



# Legislative Council Staff

## Research Note

Version: Final

Date: 4/12/2016

### Bill Number

**House Bill 16-1027**

### Sponsors

***Representative Danielson  
Senators Todd and Sonnenberg***

### Short Title

***Criminal Deposition For At-risk  
Persons***

### Research Analyst

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### Status

This research note reflects the final version of the bill, which becomes effective on July 1, 2016.

### Summary

This bill expands and streamlines the allowable use of recorded depositions for at-risk elders. Under the bill, the court must schedule a recorded deposition to take place within 14 days upon receipt of a motion without further findings if the victim is an at-risk elder, defined as any person 70 years of age or older; however, the bill allows the defense to challenge the motion for recorded depositions of other at-risk adults. The bill increases from three to 14 days the amount of time required between the prosecution's motion requesting a recorded deposition and the taking of the deposition, while allowing this interval requirement to be waived for good cause shown. Both the prosecution and the defendant must share all discovery no later than five days before the deposition. If either party fails to do so, the other may file a motion to reschedule the deposition. The bill also changes the wording of state law to allow "recording" of depositions rather than strictly "video-tape" depositions.

### Background

Under current law, prosecutors may request a video deposition for victims of or witnesses to a crime who are at-risk adults unable to testify at trial. If the court finds that the at-risk adult will be medically or otherwise unavailable at the time of trial, the court must grant the motion for a video deposition. House Bill 16-1027 requires the court to schedule such a deposition in the case of an at-risk elder upon receipt of a motion, while making the motion rebuttable in the case of at-risk adults based on whether or not the deposition will prevent injustice.

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Colorado law levies more severe penalties for crimes against at-risk adults. The General Assembly has recognized that the at-risk population is more vulnerable to and disproportionately damaged by crime, and that this population is not as physically or emotionally equipped to protect themselves or aid in their own security as the non-at-risk population. "At-risk adult" is defined by state law as a person who is 70 years of age or older, or a person who is 18 years of age or older with one of the following disabilities:

- impairment due to the loss or permanent loss of use of a hand or foot, or due to blindness or the permanent impairment of vision of both eyes to such a degree as to constitute virtual blindness;
- inability to walk, see, hear, or speak;
- inability to breathe without mechanical assistance;
- an intellectual and developmental disability;
- mental impairment; or
- receipt of care and treatment for a development disability.

Committing certain crimes against at-risk populations results in an increase in sentence by one level. For instance, an applicable crime that would normally be a class 5 felony would be a class 4 felony if committed against an at-risk person. Crimes that carry a higher penalty when committed against an at-risk adult are:

- criminally negligent conduct resulting in death, serious bodily injury, or bodily injury;
- first, second, or third degree assault;
- robbery;
- theft, or theft while acting in a position of trust;
- caretaker neglect, or knowingly acting in a manner likely to be injurious to physical or mental welfare;
- sexual assault, first degree sexual assault, second degree sexual assault, or unlawful sexual contact; and
- sexual assault on a client by a psychotherapist.

Crimes that carry a higher penalty when committed against an at-risk elder are:

- theft, or theft while acting in a position of trust;
- caretaker neglect, or knowingly acting in a manner likely to be injurious to physical or mental welfare; and
- criminal exploitation.

Certain legal privileges are not available in cases where an at-risk adult is the victim, including excluding or refusing testimony based on spousal, attorney-client, clergy-parishioner, physician-patient, or psychologist-patient privilege. Cases involving crimes against at-risk adults take precedence before the court, and the judge is to hear these cases as soon as possible after they are filed. Practitioners of a number of professions, such as medical professionals, first responders, caretakers, and banking professionals, are required to report suspected elder abuse or exploitation to law enforcement within 24 hours after observing evidence of the abuse or exploitation.

## House Action

***House Judiciary Committee (March 3, 2016).*** At the hearing, representatives of prosecutors, senior organizations, the Denver Regional Council of Governments, the Arc of Colorado, and the Attorney General's Office testified in support of the bill. A victim of elder abuse also testified in

support of the bill. The committee adopted amendments L.002 and L.009, and referred the bill to the House Committee of the Whole. Amendment L.002 requires recorded depositions of at-risk elders to take place within 14 days after a motion is received by the court. The amendment also increases from three to 14 days the amount of time required between the prosecution's motion requesting a recorded deposition and the taking of the deposition, while allowing this interval requirement to be waived for good cause shown. Amendment L.009 requires both the prosecution and the defendant to share all discovery no later than five days before the deposition. The amendment also removes at-risk elder witnesses from the scope of the bill's use of recorded depositions, applying these provisions to at-risk elder victims only. Under the bill, as amended, depositions may be ordered by the court for at-risk elder witnesses under the bill based on a motion filed by the prosecution that the witness may be unavailable for trial.

**House second reading (March 7, 2016).** The House adopted the House Judiciary Committee report. The House passed the bill on second reading.

**House third reading (March 9, 2016).** The House passed the bill on third reading with no amendments.

## Senate Action

**Senate Judiciary Committee (March 28, 2016).** At the hearing, representatives of prosecutors, a senior organization, the Attorney General's Office, and the League of Women Voters testified in support of the bill. No amendments were adopted.

**Senate second reading (March 30, 2016).** The Senate passed the bill on second reading with no amendments.

**Senate third reading (March 31, 2016).** The Senate passed the bill on third reading with no amendments.

## Relevant Research

Elder Abuse Task Force, November 2012: <http://tinyurl.com/hc6eke2>