To: SB78 Elder Abuse Task Force

From: Scott Storey, District Attorney, Jefferson and Gilpin Counties Re: proposed mandatory reporting of elder abuse and exploitation

Date: 7/5/12

Attached is the draft of the elder abuse and exploitation reporting statute that we proposed at the stakeholder meetings this past spring. Our draft created a new definition of "at-risk elder." This definition is completely separate from the existing human services code definition of "at-risk adult." An "at-risk elder" would be a person seventy years of age or older. Mandated reporting under our draft would be limited to crimes of abuse and exploitation perpetrated against "at-risk elders" only. In addition, only the set of mandated reporters would be required to report. The remaining provisions of the human services code would remain in tact.

We see the benefit of this approach being that we do not tamper excessively with the existing framework of reporting and investigation already set forth in the human services code. Our proposal would simply be an addition to either the human services code or the criminal code. We also believe that this bill is appropriately limited to the elderly. Committing ourselves to reporting of all crimes and self-neglect for all "at-risk adults" is overly broad and unduly expensive at this point. Limiting ourselves to the elderly is an appropriate first step.

Our proposal for paying for the additional resources necessitated by the increase in reporting would come from a modification of the criminal code. Our model for this procedure is HB 10-1352. This law reduced the penalties for simple possession of most types of drugs. The savings generated by reduced prison, probation and public defender costs were then shifted to support drug treatment. Presently, under the criminal code, "atrisk adult" is defined as a person age sixty and above. See 18-6.5-102(1), C.R.S. When crimes such as theft, assault, neglect and robbery are perpetrated upon an at-risk adult the criminal penalty is enhanced. This enhancement is particularly pronounced for the crime of theft. Our proposal is to change the definition of "at-risk adult" under the criminal code only (leaving the definition of "at-risk adult" unchanged in the human services code) to persons age seventy and above. We believe that this would result in significant cost savings by dramatically reducing the penalty for this limited subset of crimes committed against those in their sixties. The prosecution unit in my office sees the majority of serious elder abuse and exploitation being committed against those in their seventies and eighties. This money could then be set aside for the counties and human services.

Lastly, there would be the addition of a criminal penalty for failure to report. This would be a class three misdemeanor.

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ELDER ABUSE, NEGLECT AND EXPLOITATION REPORTING

26-3.1-101. Definitions.

"At-risk elder" means an individual seventy years of age or older.

"Abuse" means an act or omission which threatens the health, safety, or welfare of an atrisk elder or which exposes the elder to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult. "Abuse" includes, but is not limited to, abuse:

- (a) 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
- (b) where unreasonable confinement or restraint is imposed; or
- (c) where there is nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18 C.R.S.

"Caretaker Neglect" occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk elder 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 of artificial nourishment in accordance with the "Colorado Medical Treatment Decision Act", article 18 of title 15, C.R.S. shall not be considered as abuse.

"Caretaker" means a person, as such term is defined in subsection (5) of this section, who is responsible for the care of an at-risk elder as a result of a family or legal relationship or who has assumed responsibility for the care of an at-risk elder.

"County department" means a county or district department of social services

"Financial exploitation" means the illegal or improper use of an at-risk elder's financial resources for another person's profit or advantage

26-3.1-102 Reporting Requirements.

- (1)(a) Any person specified in paragraph (b) of this subsection (1) who has observed the abuse, caretaker neglect or financial exploitation of an at-risk elder, or who has reasonable cause to believe that an at-risk elder has been abused, neglected by a caretaker or financially exploited or who is at imminent risk of abuse, caretaker neglect or financial exploitation shall make a report to the county department within twenty-four hours. The report, if made during non-business hours of the county department, shall be made to a local law enforcement agency responsible for investigating violations of state criminal laws protecting elderly adults. (b) The following persons shall make or initiate a report immediately: (I) Physicians, surgeons, physicians' assistants, or osteopaths, including physicians in training; (II) Medical examiners or coroners: (III) Registered nurses or licensed practical nurses; (IV) Hospital and nursing home personnel engaged in the admission, care, or treatment of patients; (V) Psychologists and other mental health professionals; (VI) Social work practitioners; (VII) Dentists; (VIII) Law enforcement officials and personnel; (IX) Court-appointed guardians and conservators; (X) Fire protection personnel; (XI) Pharmacists;
- (XIII) Personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions;

(XII) Community-centered board staff;

- (XIV) State and local long-term care ombudsmen;
- (XV) Any caretaker, staff member, or employee of or volunteer or consultant for any licensed care facility, agency, home, or governing board.
- (c) In addition to those persons required by this subsection (1) to report known or suspected abuse, caretaker neglect or financial exploitation of an at-risk elder and circumstances or conditions which might reasonably result in abuse, caretaker neglect or financial exploitation, any other person is encouraged to report such known or suspected abuse, caretaker neglect or financial exploitation and circumstances or conditions which might reasonably result in abuse, caretaker neglect or financial exploitation of an at-risk elder to the local law enforcement agency or the county department. Upon receipt of such report, the receiving agency shall prepare a written report within forty-eight hours.
- (2) Pursuant to subsection (1) of this section, the report shall include to the extent possible: The name and address of the at-risk adult; the name and address of the at-risk elder's caretaker, if any; the age, if known, of such at-risk elder; the nature and extent of such at-risk elder's injury, if any; the nature and extent of the condition that will reasonably result in abuse or caretaker neglect; the nature and extent of such at-risk elder's financial injury, if any; the nature and extent of the condition or circumstance that is likely to result in financial exploitation; and any other pertinent information.
- (3) A copy of the report prepared by the county department in accordance with subsections (1) and (2) of this section shall be forwarded within twenty-four hours to the district attorney's office and the local law enforcement agency. A report prepared by the local law enforcement agency shall be forwarded within twenty-four hours to the county department and to the district attorney's office.
- (4) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of abuse, caretaker neglect or financial exploitation to a county department or local law enforcement agency. Any person who willfully violates the provisions of this subsection (4) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and liable for damages proximately caused thereby.
- (5) Any person, except a perpetrator, complicitor, or coconspirator, who makes a report pursuant to this section shall be immune from any civil or criminal liability on account of such report, testimony, or participation in making such report, so long as such action was taken in good faith and not in reckless disregard of the truth or in violation of subsection (4) of this section.
- (6) No person shall take any discriminatory, disciplinary, or retaliatory action against any person who, in good faith, makes a report of suspected abuse, neglect, or exploitation of an at-risk adult.

- (7) Any person who knowingly violates the provisions of subsection (1) of this section:
 - (a) Commits a class three misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
 - (b) Shall be liable for damages proximately caused thereby.