



# FINAL FISCAL NOTE

<b>Drafting Number:</b> LLS 14-0710	<b>Date:</b> May 22, 2014
<b>Prime Sponsor(s):</b> Sen. Zenzinger Rep. Foote; Schafer	<b>Bill Status:</b> Signed into Law
	<b>Fiscal Analyst:</b> Kerry White (303-866-3469)

**SHORT TITLE:** CRIMES AGAINST AT-RISK ELDERS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
<b>State Revenue</b>		
Cash Funds	<\$5,000	<\$5,000
<b>State Expenditures</b>	See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		

\* This summary shows changes from current law under the bill for each fiscal year.

## Summary of Legislation

This bill clarifies language in statute that prohibits abuse of at-risk elders. Specifically, it:

- modifies existing language defining exploitation as depriving an at-risk elder of the use, benefit, or possession of any thing of value;
- adds "exploitation" to the definition of "abuse;"
- removes language limiting "undue influence" to persons who exercise authority over an at-risk elder;
- establishes a new crime of criminal exploitation of an at-risk elder, rather than referencing the existing crime of theft and clarifies that the person must knowingly use deception, harassment, intimidation, or undue influence to commit the crime; and
- modifies reporting requirements so that reports of suspected self-neglect are forwarded to a local law enforcement agency or county department of social services, rather than the district attorney's office.

## Background

Senate Bill 13-111 established a new class of protections for "at-risk elders," who are defined as any person age 70 or older. Beginning July 1, 2014, members of helping professions listed in statute (mandatory reporters) are required to report known or suspected abuse of at-risk elders, and to make the report within 24 hours. The bill also required the Department of Human Services to implement an awareness campaign among the public and mandatory reporters about the mistreatment, self-neglect, and exploitation of all at-risk adults, including at-risk elders. Under SB13-111, the Department of Law was required to develop and implement a training curriculum to assist peace officers in recognizing and responding to known or suspected abuse and exploitation of at-risk elders.

Under current law, exploitation of at-risk elders is charged as theft. There are two ways an offense can be charged: under the theft statute of 18-4-401, C.R.S. or under the crimes against at-risk adults and juveniles statutes of 18-6.5-103 (5), C.R.S. The penalties under the theft statute range from a class 1 petty offense to a class 2 felony, depending on the value of the items. There is no way to isolate the number of offenses for at-risk elders that may have been charged under the theft statute. There were 1,373 convictions for theft under the crimes against at-risk adults and juveniles statute between January 1, 2012 and December 31, 2013. This number includes offenses committed against all at-risk persons, not just at-risk elders. The penalty for an offense charged under the at-risk adults and juvenile statute is either a class 5 (under \$500) or a class 3 felony (over \$500). It is believed that most theft offenses committed against at-risk elders are charged under the crimes against at-risk adults and juveniles statute. This bill eliminates the option for a district attorney to charge someone for an offense against an at-risk elder under the theft statute.

### **State Revenue**

Beginning in FY 2014-15, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Branch.

This bill expands the definition of exploitation to include any other thing of value (in addition to money, assets, or property). The bill also removes the requirement that a person exercise authority over an at-risk elder in order to have committed undue influence. To the extent that these behaviors result in additional convictions of exploitation, state revenue could increase.

If an offense committed against an at-risk elder would have been charged as a lesser offense under the theft statute, revenue could increase. If an offense against an at-risk elder would have been charged under the theft statute as a class 2 felony, revenue could decrease. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

### **State Expenditures**

This bill could affect state expenditures, by both increasing and reducing costs. The bill is not expected to create additional court filings, but may alter the punishment for persons who commit theft against an at-risk elder. The fiscal note assumes that potential increases and decreases will be minimal and will not require adjustments in appropriations for any state agency.

**Increases.** This bill could increase workload and costs for the Judicial Department and the Department of Corrections (DOC). Any such increase is dependent on whether someone who would have been prosecuted under the theft statute would now be required to be prosecuted for the new crime of exploitation of an at-risk elder. If a person was prosecuted in county court (such as the City and County of Denver, which is not part of the state system) for misdemeanor theft against an at-risk elder, that case would now be required to be heard in a district court as a felony case. To the extent this occurs, workload for trial courts may increase by a minimal amount.

If a person who would currently be convicted under the theft statute of a class 6 felony, misdemeanor, or petty offense is instead convicted of a class 3 or class 5 felony and sentenced to prison, costs will increase for the DOC. As discussed in the Background Section above, the extent to which any offenses against at-risk elders are currently prosecuted under the theft statute

versus the crimes against at-risk adults and at-risk juveniles statute is not known. The fiscal note assumes that most prosecutions for crimes against at-risk elders are prosecuted under the latter statute and that any increase in costs or workload for either the Judicial Department or the DOC will be minimal.

**Decreases.** If a person would have been convicted of a class 2 felony and sentenced to the DOC under the theft statute is now convicted of exploitation of an at-risk elder (with a lesser penalty), costs for the DOC could decrease. As discussed above, it is not known whether any offenses against at-risk elders are prosecuted under the theft statute. For this reason, this analysis assumes any decreases in costs will be minimal.

### **Local Government Impact**

This bill affects local governments in two ways. First, it may reduce revenue and costs as a result of no longer prosecuting certain offenses under the theft statute. Second, it decreases workload related to reports of abuse of at-risk elders.

**Reducing certain offenses prosecuted as theft.** To the extent that theft crimes against at-risk elders are currently prosecuted under the theft statute, revenue and workload for county courts will decrease under SB14-098. For any offenders convicted and sentenced to jail, costs will also decrease. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$51.45 to house state inmates. It is assumed that the impact of this bill on county jails will be minimal.

**Reporting.** The bill eliminates the need to send reports of suspected self-neglect to district attorneys' offices. This impact is anticipated to be minimal.

### **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates the new crime of exploitation of an at-risk elder. Under current law, this offense may be charged as theft or as a crime against an at-risk adult or at-risk juvenile. As discussed above, there is no way to determine if or how many theft convictions were for offenses against at-risk elders. There were 1,373 convictions for theft under the crimes against at-risk adults and juveniles statute between January 1, 2012, and December 13, 2013. No information about the gender and minority status of the victims was available as of this writing. The fiscal note assumes that this bill will not create additional court filings, but may alter the punishment for persons who commit theft of property or valuables of an at-risk elder. Due to the lack of information about these offenses, the fiscal impact of this bill cannot be estimated precisely.

**Effective Date**

The bill was signed into law by the Governor and took effect on April 7, 2014.

**State and Local Government Contacts**

Corrections  
Human Services  
Municipalities

Counties  
Judicial  
Regulatory Agencies

District Attorneys  
Law  
Sheriffs