



**Colorado
Legislative
Council
Staff**

HB17-1284

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0652	Date: April 11, 2017
Prime Sponsor(s): Rep. Lontine Sen. Aguilar; Gardner	Bill Status: House Health, Insurance, and Environment
	Fiscal Analyst: Bill Zepernick (303-866-4777)

BILL TOPIC: DATA SYSTEM CHECK FOR EMPLOYEES SERVING AT-RISK ADULTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue	\$0	at least \$352,000	at least \$704,000
Cash Funds	0	at least 352,000	at least 704,000
State Expenditures	\$616,917	\$562,108	\$697,125
General Fund	610,062	167,021	0
Cash Funds	0	352,000	624,660
Centrally Appropriated Costs	6,855	43,087	72,465
TABOR Impact	\$0	at least \$352,000	Not estimated.
FTE Position Change	1.2 FTE	4.8 FTE	7.3 FTE
Appropriation Required: \$610,062 - Department of Human Services (FY 2017-18).			
Future Year Impacts: Ongoing state revenue and expenditure increase.			

Summary of Legislation

This bill requires the following employers to conduct a records check of the Colorado adult protective services (CAPS) data system for prospective employees to determine if a prospective employee who will work directly with at-risk adults is the subject of a substantiated report of adult abuse or neglect:

- county adult protective service departments;
- health facilities licensed by the Colorado Department of Public Health and Environment;
- adult day care facilities;
- community integrated health service agencies;
- community-centered boards and other contracted agencies serving persons on Medicaid home- and community-based service waiver programs;
- area agencies on aging and contracted service providers;
- facilities operated by the Department of Human Services (DHS) that provide care and treatment for persons with developmental disabilities (regional centers);
- facilities operated by the DHS that provide care and treatment for persons with mental illness; and
- veterans community living centers.

CAPS records checks must be conducted starting on January 1, 2019. The State Board of Human Services must set a fee schedule for conducting the records checks that covers the cost of administering the program. The DHS may charge this fee to requesting employers. In addition, the bill allows a person hiring a caregiver to provide consumer-directed attendant support services under a Medicaid waiver program to voluntarily request a CAPS records check at his or her own expense. The DHS must establish rules for conducting records checks.

As soon as feasible following passage of the bill, county departments of human services are required to notify individuals when a report of adult abuse or neglect has been substantiated against them and to inform them of their right to appeal the finding. The DHS must promulgate rules and establish an appeals process for persons to contest the substantiated finding against them. The DHS is required to provide training to all current county adult protection employees by July 1, 2018, and to all future employees on an ongoing basis, about the requirements of the bill and other best practices concerning adult protection investigations, assessments, and services.

The bill specifies that information from CAPS records checks is confidential. Employers making a hiring decision based on disqualifying information received from the CAPS records check are immune from civil liability, unless the information in the CAPS system is false and the employer knows it to be false. The bill prohibits an employer from requesting a CAPS records check on someone who is not a current employee or applicant, and prohibits the release of information obtained in a CAPS records check to anyone who is not involved in the hiring process, with certain limited exceptions. A person who is found to have improperly requested a CAPS records check or shared information from a records check commits a class 1 misdemeanor.

Background and Comparable Crime

Colorado's Adult Protective Services system is administered by county departments of human services and supervised by the DHS. The system is designed to protect vulnerable or at-risk adults who, because of age or mental or physical ability, are unable to obtain services or otherwise protect their own health, safety, and welfare. An "at-risk adult" is any person over the age of 18 who meets this criteria.

Under current law, Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new crime for improperly requesting, or sharing information from, a CAPS records check. This is a new offense and a directly comparable offense has not been identified as of this writing; thus information on the gender and minority status of similar offenders is not available.

Assumptions

The fiscal note assumes that the DHS will complete rulemaking and the CAPS data system modifications necessary to allow counties to provide notice of substantiated reports of adult abuse or neglect starting on January 1, 2018, at which point the new appeals process under the bill will begin. The new records check process will begin on January 1, 2019, as specified in the bill. It is assumed that about 44,000 records check per year will be conducted. The fiscal note assumes that CAPS records checks are only required for prospective employees, but that employers may voluntarily request checks for current employees (see Technical Note section for more information). Lastly, the fiscal note assumes that employers will comply with the prohibitions on improper information sharing and will not request checks on ineligible persons; thus, misdemeanor charges and convictions under the bill are assumed to be infrequent.

State Revenue

The bill increases state cash fund revenue to the DHS by **\$352,000 in FY 2018-19 and \$704,000 in FY 2019-20 and future years** from CAPS records check fees. It is also anticipated to increase cash fund revenue by a minimal amount from the creation of a new misdemeanor offense starting in FY 2018-19. No new revenue will be received in FY 2017-18. These impacts are described below.

Fee increase on employers — CAPS records check fees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Based on the program costs estimated in the State Expenditures section, the fiscal note estimates that a CAPS records check fee of \$16.00 will be charged, which will generate revenue of \$352,000 in FY 2018-19 and \$704,000 in FY 2019-20 and future years. This fee amount is an estimate only, the actual fee will be set administratively by the DHS based on cash fund balance, program costs, and the actual number of checks conducted. This revenue will be deposited into the Records and Reports Fund in the DHS. Fee revenue in the first year is prorated to reflect six months of records checks being conducted.

Criminal fines. This bill is anticipated to increase state cash fund revenue from fines by less than \$5,000 per year starting in FY 2018-19, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 1 misdemeanor is between \$500 and \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of criminal fines imposed in 2016, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court and administrative fees. This bill may also increase state cash fund revenue by a minimal amount starting in FY 2018-19 from court and administrative fees associated with the new misdemeanor offense. Fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court. Typical fees may include such items as probation supervision, victim compensation, late fees, and other administrative fees. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

TABOR Impact

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

The bill increases state expenditures by **\$616,917 and 1.2 FTE in FY 2017-18, \$562,108 and 4.8 FTE in FY 2018-19, and \$697,125 and 7.3 FTE in FY 2019-20 and future years**. These costs are initially paid from the General Fund, but shift to the Records and Reports Fund after fee revenue from records checks begins in the second year. Expenditures under the bill are summarized in Table 1 and discussed below.

Table 1. Expenditures Under HB 17-1284			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services	\$33,513	\$180,986	\$294,945
FTE (Department of Human Services)	0.5 FTE	3.5 FTE	6.0 FTE
FTE (Department of Law - Legal Services)	0.7 FTE	1.3 FTE	1.3 FTE
Operating Expenses and Capital Outlay Costs	5,736	40,420	32,100
Computer System Modifications and Maintenance	320,000	22,000	22,000
Legal Services	118,813	218,615	218,615
Training for County Staff	132,000	57,000	57,000
Centrally Appropriated Costs*	6,855	43,087	72,465
TOTAL	\$616,917	\$562,108	\$697,125
General Fund	610,062	167,021	0
Cash Funds	0	352,000	624,660
Centrally Appropriated Costs*	6,855	43,087	72,465

* Centrally appropriated costs are not included in the bill's appropriation.

CAPS system modifications. The DHS will be required to modify the CAPS system in several ways, including allowing county departments of human services to generate automated notices about substantiated cases of adult abuse and neglect and appeal rights, to modify data storage and search functions, and to generate reports for employers submitting CAPS records check requests. These changes are estimated to cost \$320,000 in FY 2017-18 only. Ongoing software licensing costs and system maintenance to support the CAPS records check functions are estimated at \$22,000 per year starting in FY 2018-19. It is assumed that this work will be contracted for by the DHS using the existing system vendor, rather than conducted by the Office of Information Technology.

Personal services. Starting in December 2017, the DHS will require 1.0 FTE for a compliance investigator to receive appeals from persons facing a substantiated allegation of adult abuse or neglect. An additional 5.0 FTE is required for staff to process CAPS records checks, with this staff starting in December 2018. After accounting for these start dates and the General Fund paydate shift, personal services costs in the DHS are estimated to be \$33,513 and 0.5 FTE in FY 2017-18, \$180,986 and 3.5 FTE in FY 2018-19, and \$294,945 and 6.0 FTE in FY 2019-20 and future years. These staffing levels are based on 44,000 requests per year (22,000 for a half-year impact in the first year) and the amount of staff time required to process these records checks is based on a similar records check conducted of the child abuse and neglect data system for child care workers.

Operating expenses and capital outlay expenses. Accounting for the phased in start dates of staff, the DHS will have operating and capital outlay expenses of \$5,736 in FY 2017-18, \$40,420 in FY 2018-19, and \$32,100 in FY 2019-20. These costs include the standard operating and capital outlay expenses, as well as costs for postage, printing, and other miscellaneous costs.

Legal services. The DHS will require \$118,813 in FY 2017-18 and \$218,615 in FY 2018-19 and future years for legal services from the Department of Law. These costs are primarily for legal services arising out of appeals of substantiated cases of adult abuse and neglect, as well as rule promulgation in the first year. Each year, there are about 925 substantiated cases of adult abuse or neglect. Based on the appeals process for persons facing substantiated

allegations of child abuse and neglect, it is assumed that 25 percent of persons facing substantiated allegations of adult abuse and neglect (231 cases) will appeal the finding. Of this amount, 20 percent (46 cases) will require the involvement of the Department of Law after failing to settle the case following an initial review by DHS staff.

Each appeal involving the Department of Law is estimated to require 50 hours of attorney and paralegal time at a rate of \$95.05 per hour, resulting in costs of \$218,615 per year for 2,300 hours of legal services. The first-year costs are prorated to reflect the anticipated December start of the new appeals process following CAPS system modifications. The Department of Law will require 0.7 FTE in FY 2017-18 and 1.3 FTE in FY 2018-19 and beyond to provide these legal services.

Training for county staff. The bill requires the DHS to provide training to all current and future county Adult Protective Services staff. Currently, there are about 350 county adult protection workers statewide. Training for these existing staff is expected to cost \$132,000 in FY 2017-18, including \$18,000 for training development, \$90,000 to provide 12 training sessions and certification exams, and \$24,000 to cover lodging costs for county employees outside of commuting range. In future years about 90 new county employees are expected each year and costs for training will be \$57,000 including training sessions and lodging costs.

Judicial Department impacts. By creating a new misdemeanor offense, the bill may increase workload in the trial courts by a minimal amount. The bill may also increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes a high level of compliance by employers conducting CAPS records checks and that any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

CAPS records check costs. The DHS, as an employer of persons who provide services at regional centers and veterans community living centers, will have additional costs to pay for CAPS records checks for new employees at these facilities starting in FY 2018-19. These costs will depend on the turnover rate at these facilities, but for the purposes of this fiscal note are assumed to be minimal and paid for within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB 17-1284			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$3,852	\$26,870	\$46,036
Supplemental Employee Retirement Payments	3,003	16,217	26,429
TOTAL	\$6,855	\$43,087	\$72,465

Local Government Impact

The bill impacts counties and other local governments in several ways, as described below.

County adult protection workload. County departments of human services will be required to send current and future Adult Protective Services staff to a mandatory training, which will increase workload and costs to cover for staff while they attend the training. County staff will also have additional workload to notify persons of substantiated allegations of adult abuse and neglect and to provide information concerning appeals.

CAPS records check costs. Counties, municipalities, and other local governments that operate medical and other facilities covered by the bill will be required to pay for CAPS records checks for new employees starting in FY 2018-19. This impact has not been estimated.

County expenditures. First, the bill increases workload for district attorneys to prosecute the new misdemeanor under the bill. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a class 1 misdemeanor for a period of between 6 and 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. It is assumed that the impact of this bill will be minimal.

Denver County expenditures. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases within its jurisdiction under the bill. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

Criminal fine revenue and fees. This bill is anticipated to increase revenue by a minimal amount to the City and County of Denver starting in FY 2018-19 from the creation of the new misdemeanor offense. The fine penalty for a class 1 misdemeanor is between \$500 and \$5,000. Similar to the state, court and administrative fee revenue will also increase from various sources. In the City and County of Denver, probation fee revenue is anticipated to increase by \$50 per month, per offender. For all jurisdictions, revenue is anticipated to increase by a minimal amount from any court and administrative fees shared with the state.

Technical Note

In the bill, Section 26-3.1-111(6)(a) specifies that CAPS records checks are required for prospective employees prior to employment. Other sections of the bill, such as Section 26-3.1-111(6)(a), discuss the process for records checks for both current and prospective employees. These potentially conflicting provisions may create ambiguity about whether or not CAPS records checks are required for current employees. The fiscal note assumes that CAPS records checks are required for all prospective employees, but that employers may request CAPS records checks on current employees voluntarily. If the bill is interpreted to require CAPS records checks for all current employees upon passage, costs in FY 2018-19 would increase significantly above the current fiscal note estimate.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2017-18, the bill requires a General Fund appropriation of \$610,062 to the Department of Human Services, of which \$118,813 should be reappropriated to the Department of Law for legal services. In addition, the Department of Human Services requires an allocation of 0.5 FTE and the Department of Law requires an allocation of 0.7 FTE.

State and Local Government Contacts

Counties	Health Care Policy and Financing
Human Services	Information Technology
Judicial	Law
Public Safety	Public Health and Environment