

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0613.01 Jane Ritter

SENATE BILL 11-171

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

(None),

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING A DATABASE TO TRACK SUBSTANTIATED ALLEGATIONS
102 OF MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS.

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>.)

The bill creates the mistreatment of at-risk adults by caretakers database (database) in the department of human services (department). Agencies that are currently responsible for investigating allegations of mistreatment of at-risk adults by caretakers shall determine if an allegation against a caretaker is substantiated and if, therefore, the

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.

caretaker's name should be placed in the database. The state board of human services (state board) is authorized to promulgate rules concerning the implementation of the database, including an appeal process. An employer of caretakers may check the database before hiring a caretaker and may hire a caretaker even if his or her name appears in the database unless the substantiated allegation of mistreatment meets the description of mistreatments barring employment as established by rule of the state board. The department is not obligated to implement the database until sufficient gifts, grants, donations, or federal moneys have been received.

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

2 **SECTION 1.** 26-3.1-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **26-3.1-101. Definitions.** As used in this article, unless the context
6 otherwise requires:

7 (2.5) "DATABASE" MEANS THE MISTREATMENT OF AT-RISK ADULTS
8 BY CARETAKERS DATABASE ESTABLISHED PURSUANT TO SECTION
9 26-3.1-107.

10 (8) "SUBSTANTIATED ALLEGATION OF MISTREATMENT" MEANS AN
11 ALLEGATION OF MISTREATMENT, AS THAT TERM IS DEFINED IN SUBSECTION
12 (4) OF THIS SECTION, THAT IS VERIFIED BY PROOF BY A PREPONDERANCE OF
13 THE EVIDENCE.

14 **SECTION 2.** Part 1 of article 3.1 of title 26, Colorado Revised
15 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
16 read:

17 **26-3.1-107. Mistreatment of at-risk adults by caretakers**
18 **database - creation - immunity - fund - repeal.** (1) (a) UPON
19 COMPLETION OF AN INVESTIGATION CONDUCTED PURSUANT TO SECTIONS
20 26-3.1-103 (1) AND 26-11.5-105 AND SECTION 25-1-124 (2.5) (a), C.R.S.,

1 THE AGENCY RECEIVING A REPORT OF MISTREATMENT OF AN AT-RISK
2 ADULT SHALL DETERMINE IF THE INCIDENT CONSTITUTES A
3 SUBSTANTIATED ALLEGATION OF MISTREATMENT, AS OUTLINED BY RULE
4 ADOPTED BY THE STATE BOARD PURSUANT TO PARAGRAPH (d) OF THIS
5 SUBSECTION (1), AND WHETHER THE NAME OF THE CARETAKER SHOULD BE
6 PLACED IN THE DATABASE CREATED PURSUANT TO SUBSECTION (2) OF THIS
7 SECTION. THE INVESTIGATING AGENCY SHALL FORWARD TO THE STATE
8 DEPARTMENT THE NAME OF ANY CARETAKER DETERMINED TO HAVE HAD
9 A SUBSTANTIATED ALLEGATION OF MISTREATMENT OF AN AT-RISK ADULT
10 FOR INCLUSION IN THE DATABASE.

11 (b) PRIOR TO PLACEMENT OF THE CARETAKER'S NAME IN THE
12 DATABASE, THE INVESTIGATING AGENCY SHALL PROVIDE WRITTEN NOTICE,
13 INCLUDING NOTICE OF THE RIGHT TO APPEAL, AS ESTABLISHED BY RULE
14 ADOPTED BY THE STATE BOARD PURSUANT TO PARAGRAPH (d) OF THIS
15 SUBSECTION (1), TO THE CARETAKER. THE WRITTEN NOTICE SHALL
16 INCLUDE A SUMMARY OF THE SUBSTANTIATED FINDINGS OF
17 MISTREATMENT OF THE AT-RISK ADULT. IF THE CARETAKER REQUESTS AN
18 APPEAL, HIS OR HER NAME SHALL NOT BE PLACED IN THE DATABASE
19 PENDING THE OUTCOME OF THE APPEAL. ANY CARETAKER WHO IS
20 SUCCESSFUL IN REVERSING A RECOMMENDATION TO HAVE HIS OR HER
21 NAME PLACED IN THE DATABASE SHALL BE TREATED FOR ALL PURPOSES AS
22 IF NO RECOMMENDATION HAD OCCURRED.

23 (c) THE INVESTIGATING AGENCY THAT RECOMMENDS THE
24 PLACEMENT OF A CARETAKER'S NAME IN THE DATABASE AND THE STATE
25 BOARD SHALL BE IMMUNE FROM CIVIL LIABILITY UNLESS THE
26 INFORMATION UPON WHICH THE RECOMMENDATION IS BASED IS FALSE AND
27 THE INVESTIGATING AGENCY OR STATE BOARD KNOWS THE INFORMATION

1 IS FALSE OR ACTS WITH RECKLESS DISREGARD CONCERNING THE VERACITY
2 OF THE INFORMATION.

3 (d) THE STATE BOARD SHALL ADOPT RULES FOR THE
4 IMPLEMENTATION OF THIS SUBSECTION (1), INCLUDING BUT NOT LIMITED
5 TO THE APPEAL PROCESS, DESCRIPTIONS OF ACTIONS THAT WOULD
6 TRIGGER PLACEMENT OF A CARETAKER'S NAME IN THE DATABASE, AND
7 DESCRIPTIONS OF SUBSTANTIATED ALLEGATIONS THAT WOULD BAR A
8 PERSON FROM HIRING A PROSPECTIVE CARETAKER.

9 (2) THERE IS HEREBY CREATED IN THE STATE DEPARTMENT THE
10 MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS DATABASE. THE
11 DATABASE SHALL INCLUDE NAMES OF CARETAKERS FOR WHOM A
12 SUBSTANTIAL ALLEGATION OF MISTREATMENT HAS BEEN DETERMINED
13 PURSUANT TO SUBSECTION (1) OF THIS SECTION.

14 (3) PERSONS ARE ENCOURAGED TO CHECK THE DATABASE PRIOR
15 TO HIRING A CARETAKER TO DETERMINE IF THE CARETAKER HAS HAD A
16 SUBSTANTIATED ALLEGATION OF MISTREATMENT OF AN AT-RISK ADULT.
17 IF THE POTENTIAL CARETAKER'S NAME IS IN THE DATABASE, THE PERSON
18 INVOLVED IN HIRING MAY ALLOW THE CARETAKER AN OPPORTUNITY TO
19 EXPLAIN THE CIRCUMSTANCES AND MAY HIRE THE CARETAKER, UNLESS
20 THE SUBSTANTIATED ALLEGATION IS ONE THAT TRIGGERS A BAR ON HIRING
21 PER RULES ESTABLISHED BY THE STATE BOARD PURSUANT TO PARAGRAPH
22 (d) OF SUBSECTION (1) OF THIS SECTION, IN WHICH CASE THE PERSON
23 SHALL NOT HIRE THE CARETAKER.

24 (4) ANY PERSON THAT RELIES ON INFORMATION PROVIDED IN THE
25 DATABASE IN MAKING AN EMPLOYMENT DECISION SHALL BE IMMUNE FROM
26 CIVIL LIABILITY UNLESS THE INFORMATION IS FALSE AND THE PERSON
27 KNOWS THE INFORMATION IS FALSE OR IF THE PERSON ACTS WITH

1 RECKLESS DISREGARD CONCERNING THE VERACITY OF SUCH INFORMATION.

2 (5) (a) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
3 DATABASE SHALL BE FUNDED THROUGH FEDERAL MONEYS AND ANY GIFTS,
4 GRANTS, AND DONATIONS RECEIVED BY THE STATE DEPARTMENT FOR THE
5 PURPOSE OF IMPLEMENTING THE DATABASE. THE PROVISIONS OF THIS
6 SECTION SHALL TAKE EFFECT ONLY IF, BY JUNE 30, 2012, THE STATE
7 DEPARTMENT RECEIVES AN AMOUNT THROUGH GIFTS, GRANTS,
8 DONATIONS, AND FEDERAL MONEYS THAT IS EQUAL TO OR GREATER THAN
9 THE FINAL FISCAL ESTIMATE FOR SENATE BILL 11-___, ENACTED IN 2011,
10 TO COVER THE ESTIMATED COSTS OF IMPLEMENTING THIS SECTION. ANY
11 GIFTS, GRANTS, OR DONATIONS RECEIVED BY THE STATE DEPARTMENT
12 PURSUANT TO THIS SUBSECTION (5) SHALL BE DEPOSITED INTO THE
13 MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS DATABASE FUND
14 CREATED IN SUBSECTION (6) OF THIS SECTION.

15 (b) ON OR BEFORE JUNE 30, 2012, THE EXECUTIVE DIRECTOR OF
16 THE STATE DEPARTMENT SHALL FILE A WRITTEN NOTICE WITH THE REVISOR
17 OF STATUTES, INDICATING THAT THE ESTIMATED AMOUNT OF MONEYS WAS
18 RECEIVED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5). IF THE
19 NOTICE IS NOT RECEIVED BY THE REVISOR OF STATUTES BY JUNE 30, 2012,
20 THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2012. IF THE NOTICE IS
21 RECEIVED BY THE REVISOR OF STATUTES BY JUNE 30, 2012, THIS
22 PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2012.

23 (6) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK AND ACCEPT
24 GIFTS, GRANTS, DONATIONS, OR FEDERAL MONEYS FROM PRIVATE OR
25 PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION; EXCEPT THAT THE
26 STATE DEPARTMENT MAY NOT ACCEPT A GIFT, GRANT, OR DONATION THAT
27 IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS SECTION

1 OR ANY OTHER LAW OF THE STATE. IN SEEKING OR ACCEPTING A GIFT,
2 GRANT, OR DONATION, THE STATE DEPARTMENT SHALL COMPLY WITH THE
3 PROVISIONS OF PART 13 OF ARTICLE 75 OF TITLE 24, C.R.S., REGARDING
4 THE STATUS OF GIFTS, GRANTS, AND DONATIONS MADE TO STATE
5 AGENCIES. THE STATE DEPARTMENT SHALL TRANSMIT ALL PRIVATE AND
6 PUBLIC MONEYS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO
7 THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE
8 MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS DATABASE FUND,
9 WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SUBSECTION
10 (5) AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO
11 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE STATE
12 DEPARTMENT FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH
13 IMPLEMENTING THIS SECTION. ANY MONEYS IN THE FUND NOT EXPENDED
14 FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE
15 TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED
16 FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE
17 CREDITED TO THE FUND.

18 **SECTION 3.** 25-1-124 (2.5) (a), Colorado Revised Statutes, is
19 amended to read:

20 **25-1-124. Health care facilities - consumer information -**
21 **reporting - release.** (2.5) (a) In addition to the reports required by
22 subsection (2) of this section, if the Colorado attorney general, the
23 division for developmental disabilities in the department of human
24 services, a community centered board, an adult protection service, or a
25 law enforcement agency makes a report of an occurrence as described in
26 subsection (2) of this section involving a licensed long-term care facility,
27 that report shall be provided to the department and shall be made

1 available for inspection consistent with the provisions of subsection (6)
2 of this section. Any reports concerning an adult protection service shall
3 BE SUBMITTED TO THE COUNTY DEPARTMENT OF SOCIAL SERVICES IN
4 WHICH THE PATIENT OR RESIDENT OF THE FACILITY RESIDES FOR POSSIBLE
5 INCLUSION ON THE MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS
6 DATABASE CREATED IN SECTION 26-3.1-107 (2), C.R.S., AND SHALL be in
7 compliance with the confidentiality requirements of section 26-3.1-102
8 (7), C.R.S.

9 **SECTION 4.** 26-11.5-105 (1) (a) (I), Colorado Revised Statutes,
10 is amended to read:

11 **26-11.5-105. Duties of state long-term care ombudsman.**

12 (1) In addition to such other duties and functions as the state department
13 may allocate to the office, the state long-term care ombudsman shall have
14 the following duties and functions in implementing a statewide long-term
15 care ombudsman program:

16 (a) (I) Establish statewide policies and procedures for operating
17 the state long-term care ombudsman program including procedures to
18 identify, investigate, and seek the resolution or referral of complaints
19 made by or on behalf of any elderly resident related to any action,
20 inaction, or decision of any provider of long-term care services or of any
21 public agency, including the state department of human services and
22 county departments of social services, that may adversely affect the
23 health, safety, welfare, or rights of such elderly resident. THE POLICIES
24 AND PROCEDURES SHALL INCLUDE A MECHANISM TO PROVIDE THE RESULTS
25 OF AN INVESTIGATION OF MISTREATMENT OF AN AT-RISK ADULT, AS THOSE
26 TERMS ARE DEFINED IN SECTION 26-3.1-101, TO THE COUNTY DEPARTMENT
27 OF SOCIAL SERVICES IN WHICH THE AT-RISK ADULT RESIDES FOR POSSIBLE

1 INCLUSION ON THE MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS
2 DATABASE CREATED IN SECTION 26-3.1-107 (2).

3 **SECTION 5.** 27-10.5-115 (10), Colorado Revised Statutes, is
4 amended to read:

5 **27-10.5-115. Right to humane care and treatment.** (10) A
6 record shall be maintained of all physical injuries to any person receiving
7 services, all incidents of mistreatment, exploitation, neglect, or abuse, and
8 all uses of physical or mechanical restraint. All records shall be subject
9 to review by the human rights committee. THE HUMAN RIGHTS
10 COMMITTEE SHALL PROVIDE THE RESULTS OF AN INVESTIGATION OF
11 MISTREATMENT OF AN AT-RISK ADULT, AS THOSE TERMS ARE DEFINED IN
12 SECTION 26-3.1-101, C.R.S., TO THE COUNTY DEPARTMENT OF SOCIAL
13 SERVICES IN WHICH THE AT-RISK ADULT RESIDES FOR POSSIBLE INCLUSION
14 ON THE MISTREATMENT OF AT-RISK ADULTS BY CARETAKERS DATABASE
15 CREATED IN SECTION 26-3.1-107 (2), C.R.S.

16 **SECTION 6. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.