and to the district attorney's office of the location where the abuse or exploitation occurred.

(3) A person, including but not limited to a person specified in paragraph (b) of subsection (1) of this section, who reports abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY to a law enforcement agency pursuant to subsection (1) of this section is immune from suit and liability for damages in any civil action or criminal prosecution if the report was made in good faith; except that such a person is not immune if he or she is the alleged perpetrator of the abuse or exploitation.

(4) A person, including but not limited to a person specified in paragraph (b) of subsection (1) of this section, who knowingly makes a false report of abuse or exploitation of an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY to a law enforcement agency commits a class 3 misdemeanor and ~~shall~~ MUST be punished as provided in section 18-1.3-501 and ~~shall be~~ IS liable for damages proximately caused thereby.

(5) The reporting duty described in subsection (1) of this section ~~shall not be interpreted as creating~~ DOES NOT CREATE a civil duty of care or establishing a civil standard of care that is owed to an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY by a person specified in paragraph (b) of subsection (1) of this section.

SECTION 4. In Colorado Revised Statutes, 26-3.1-102, **amend** (1) (a.5) as follows:

26-3.1-102. Reporting requirements. (1) (a.5) As required by

section 18-6.5-108, C.R.S., certain persons specified in paragraph (b) of this subsection (1) who observe the abuse or exploitation, AS DEFINED IN SECTION 18-6.5-102 (1) AND (10), C.R.S., of an at-risk elder, as defined in section ~~18-6.5-102 (1) and (10)~~ 18-6.5-102 (3), C.R.S., OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 18-6.5-102 (2.5), C.R.S., or who have reasonable cause to believe that an at-risk elder OR AN AT-RISK ADULT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY has been abused or exploited or is at imminent risk of abuse or exploitation shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.

SECTION 5. Effective date - applicability. (1) Except as otherwise provided in this section, this act takes effect upon passage.

(2) Sections 3 through 4 of this act take effect July 1, 2016, and apply to offenses committed on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Appendix 2 – Sample Definition of “Incident or Accident”

Incident or Accident: Injuries or accidents that occur in long-term care facilities or board and care homes to at-risk elders or adults with IDD that is not the expected outcome of a resident’s condition or disease process. An incident includes, but is not limited to: falls; elopements; medication errors; skin breakdown that is clinically unavoidable; misappropriation of property that does not meet the definition of exploitation; choking incidents; entrapment incidents; self-abuse; behavioral disruptions; physical intervention in line with approved behavioral treatment plan; and auto accidents .

**Board of Governors of the Federal Reserve System
Commodity Futures Trading Commission
Consumer Financial Protection Bureau
Federal Deposit Insurance Corporation
Federal Trade Commission
National Credit Union Administration
Office of the Comptroller of the Currency
Securities and Exchange Commission**

**Interagency Guidance on Privacy Laws and
Reporting Financial Abuse of Older Adults**

PURPOSE

The Board of Governors of the Federal Reserve System (Federal Reserve), Commodity Futures Trading Commission (CFTC),¹ Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) are issuing this guidance to financial institutions to clarify the applicability of privacy provisions of the Gramm-Leach-Bliley Act (GLBA) to reporting suspected financial exploitation of older adults.

Employees of depository institutions and other financial service providers that constitute “financial institutions” for purposes of the GLBA may observe signs of possible financial exploitation of an older adult. Various federal and state authorities either require or encourage reporting of this type of information to the appropriate agency. This guidance clarifies that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the GLBA or its implementing regulations.² In fact, specific privacy provisions of the GLBA and its implementing regulations permit the sharing of this type of information under appropriate circumstances without complying with notice and opt-out requirements.³

¹ The CFTC is issuing this document as staff guidance.

² While this guidance discusses when reporting is allowed under the GLBA, it does not address any other federal or state laws that may regulate such reporting. Also, the guidance does not specifically address risk management expectations for financial institutions related to the reporting of elder abuse.

³ This guidance’s analysis of the GLBA’s privacy provisions builds on joint guidance issued by several federal agencies in 2002 that specifically addressed disclosures to the Michigan Family Independence Agency. *See* Letter to Hon. Debbie Stabenow, July 3, 2002, *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_bank_rptg_op_ltr.auth_checkdam.pdf.

BACKGROUND

Elder abuse includes the illegal or improper use of an older adult's funds, property, or assets.⁴ Recent studies suggest that financial exploitation is the most common form of elder abuse and that only a small fraction of incidents are reported.⁵ Older adults can become targets of financial exploitation by family members, caregivers, scam artists, financial advisers, home repair contractors, fiduciaries (such as agents under power of attorney and guardians), and others. Older adults are attractive targets because they may have significant assets or equity in their homes. They may be especially vulnerable due to isolation, cognitive decline, physical disability, health problems, and/or the recent loss of a partner, family member, or friend. Financial institutions can play a key role in preventing and detecting elder financial exploitation. A financial institution's familiarity with older adults it encounters may enable it to spot irregular transactions, account activity, or behavior.⁶ Prompt reporting of suspected financial exploitation to adult protective services, law enforcement,⁷ and/or long-term care ombudsmen⁸ can trigger appropriate intervention, prevention of financial losses, and other remedies.

⁴ See the National Center on Elder Abuse definitions *available at* http://www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx. The Older Americans Act, as amended by the Elder Justice Act of 2009, defines exploitation as “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.” 42 U.S.C. 1397j(8).

⁵ Acierno, R., M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, “Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,” *American Journal of Public Health* 100(2): 292–97; Lifespan of Greater Rochester, Inc., et al., *Under the Radar: New York State Elder Abuse Prevention Study*, (Rochester, NY: Lifespan of Greater Rochester, Inc., May 2011).

⁶ Treasury Department rules require recipients of federal nontax payments to receive payment by electronic funds transfer, with an allowance for certain waivers from the requirement. The rule applies to recipients of Social Security, Veterans Affairs, Supplemental Security Income, Railroad Retirement Board, Department of Labor, and Office of Personnel Management benefit payments. Benefit recipients may have payments directly deposited to an account at a financial institution or to a *Direct Express* debit card account. See 75 Fed. Reg. 80315 (Dec. 22, 2010). Financial institutions should be mindful that this change may result in additional electronic funds transfer activity involving the accounts of older adults.

⁷ Financial institutions file “Suspicious Activity Reports” with the Financial Crimes Enforcement Network (FinCEN), a Bureau of the U.S. Department of the Treasury, involving money laundering and terrorist financing as well as activities related to elder abuse and other consumer fraud. The reports assist law enforcement in identifying individuals and organizations involved in financial crime. See FinCEN, Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation, FIN-2011-A003 (Feb. 22, 2011), *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2011-a003.pdf.

⁸ Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. Under the federal Older Americans Act, each state has an Office of the State Long-Term Care Ombudsman that addresses complaints and advocates for improvements in the long-term care system. Local ombudsman staff and volunteers work to resolve problems of individual residents. For more information, see http://www.aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Ombudsman/index.aspx. To find your local ombudsman program, search by location at www.eldercare.gov.

DISCUSSION OF PRIVACY PROTECTIONS

The GLBA establishes a general rule that a financial institution may not disclose any nonpublic personal information about a consumer to any nonaffiliated third party unless the financial institution first provides the consumer with a notice that describes the disclosure (as well as other aspects of its privacy policies and practices) and a reasonable opportunity to opt out of the disclosure, and the consumer does not opt out. However, section 502(e) of the GLBA provides a variety of exceptions to this general rule that permit a financial institution to disclose information to nonaffiliated third parties without first complying with notice and opt-out requirements. Generally, disclosure of nonpublic personal information about consumers to local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults will fall within one or more of the exceptions.⁹ These disclosures of information may be made either at the agency's request or on the financial institution's initiative.

The following are specific exceptions to the GLBA's notice and opt-out requirement that, to the extent applicable, would permit sharing of nonpublic personal information about consumers with local, state, or federal agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization and without violating the GLBA:

- A financial institution may disclose nonpublic personal information to comply with federal, state, or local laws, rules and other applicable legal requirements, such as state laws that require reporting by financial institutions of suspected abuse. (15 U.S.C. 6802(e)(8) and implementing regulations at ____15(a)(7)(i)).¹⁰
- A financial institution may disclose nonpublic personal information to respond to a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities or to respond to judicial process or government regulatory authorities having jurisdiction for examination, compliance, or other purposes as authorized by law. (15 U.S.C. 6802(e)(8) and implementing regulations at ____15(a)(7)(ii)-(iii)).
- A financial institution may disclose nonpublic personal information to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. (15 U.S.C. 6802(e)(3)(B) and implementing regulations at ____15(a)(2)(ii)). For example, this exception generally would allow a financial institution to disclose to appropriate authorities nonpublic personal information in order to:
 - report incidents that result in taking an older adult's funds without actual consent, or
 - report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction.

⁹ See Section 502(e) of the GLBA (15 U.S.C. 6802(e)).

¹⁰ The CFPB's, FTC's, CFTC's, and SEC's implementing regulations are contained in 12 CFR part 1016, 16 CFR part 313, 17 CFR part 160, and 17 CFR part 248, respectively. For ease of reference, this discussion uses the shared numerical suffix of each of these agencies' regulations.

- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), a financial institution may disclose nonpublic personal information to law enforcement agencies (including the CFPB, the federal functional regulators, and the FTC), self-regulatory organizations, or for an investigation on a matter related to public safety. (15 U.S.C. 6802(e)(5) and implementing regulations at ____15(a)(4)).

In addition, a financial institution may disclose nonpublic personal information with the consumer's consent or consent of the consumer's legal representative. (15 U.S.C. 6802(e)(2) and implementing regulations at ____15(a)(1)).

POSSIBLE SIGNS OF FINANCIAL ABUSE OF OLDER ADULTS

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published an advisory in February 2011 that describes potential signs of elder financial exploitation that might trigger the filing of a Suspicious Activity Report (SAR).¹¹ As described in the advisory, among the possible signs of abuse are:

- Erratic or unusual banking transactions, or changes in banking patterns:
 - Frequent large withdrawals, including daily maximum currency withdrawals from an ATM;
 - Sudden non-sufficient fund activity;
 - Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
 - Debit transactions that are inconsistent for the older adult;
 - Uncharacteristic attempts to wire large sums of money; or
 - Closing of CDs or accounts without regard to penalties.
- Interactions with older adults or caregivers:¹²
 - A caregiver or other individual shows excessive interest in the older adult's finances or assets, does not allow the older adult to speak for himself, or is reluctant to leave the older adult's side during conversations;
 - The older adult shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker;
 - The financial institution is unable to speak directly with the older adult, despite repeated attempts to contact him or her;
 - A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the older adult without proper documentation;

¹¹ See footnote 6 above.

¹² References to "caregiver" or "caretaker" also may apply to other individuals who may be involved in transactions of the type described in the FinCEN advisory.

- The older adult moves away from existing relationships and toward new associations with other “friends” or strangers;
- The older adult's financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual; or
- The older adult lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

Further information about the use of Suspicious Activity Reports to report suspected elder financial exploitation is available in FinCEN’s “The SAR Activity Review” published in May 2013.¹³ In addition, if financial institutions or other organizations are interested in raising public awareness among older adults and their caregivers about preventing, identifying, and responding to elder financial exploitation, *Money Smart for Older Adults*, a financial resource tool, serves as a helpful source of training and information.¹⁴

¹³ See “The SAR Activity Review: Trends Tips & Issues,” Issue 23, May 2013, available at http://www.fincen.gov/news_room/rp/files/sar_tti_23.pdf.

¹⁴ *Money Smart for Older Adults* (June 2013), available at www.fdic.gov or www.consumerfinance.gov.

Appendix 4 – Colorado’s Reporting Requirements as a Result of SB13-111 and SB15-109

Victim Age	Victim Vulnerability	Mistreatment	Report To	Mandatory or Urged
70+	None - age alone	Abuse, neglect, exploitation	LE	Mandatory
70+	None - age alone	Self-neglect	None	None
70+	None - age alone	Abuse, neglect, or exploitation AND Self-neglect	LE for ANE only APS for self-neglect	Mandatory for ANE Urged for self-neglect
18+	IDD - (before 22 & CCB determined)	Abuse, neglect, exploitation	LE	Mandatory
18+	IDD - (before 22 & CCB determined)	Self-neglect	APS	Urged
18+	IDD - (before 22 & CCB determined)	Abuse, neglect, or exploitation AND Self-neglect	LE for ANE only/APS for self-neglect	Mandatory for ANE Urged for self-neglect
18+	IDD (undetermined) TBI, Medically Fragile, Frail Elderly, Dementia,/Alzheimer’s, Neurological, Total Physical Care, Mental Illness	Abuse, neglect, exploitation	APS	Urged
18+	IDD (undetermined) TBI, Medically Fragile, Frail Elderly, Dementia,/Alzheimer’s, Neurological, Total Physical Care, Mental Illness	Self-neglect	APS	Urged
18+	IDD (undetermined) TBI, Medically Fragile, Frail Elderly, Dementia,/Alzheimer’s, Neurological, Total Physical Care, Mental Illness	Abuse, neglect, or exploitation AND Self-neglect	APS	Urged

Other States’ Reporting Requirements and Federal Draft Recommendation

44 states are 18+ vulnerable or “at-risk” populations, similar to Colorado’s APS “at-risk” definition.	Abuse, neglect, or exploitation AND Self-neglect	APS only OR Either APS or LE	Mandatory
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* LE = Law enforcement; ANE = Abuse, caretaker neglect, and exploitation; APS = Adult Protective Services; CCB = Community Centered Board; IDD = Intellectual and developmental disability; TBI = Traumatic brain injury

Appendix 5 – Current Funding Sources

The chart below shows current funding sources that directly or indirectly related to reporting and investigating suspected mistreatment of vulnerable adults.

Existing Funding Sources	What's it pay for?	The Gap	Flexible Funding?
<p>Adult Protective Services (APS) annual allocation of State General Fund & matching funds by counties (80/20), and approximately \$1.96 million in federal funding (SSBG). No federal APS funding exists.</p>	<p>Funding supports county adult protective services as they answer phones, record calls, investigate reports within prescribed timeframes, identify community resources to enable at risk individuals to remain self-sufficient, provide legal support and representation and provide on-going case management, when appropriate.</p>	<p>When mandatory reporting became effective 7/1/14, there was an increase in reports to APS of 41% over the prior fiscal year, with funding provided for only a planned 15% increase in reports. Funding was also tied to a 25:1 caseload ratio for APS workers. The increase in reports has driven the current caseload ratio to: 30:1.</p>	<p>No</p>
<p>\$1 million for Client Services allocated from the State General Fund</p>	<p>Funds available to counties for one-time expenditures for clients' needs (including I/DD population), which are unavailable through other government or community benefits/programs and the client is unable to afford to purchase the service/product. Services may include emergency shelter, home repairs or modifications, medical specialist evaluations, assistive technology, etc.</p>	<p>If additional investigations are required of county APS, I/DD population will likely require extensive services to address their needs that are not available currently in the community.</p>	<p>No. Dedicated to client services.</p>

Annual APS Caseworker Training funds - \$85,000 CDHS	Training funds provided to CDHS to train county caseworkers, supervisors and case aides. Funding supports four day training academy and covers the lodging for county staff, facility fee and materials.	Additional funding will be needed to provide specialized training for county APS workers.	No.
County General Fund – Law Enforcement Workload	Annual budgetary requests by law enforcement to local governments to address state mandates.	Unfunded mandate. No state general fund dollars have been appropriated to address the increased workload assumed by law enforcement.	
Voter approved mill levies for DD services.	Roughly 15 counties have dedicated mill levies to serve the DD community. Funding pays for services dictated by voters.	Typically DD mill levies equal 1 mill.	
\$25.51 per person enrolled paid by DD system to CCBs (50% general funds and 50% federal match)	To provide quality assurance including investigation	Current funds are not meeting the need for funding for CCBs to serve in this capacity	
HCPF – I/DD cash fund – one time use, not ongoing	Waiting list reduction	These funds are not available since they are committed and are one time use funding	

Appendix 6 – Possible Funding Sources

The chart below outlines possible sources of revenue, originally identified by the SB12-078 Task Force. The SB15-109 Task Force believes that these continue to be viable sources of revenue, in various degrees.

Revenue Source	Overall Viability		Comments
	Not likely to generate substantial and sustainable revenue	Likely to generate substantial and sustainable revenue	
OAP sponsor deeming savings		X	In 2010, the General Assembly passed HB 10-1384, which modified the Old Age Pension (OAP) program provisions related to qualified aliens who apply for the state's OAP cash benefit. The bill delayed eligibility for qualified aliens to receive OAP benefits until they have been in the United States for at least five years. The Bill had two phases, the first was estimated to generate a \$13 million savings to the General Fund in the first year of implementation and approximately \$14 million in savings in subsequent years. The second phase is expected to save an additional \$15 million annually beginning in FY 2013-14. Unused OAP savings flow into the General Fund. All or a portion of these projected savings could be used for mandatory reporting and related infrastructure improvements without negatively impacting existing funding for other programs. This legislation has already been passed so there is no identified downside related to this option.
Increase in county fees for various financial and legal documents	X		The fees associated with many of these documents have not been changed for years. While some may have a nexus to APS, others do not.
Create a means test for the senior homestead exemption and use the balance for APS	X		Means testing the homestead exemption requires a constitutional amendment.
Surcharge on birth/death certificates	X		Statute authorizes the Colorado Department of Public Health and Environment to set birth and death certificate fees that reflect the Office of the State Registrar's direct and indirect costs. A recent \$3 dollar increase on death certificates resulted in roughly \$700,000 to be used for a new electronic death certificate registration system. An additional increase is not likely, nor would it generate sufficient funds.
Surcharge on probate cases on wills	X		Adding an additional surcharge to the probate of wills could result in \$60,000 - \$120,000 in revenue, depending on the surcharge amount.
Long-term care estate recovery		X	Federal regulations may prohibit this option.

<p>Medicaid targeted case management</p>		<p>X</p>	<p>Medicaid case management services help beneficiaries receive care by identifying needed services, finding providers, and monitoring and evaluating the services delivered. Targeted Case Management (TCM) refers to case management restricted to specific beneficiary groups defined by disease or medical condition, by geographic regions, or other groups identified by a state and approved by the Centers for Medicare and Medicaid Services (CMS). TCM reimbursement is currently used for APS in at least eight (8) states with an average annual reimbursement of approximately \$1,000,000 per state. Adults currently receiving TCM in Colorado include Medicaid eligible persons with: A developmental disability; A mental illness who are in need of case management services; or A need for substance abuse treatment. TCM reimbursement could be a viable source of funding for Colorado APS as it is estimated that APS caseworkers assist up to 50% of their clients with applying for and accessing Medicaid services. However, TCM spending has increased rapidly and adding another target population may be challenging as it requires a state plan amendment to the Centers for Medicare and Medicaid Services. Coordination with current TCM providers, the CDHS divisions of Developmental Disabilities, and Behavioral Health, could minimize any perception of competition for funding. Workload considerations at the county level include requiring caseworkers to track their time, meet educational eligibility requirements, and county participation in post payment reviews of TCM.</p>
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Appendix 7 – Minority Report from the Colorado Bankers Association

November 13, 2015

Minority Report issued by the Colorado Bankers Association as an appointed member of the SB15-109 task force

Effective Date

While the Colorado Bankers Association is supportive of mandatory reporting for adults with IDD, we are very concerned that the effective date of July 1, 2016, is unreasonable and could do more harm than good. The population protected by this bill is unique and has different needs and concerns than those protected by the existing Elder Abuse Mandatory reporting Law. Mandatory reporters need training on how to identify those to whom this law applies and how to best identify financial and physical abuse. We rely, in part, on law enforcement and other governmental agencies to help train the private sector. Unfortunately the funding to provide for training of law enforcement was not adequately addressed in the 2015 bill. It is impossible to expect state agencies and law enforcement to provide the necessary training to the private sector when they themselves will not have been given the opportunity to be adequately trained.

Financial institutions are in an unusually awkward position with this law, in that we are barred by federal anti-discrimination laws to even know to whom the protections provided in HB15-109 applies to. Financial institutions are not permitted to ask if an individual has a disability, nor are we permitted to flag an account in any way should we have information that a customer has a disability. Put simply, banks are not allowed to know to whom this law applies. This differs greatly from Colorado's laws against elder abuse, because the documents required to open a banking account often have the date of birth.

We feel strongly the existing law should be amended to provide an additional six months to comply, an with an effective date of January 01, 2017. This allows for time to train mandatory reporters regarding the challenges of complying with SB15-109, how to identify an adult with IDD and how best to serve that population and appropriately protect them.

We urge the legislature to amend the existing law to provide adequate training time in order to protect adults with IDD.

We request an effective date of 01/01/2017.

Expanding the list of mandatory reporters

We oppose the recommended expansion of the list of mandatory reporters to include certified public accountants, mortgage brokers, life insurance agents and financial planners. The task force did not have representatives from these industries present to explain the challenges they would face with mandatory reporting. Do CPAs have the same binding client privilege that attorneys do? If so, how can they comply with the law? With respect to life insurance agents, does the protection apply to a beneficiary of a life

insurance policy? If so, how can the company identify if the customer is protected by the law? Often, beneficiary forms only list the name, social security number and address of a beneficiary. The Insurance company has no way of knowing the age of a beneficiary or if he or she is an adult with IDD. There are challenges for each industry included.

The task force recommendations regarding expansion of mandatory reporters is beyond the scope of the task force. The task force was charged with addressing concerns regarding the existing elder abuse law being amended in the 2015 legislative session to include adults with IDD. The recommendations would have these industries as **both** mandatory reporters for adults with IDD (SB15-109) and elder abuse, individuals 70 years of age and older (SB13-111).

In our opinion, the recommendation to expand the list of mandatory reporters was not well vetted. In fact it was not vetted at all with the affected industries, as they were not included in the conversations that led to the task force's recommendations. It may be logical to include other industries as mandatory reporters, but it is unwise to do so without thoughtful consideration as to each industry and input from industry representatives.

And, the challenge with timing of implementation remains. As previously stated, the existing effective date of July 1, 2016, is unreasonable to give existing mandatory reporters time to be adequately trained on additional reporting requirements for both elder abuse and adults with IDD. Adding additional, new mandatory reporters for both elder abuse and adults with IDD – on that same timeline – is effectively impossible.

We request that the list of mandatory reporters not be expanded at this time.

Authority to access records and victims.

Financial institutions understand the need for law enforcement and APS to access records, but feel strongly that the proper channels (search warrant or subpoena) be used to obtain certain confidential information. Just because an individual is suspected of being a victim of abuse does not mean he or she does not have a right to privacy. Financial institutions are charged with protecting customers' financial assets as well as their privacy. This is held up by numerous federal laws as well as a 1980 Colorado Supreme court case, *Charnes v. DiGiacomo*. In part, the ruling states, "We agree with the taxpayer that he has an expectation of privacy in his bank records and that the records are protected from unreasonable search and seizure."

If banks were to hand over customers' information upon request versus being legally compelled to do so, they would not only be trampling their customers' right to privacy and betraying their trust, but banks could also open themselves up to lawsuits. Financial institutions in no way want to hamper the investigation and prosecution of criminals; we simply request that investigators use existing and appropriate channels. While we want to help in any way we are able, we have a responsibility to our customers, as they have entrusted us with their assets and with information they often do not even share with the people closest to them. Ask yourself if you want your financial records accessed by law enforcement or APS and potentially shared, without going through the proper channels simply because someone says you're a victim.

Further, there is concern about how our customers' data is protected, once released. While a financial institution is insulated from liability if a judge orders information to be released and a breach or improper use later occurs once the data has left the bank, but the same protections would not be in place should this recommendation become law. State law is incapable of providing that safety from liability to banks and others.

And do not forget, as stated earlier, because banks are legally barred from flagging or otherwise noting on an account whether a customer has a disability, this stipulation could apply to every, single bank account.

Colorado citizens do not sign away their right to financial privacy simply because someone alleges they are a victim. Violating an individual's right to privacy is serious and warrants judicial authorization. The United States and Colorado constitutions protect an individual's reasonable expectation of privacy from unreasonable governmental intrusion. We assert that using existing governmental channels to access private financial information does not prove a significant or purposeless delay in investigations. Side-stepping state and federal laws – no matter how well intended – is unacceptable, sending our system down a slippery slope.

We oppose any language suggesting that anyone is permitted to access another individual's financial records without going through the appropriate judicial channels to obtain that information.

Sincerely,

A handwritten signature in black ink that reads "Jenifer Waller". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jenifer Waller

Sr. Vice President

Colorado Bankers Association

Appendix 8 – Minority Report from Colorado Counties, Inc. and Colorado Human Services Directors Association

November 23, 2015

Minority Report issued by Colorado Counties Inc. and Colorado Human Service Directors Association as appointed members of the SB15-109 task force.

Colorado Counties Inc. and the Colorado Human Service Directors Association join the Colorado Bankers Association and the District Attorneys in requesting that the implementation date for mandatory reporting for adults with IDD be January 1, 2017. This would require a statutory change to modify the implementation date from July 1, 2016 to January 1, 2017.

Counties are in complete agreement on the importance and need for mandatory reporting for adults with IDD. There is no debate that mandatory reporting of suspected abuse and mistreatment of adults with IDD will be an effective deterrent to non-reporters and perpetrators and will create important mechanisms for law enforcement and prosecutors to address the perpetrator's activity.

Counties, as political arms of the state, will be solely responsible for implementing this critical policy. Local law enforcement will receive the reports, conduct criminal investigations and determine whether the case should be sent to the District Attorneys for possible prosecution of the alleged perpetrator. All of these reports received by law enforcement will ultimately be forwarded to County Adult Protective Services (APS). County APS will be responsible for investigating allegations, assess the client to determine the client's ongoing needs (physical, environmental, medical, mental, financial, and support system) and identifying available services to meet those needs.

In recognition of the work counties will do under this new policy, the task force spent a tremendous amount of time and energy identifying the resources needed to help ensure success. Assuming the state commits the financial resources required to meet the SB 109 Task Force's recommendations (see page 46, table 5 of the report), there will be seven months (December 2015 – June 2016) to do the following:

- 1.) Secure a 2015-2016 supplemental authorizing state general funds to be spent on the activities itemized on page 46, table 5 of the report;
- 2.) Convene counties to determine the methodology for distributing new 2015-2016 supplemental funding to begin hiring new caseworkers;
- 3.) Once a distribution methodology is determined, notify counties who will receive funds that they can begin hiring new caseworkers – a process that takes roughly 2-3 months;

- 4.) Train new and existing caseworkers on the specialized skills necessary to assist adults with IDD;
- 5.) Flesh out the mechanics on how county APS, law enforcement and community center boards (CCBs) may choose to coordinate investigations. These mechanics need to be communicated with county APS, law enforcement and CCBs in a timely manner so communities can develop a coordination plan that works best for them;
- 6.) Develop curriculum for law enforcement ;
- 7.) Train law enforcement officers, district attorneys, district attorney investigators, and law enforcement based victim advocates on communicating and interviewing this specialized population;

We believe that the implementation steps outlined above cannot be accomplished in a seven month timeframe. Given that, we recommend that the implementation date for mandatory reporting be delayed by 6 months and that the policy becomes effective on January 1, 2017. January 1, 2017 also marks a new budget year for counties. (Please note that counties complete their budgets in early November of each year. The timing of the task force recommendations coupled with the multi-month deliberative process that occurs at the county level to identify a budget for the upcoming calendar year, made it impossible for counties to financially plan and budget for this policy in 2016.)

As the implementers, we are acutely aware of the risk and harm that can occur when staff are not properly equipped or trained to help protect this vulnerable population and meet the expectations of the public and the legislature. Like all members of the SB 109 task force, we are deeply invested in the success of this policy change on day 1 of its implementation.

Appendix 9 – Minority Report from the Colorado Cross-Disability Coalition

Recommendation 1

“Consistent with the current language in Senate Bill 15-109, the Task Force recommends that law enforcement and Adult Protective Services (APS) are key agencies with authority to investigate allegations of abuse, caretaker neglect, and exploitation of at-risk adults with an Intellectual and Developmental Disability (IDD).” (Page 9)

Minority Opinion

1. We write this minority opinion from the Cross-Disability perspective that strongly supports the full and equitable contribution of people who have a lived experience¹. In no way is the minority opinion intended to minimize the hard work of our fellow Task Members.
2. We are unable to wholeheartedly support the above recommendation made by the majority of the members of the SB 15-109 Task Force.
3. We do support that law enforcement, as referenced in 18-6.5-108 (2) (a) and 26-3.1-102, is the key investigating agency of abuse, caretaker neglect, and exploitation of at-risk adults with IDD.
4. We understand that APS has an important role in supporting the reporting and investigation of abuse, caretaker neglect, and exploitation of at-risk adults with IDD when there is shady behavior that does not rise to a level of a crime. However, we do not believe that SB 109 gives a key investigator role to APS specifically for crimes that should be investigated by criminal justice professionals.
5. We believe that elevating APS to the role of key investigator causes this recommendation to become confusingly vague and is outside the scope and the authority of SB 15-109 Task Force duties.
6. We suggest removing APS from this recommendation, and that an additional recommendation be created that exclusively defines the legislated role APS plays in mandatory reporting.

¹ People with lived experience: describes the first-hand accounts, knowledge, and impressions about the world gained through every day events living as a member of specific population, minority, or oppressed group.

Appendix 9 – Minority Report from the Colorado Cross-Disability Coalition

Recommendation 2

“The Task Force further recommends that the Community Center Boards (CCBs) continue to review incidents and accidents in accordance with existing rules and regulations.” (Page 9)

Minority Opinion

1. We write this minority opinion from the Cross-Disability perspective that strongly supports the full and equitable contribution of people who have a lived experience². In no way is the minority opinion intended to minimize the hard work of our fellow Task Members.
2. We are unable to wholeheartedly support the above recommendation made by the majority of the members of the SB 15-109 Task Force.
3. We are of the opinion that CCBs should play an important role in implementing SB 15-109. However, we do not support CCBs continued authority to review incidents and accidents within existing rules and regulations.
4. We believe that CCBs currently have a conflict of interest in investigating incidents and accidents.
5. We believe that SB 15-109 as proposed was intended to remove the authority of CCBs to investigate or oversee the investigation of abuse, caretaker neglect, and exploitation of at-risk adults with IDD.
6. We believe this recommendation perpetuates that conflict of interest as well as implying a false sense of action in investigating abuse, caretaker neglect, and exploitation of at-risk adults with IDD.
7. We further believe that CCBs authority will be significantly change with the implementation of SB 15-109 and that rules and regulations will be changed as well. This recommendation speaks to current rules and regulations, at a minimum the recommendation should speak to revised rules and regulations.

² People with lived experience: describes the first-hand accounts, knowledge, and impressions about the world gained through every day events living as a member of specific population, minority, or oppressed group.

Appendix 9 – Minority Report from the Colorado Cross-Disability Coalition

Recommendations 7, 8, 9 & 10

“7. The Task Force recommends funding be provided to support administrative and personnel costs of investigating reports and providing protective services for county departments, the State Department, law enforcement, and judicial districts.

8. The Task Force recommends mandatory training for APS, law enforcement, CCBs, mandatory reporters, and the community and that funding be provided for those training costs.

9. The Task Force recommends fully funding the administrative and training costs identified in this report with a sustainable revenue stream.

10. The Task Force further recommends that if the General Assembly is unable to fully fund the administrative and training costs identified in this report with a sustainable revenue stream, that SB15-109 be repealed or delayed and that mandatory reporting for at-risk adults with an intellectual and developmental disability not be implemented until such time as the General Assembly can meet the Task Force’s funding recommendation.” (Page 30)

Minority Opinion

1. We write this minority opinion from the Cross-Disability perspective that strongly supports the full and equitable contribution of people who have a lived experience³. In no way is the minority opinion intended to minimize the hard work of our fellow Task Members.
2. We are unable to wholeheartedly support the above recommendation made by the majority of the members of the SB 15-109 Task Force.
3. We understand the implementation of SB 15-109 will cost money.
4. We understand the implementation of SB 15-109 will require training.
5. We understand the implementation of SB 15-109 may create the need for new staff and sworn officers.
6. However, we are of the opinion that the budgets reflected in the above recommendations are overly inflated and include expenses outside of the scope and duties associated with implementing SB 15-109.
7. We believe that throughout these budgets are attempts to backfill funding for the implementation of mandatory reporting of elder abuse and/or other unfunded mandates. While we support fully funding mandatory reporting of elder abuse and/or other programs of need, we believe that those funds should be specifically requested and not under the guise of implementing SB 15-109.
8. Further, we are offended because such an inflation perpetuates the myth that supporting justice for people with IDD will cost more than implementing the same justice for people

³ People with lived experience: describes the first-hand accounts, knowledge, and impressions about the world gained through every day events living as a member of specific population, minority, or oppressed group.

without disabilities, such as elders. Consider that approximately 220,000⁴ Coloradans are over the age of 70 as compared to an estimated 85,000⁵ Coloradans with IDD. Yet, the proposed budget for implementation of mandatory reporting for at-risk adults with IDD is more than double to what was requested to implement mandatory report for at-risk elders.

9. We are further disappointed that our fellow Task Members would support holding hostage the implementation of SB 15-109 unless these inflated funding requests were authorized.
10. We recommend that SB 15-109 be implemented as planned and that the legislature work to create a more realistic budget to support that implementation on July 1, 2016.

⁴ 2010 Census

⁵ 2014 State of the State in Developmental Disabilities Report

Appendix 10 – Minority Report of the Colorado District Attorneys Council (CDAC)

While the CDAC supports the expansion of mandatory reporting to at-risk adults with an intellectual and developmental disability (IDD), CDAC does not agree that the implementation of the law should take effect July 1, 2016.

Training will be a very important component in the successful implementation of IDD mandatory reporting. The training will not only involve law enforcement, but also training of mandatory reporters in the private sector. It will take time to develop a training curriculum and to identify those who will be the trainers, and that must be accomplished before the 1st training is held. CDAC learned from training law enforcement, district attorneys, financial institutions, and other mandatory reporters of elder abuse that having 4 hour trainings in the new law, identifying abuse and exploitation of elders, and investigation and prosecution of these cases prior to the effective date of the elder abuse mandatory reporting law was critical.

CDAC believes the same opportunity to provide additional training on the expansion of mandatory reporting is critical to its successful implementation. Training law enforcement and district attorneys on how to investigate and prosecute crimes committed against the IDD population will be even more complex than the training for at-risk elder abuse. There must be adequate time to do it right.

CDAC urges the General Assembly to delay the effective date of IDD mandatory reporting to January 1, 2017.