

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0364.01 Dan Cartin x2045

SENATE BILL 15-038

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING ACCESS TO CERTAIN RECORDS OF A COUNTY
102 DEPARTMENT OF HUMAN OR SOCIAL SERVICES CONTAINING
103 PERSONAL IDENTIFYING INFORMATION BY AN AUDITOR
104 CONDUCTING A FINANCIAL OR PERFORMANCE AUDIT OF THAT
105 DEPARTMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Access to or publication of certain records containing personal identifying information that are held by a county department of human or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

social services is prohibited or limited under current law. This includes county department records relating to public assistance and welfare, at-risk adults, and child abuse and neglect. The state department of human services also has authority to establish rules restricting the use and disclosure of this information.

The bill requires a county department of human or social services to provide an auditor who is conducting a financial or performance audit of the county department (county department audit) access to these records, including any personal identifying information necessary to achieve the purposes of the audit. The authorization applies to an auditor retained by a county or authorized pursuant to a county charter or ordinance.

The bill prohibits an auditor from disclosing or releasing to any person or in an audit report any information, including personal identifying information, that is obtained pursuant to a county department audit and required to be kept confidential by law. A person who unlawfully releases this confidential information is subject to the applicable criminal penalty.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and determines that:

4 (a) The delivery of human and social services is a matter of state
5 concern and a function that is administered by county departments as an
6 arm of the state pursuant to state statutes;

7 (b) The purposes of these county-administered programs include
8 ensuring the protection, safety, and well-being of at-risk children and
9 adults and promoting better outcomes for these individuals;

10 (c) Despite these purposes, some counties are experiencing
11 program deficiencies in the performance and delivery of these critical
12 services, thereby failing at-risk individuals;

13 (d) The general assembly is committed to improving the delivery
14 of these services in order to ensure the safety and well-being of these
15 individuals;

1 (e) A performance or financial audit of a county department
2 experiencing these adverse outcomes can be essential to addressing the
3 causation of such systemic program weaknesses or deficiencies;

4 (f) The general assembly recognizes that maintaining the
5 confidentiality of highly sensitive and personal identifying information
6 contained in the client records of county departments is critical to the
7 privacy of the at-risk children, adults, and members of their families
8 served by these programs; and

9 (g) Auditors often have access to confidential information and
10 allowing an auditor access to the confidential information held by county
11 departments will serve to ensure that the audit report ultimately promotes
12 improvements to, enhances the accountability of, and advances better
13 outcomes for the children, adults, and families served by
14 county-administered programs.

15 (2) Therefore, the general assembly hereby declares that it is in the
16 best interests of the at-risk individuals served by these programs for an
17 auditor to have access to certain confidential information held by county
18 departments in order to further the audit's examination of systemic
19 deficiencies or failures, while ensuring that the information is not
20 released, made available for public inspection, or made part of the audit
21 report.

22 **SECTION 2.** In Colorado Revised Statutes, **add** 26-1-114.5 as
23 follows:

24 **26-1-114.5. Records - access by county auditor.**

25 (1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A
26 COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES SHALL PROVIDE TO
27 AN AUDITOR CONDUCTING A FINANCIAL OR PERFORMANCE AUDIT OF THE

1 COUNTY DEPARTMENT ACCESS TO ALL OF THE RECORDS, REPORTS, PAPERS,
2 FILES, AND COMMUNICATIONS OF THE COUNTY DEPARTMENT, INCLUDING
3 ANY PERSONAL IDENTIFYING INFORMATION OF INDIVIDUALS CONTAINED
4 IN THE RECORDS, REPORTS, PAPERS, FILES, AND COMMUNICATIONS
5 NECESSARY TO ACHIEVE THE STATED AUDIT OBJECTIVES.

6 (2) THIS SECTION APPLIES TO AN AUDITOR RETAINED BY A COUNTY
7 OR AUTHORIZED PURSUANT TO A COUNTY CHARTER OR ORDINANCE.

8 (3) (a) INFORMATION REQUIRED TO BE KEPT CONFIDENTIAL OR
9 EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO ANY OTHER LAW OR
10 RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES OR UPON
11 SUBPOENA, SEARCH WARRANT, DISCOVERY PROCEEDINGS, OR OTHERWISE,
12 INCLUDING PERSONAL IDENTIFYING INFORMATION, THAT IS OBTAINED BY
13 AN AUDITOR PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST NOT BE:

14 (I) RELEASED, DISCLOSED, OR MADE AVAILABLE FOR INSPECTION
15 TO ANY PERSON BY THE AUDITOR, THE AUDITOR'S STAFF, OR AN AUDIT
16 OVERSIGHT COMMITTEE; OR

17 (II) DISCLOSED OR CONTAINED IN AN AUDIT REPORT THAT IS
18 RELEASED FOR PUBLIC INSPECTION.

19 (4) A PERSON WHO RELEASES INFORMATION REQUIRED TO BE KEPT
20 CONFIDENTIAL OR EXEMPT FROM PUBLIC DISCLOSURE IN VIOLATION OF
21 SUBSECTION (3) OF THIS SECTION IS SUBJECT TO THE APPLICABLE CRIMINAL
22 OR CIVIL PENALTY FOR THE UNLAWFUL RELEASE OF THE INFORMATION.

23 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE
24 THE AUTHORITY OF THE STATE AUDITOR PURSUANT TO SECTION 2-3-107
25 (2) (a), C.R.S.

26 **SECTION 3.** In Colorado Revised Statutes, 19-1-307, **amend** (2)
27 (o); and **add** (2) (o.5) as follows:

1 **19-1-307. Dependency and neglect records and information -**
2 **access - fee - rules - records and reports fund - misuse of information**
3 **- penalty. (2) Records and reports - access to certain persons -**
4 **agencies.** Except as otherwise provided in section 19-1-303, only the
5 following persons or agencies shall be given access to child abuse or
6 neglect records and reports:

7 (o) A person, agency, or organization engaged in a bona fide
8 research or evaluation project, ~~or audit~~, but without information
9 identifying individuals named in a report, unless having said identifying
10 information open for review is essential to the research and evaluation,
11 in which case the executive director of the state department of human
12 services shall give prior written approval and the child through a legal
13 representative shall give permission to release the identifying
14 information;

15 (o.5) AN AUDITOR CONDUCTING A FINANCIAL OR PERFORMANCE
16 AUDIT OF A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES
17 PURSUANT TO SECTION 26-1-114.5, C.R.S.;

18 **SECTION 4.** In Colorado Revised Statutes, 26-1-114, **amend** (1)
19 as follows:

20 **26-1-114. Records confidential - authorization to obtain**
21 **records of assets - release of location information to law enforcement**
22 **agencies - outstanding felony arrest warrants. (1)** The state
23 department of human services may establish reasonable rules to provide
24 safeguards restricting the use or disclosure of information concerning
25 applicants, recipients, and former and potential recipients of federally
26 aided public assistance and welfare, including but not limited to
27 assistance payments, food stamps, social services, and child welfare

1 services, to purposes directly connected with the administration of such
2 public assistance and welfare and related state department activities and
3 covering the custody, use, and preservation of the records, papers, files,
4 and communications of the state and county departments. Whenever,
5 under provisions of law, names and addresses of applicants for, recipients
6 of, or former and potential recipients of public assistance and welfare are
7 furnished to or held by another agency, ~~or~~ department of government, OR
8 AN AUDITOR CONDUCTING A FINANCIAL OR PERFORMANCE AUDIT OF A
9 COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES PURSUANT TO
10 SECTION 26-1-114.5, ~~such~~ THE agency, ~~or~~ department, ~~shall be~~ OR
11 AUDITOR IS required to prevent the publication of lists ~~thereof~~ and their
12 uses for purposes not directly connected with the administration of ~~such~~
13 public assistance and welfare.

14 **SECTION 5.** In Colorado Revised Statutes, 26-3.1-102, **amend**
15 (7) (b) (II) and (7) (b) (III); and **add** (7) (b) (IV) as follows:

16 **26-3.1-102. Reporting requirements.** (7) (b) Disclosure of a
17 report of the mistreatment, self-neglect, or exploitation of an at-risk adult
18 and information relating to an investigation of such a report shall be
19 permitted only when authorized by a court for good cause. Such
20 disclosure shall not be prohibited when:

21 (II) There is a death of a suspected at-risk adult from
22 mistreatment, self-neglect, or exploitation and a law enforcement agency
23 files a formal charge or a grand jury issues an indictment in connection
24 with the death; ~~or~~

25 (III) Such disclosure is necessary for the coordination of multiple
26 agencies' investigation of a report or for the provision of protective
27 services to an at-risk adult; OR

1 (IV) SUCH DISCLOSURE IS NECESSARY FOR PURPOSES OF AN AUDIT
2 OF A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES PURSUANT TO
3 SECTION 26-1-114.5, C.R.S.

4 **SECTION 6. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2016 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.