

## ATTACHMENT A

### Mandatory Reporting Policy Decisions September 12, 2012

The following decisions have been made but not voted on by the SB 78 Task Force. Voting will occur at the September 26, 2012 meeting.

*1.) Should we have mandatory reporting?*

Yes, the task force agrees that we should have mandatory reporting. There is unanimous agreement that at-risk adults are in need of protection as are abused and neglected children. The State must commit adequate resources to allow for a sustainable Adult Protective Services system at the time of implementation of mandatory reporting.

*2.) Statutorily, where should a mandatory reporting statute reside – title 18 (criminal), title 26 (APS) or both?*

Statutory revisions should be made to Title 18. Title 26 should remain unchanged. The task force considered reconciling the ‘at-risk adult’ definitions in the two titles and ultimately decided that would not be prudent. The ‘at-risk adult’ definition under CRS 26-3.1-101 captures instances of self-neglect which is not appropriate under the criminal code. The ‘at-risk adult’ definition under CRS 18-6.5-201 (1) addresses disabilities that may make someone vulnerable to criminal activity but would not otherwise necessitate human services involvement. For instance, the mere fact that someone is blind would be at risk under the criminal code but not Title 26. In other words, the ‘at-risk adult’ definition under Title 18 is appropriately broad to capture more at-risk adults.

*3.) What areas of behavior should mandatory reporting apply too (i.e. physical abuse, financial exploitation, etc.)*

Mandatory reporting should be required for incidents of physical abuse and sexual abuse. Additionally, it should include financial exploitation as long as there is civil and criminal immunity for financial institutions and their employees.

Finally, the task force recommends repealing the consent form statute under CRS 6-21-103. Despite good intentions, this policy has been ineffective. Forms are rarely completed and many customers find the forms offensive and an attempt by financial institutions and state agencies to gain unfair control over sensitive private financial information.

Sent to Scott for review

*4.) Who should be required to mandatorily report abuse of at-risk adults?*

The list of mandatory reporters in CRS 26-3.1-102 (1)(b) should be amended to include:

- 1.) Emergency Medical Services Providers;
- 2.) Clergy (as defined in the Children’s Code – CRS 19-3-304(2)(aa) and CRS 13-90-109(1)(c))

- 3.) Specification that both paid or unpaid workers in any of the professional areas listed in CRS 26-3.1-102(1)(b) also be required to report.

That change would read:

CRS 26-3.1-102 (1)(a)

An immediate oral report should be made or caused to be made within twenty-four hours to a county department or during non-business hours to a local law enforcement agency responsible for investigating violations of state criminal laws protecting at-risk adults by any person PAID OR UNPAID specified in paragraph (b) of this subsection (1) who has observed the mistreatment, self-neglect, or exploitation of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated, is self-neglected, or has been exploited and is at imminent risk of mistreatment, self-neglect, or exploitation.

- 5.) *Who should be subject to mandatory reporting (all at-risk, elders, etc)?*

The task force believes that elders age seventy and above are the most vulnerable and in need of the protections that mandatory reporting would provide. Roughly 60% of Adult Protective Clients in SFY 2012 were over the age of 70.

Protecting this population should be the starting point. At some point in the future, the task force recommends expanding the population to those individuals over the age of eighteen who are disabled, as set forth in CRS 18-6.5-102(3), when that disability causes the individual increased susceptibility to becoming a victim of a crime, as outlined in CRS 18-6.5-103, because the disability impacts the individual's ability to perform activities necessary for his or her health, safety or welfare or causes the individual to lack sufficient understanding or capacity to make or communicate decisions concerning his or her person or affairs.

- 6.) *Should criminal penalties be applied to those who do not report?*

The majority of the group believes that a misdemeanor three for those who fail to report is appropriate. A misdemeanor 3 under CRS 18-1.3-501 may result in a fine between \$50-750 or 6 months in the county jail. Some of the reasons given for this decision is that: 1.) for egregious incidents, jail time is a necessary hammer; 2.) this penalty mirrors the Child Welfare statute for failure to report; and 3.) if jail time is not an option, these crimes will be de-prioritized from a prosecution standpoint.

Additionally, a "Good Faith" Immunity Clause is imperative.

Those who opposed a class three misdemeanor penalty argued that a class 2 petty offense (fine only) should be the penalty for the first incident of failing to report. Those who routinely fail to report should be subject to class three misdemeanors.

- 7.) *Should investigations be mandatory?*

Law enforcement, upon receiving the report of a violation of any criminal statute against an elder or at risk adult shall make a verbal report to the county department adult protective services within 24 hours of receipt of the information. Law enforcement shall document the circumstances in a written report. The law enforcement agency shall forward a copy of that written report to the county department and to the district attorney's office within 24 hours of the completion of the report. The law enforcement agency shall complete a criminal investigation when appropriate and upon completion of the investigation forward a copy of the completed report to the county department of adult protective services and the district attorney's office.

The report shall include, at a minimum: the name, age and address, and contact information of the elder or at-risk adult; the name, age, address and contact information of their caretaker if one is known; the criminal allegations including but not limited to the nature and extent of the elder or at-risk adult's injury, whether physical or financial; the nature and extent of the condition that necessitated a report to be made; the reporting party's name, address and contact information; the alleged perpetrator; and any other pertinent information.