


  
*Colorado Legislative Council Staff Fiscal Note*
  
**FINAL**
  
**FISCAL NOTE**

**Drafting Number:** LLS 12-0292 **Date:** May 29, 2012  
**Prime Sponsor(s):** Rep. Fields **Bill Status:** Signed into Law  
**Fiscal Analyst:** Jessika Shipley (303-866-3528)  
 Sen. Carroll; Hudak

**TITLE:** CONCERNING AN EXCEPTION TO THE HEARSAY RULE TO ALLOW TESTIMONY FROM PERSONS WITH DEVELOPMENTAL DISABILITIES.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
<b>State Expenditures</b>	Minimal increase.	
<b>FTE Position Change</b>		
<b>Effective Date:</b> The bill was signed into law by the Governor on April 3, 2012, and takes effect August 8, 2012, assuming no referendum petition is filed.		
<b>Appropriation Summary for FY 2012-2013:</b> None required.		
<b>Local Government Impact:</b> None.		

**Summary of Legislation**

The bill creates an exception to the hearsay rule, which is an existing rule of evidence rendering out-of-court statements inadmissible in a trial, hearing, or other court proceeding. Such a statement made by a developmentally disabled individual, in any criminal or delinquency proceeding in which the declarant is alleged to have been a victim, is admissible in such a proceeding.

Further, a statement is admissible in any criminal, delinquency, or civil proceeding when it describes:

- an unlawful sexual offense performed with, by, on, or in the presence of the declarant;
- child abuse which the declarant witnessed or to which he or she was subjected;
- a homicide; or
- an act of domestic violence.

The statement may only be admitted into evidence after the court holds a hearing outside the presence of the jury to rule on the reliability of the statement and either the declarant testifies at the hearing (if the declarant is unavailable, the defendant must have had an opportunity to cross-examine the declarant in a previous proceeding and corroborative evidence must exist concerning the act that is the subject of the statement) or the statement is a nontestimonial statement. If the statement is admitted, the court is required to instruct the jury as to how to consider such hearsay evidence.

## **State Expenditures**

***Department of Human Services (DHS).*** The bill requires corroborative evidence of the act that is the subject of an out-of-court statement made by a developmentally disabled individual when such an individual is not available to testify at the hearing on the admissibility of the statement. A caseworker from the DHS will likely provide such evidence if it exists. The bill will increase the workload of such caseworkers, however the increase is expected to be minimal and will be absorbed within existing appropriations.

***Judicial Branch.*** The workload of the trial courts will increase in cases where additional hearings are required to determine the admissibility of out-of-court statements permitted by the bill. It is difficult to determine how many hearings will be held, however anecdotal evidence from Colorado judges indicates that such occurrences are exceedingly rare. Any increased workload will be absorbed within current appropriations.

***Other judicial agencies.*** The Office of Alternate Defense Counsel, the Office of the Child's Representative, and the Office of the State Public Defender could be required to represent clients in new hearings each year as a result of the bill. The hearings are expected to be short and very few in number and will not require additional appropriations.

## **Departments Contacted**

Alternate Defense Counsel  
Human Services

Child's Representative  
Public Defender

Judicial