

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0745.01 Shelby Ross x4510

HOUSE BILL 23-1160

HOUSE SPONSORSHIP

Evans, Epps

SENATE SPONSORSHIP

(None),

House Committees

Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS BEFORE ADDING A PERSON SUSPECTED**
102 **OF CHILD ABUSE OR NEGLECT TO THE AUTOMATED CHILD**
103 **WELFARE SYSTEM.**

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://leg.colorado.gov>.)

Before adding a person suspected of child abuse or neglect (person) to the automated child welfare system (system), the bill requires the department of human services (state department) to provide a written notice to the person of the opportunity for a hearing. The person must request a hearing no later than 90 days after the date of the written notice.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

The bill prohibits the state department from releasing a finding of a person responsible for child abuse or neglect or the state department or a law enforcement entity from releasing information about the person or the allegations against the person to a third party until all administrative appeals are either exhausted or waived.

When a hearing is requested, the bill requires an administrative law judge (ALJ) to contact the parties to schedule the hearing no later than 120 days after the date the person requests a hearing.

If the ALJ finds that there is sufficient evidence to support the state department's allegations, the bill requires:

- The state department to enter the substantiated findings against the person into the system for a period of time proportionate to the severity of the findings; and
- Any law enforcement entity that created a record of the alleged incident of child abuse or neglect to retain the record pursuant to certain restrictions.

If the ALJ finds there is insufficient evidence to support the state department's allegations, the bill requires:

- The ALJ to order the state department to amend the state department's findings accordingly and order that allegation not be entered into the system; and
- Any law enforcement entity that created a record of the alleged incident of child abuse or neglect to mark the record as unsubstantiated and retain and release the record pursuant to certain restrictions.

The bill prohibits a finding from being entered against a person who is less than 13 years of age.

The bill authorizes the state department, county departments of human and social services (county departments), and law enforcement entities to retain information concerning unsubstantiated reports of child abuse and neglect in casework files to assist in future risk and safety assessments; except that the state department, county departments, and law enforcement entities shall not release any information contained in any records that are accessible to the public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 19-3-313.3 as
3 follows:

4 **19-3-313.3. State department automated child welfare system**

1 - written notice - no action until appeals exhausted - law enforcement
2 records - administrative hearing - procedures - retention - definitions.

3 (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
4 OTHERWISE REQUIRES:

5 (a) "AUTOMATED CHILD WELFARE SYSTEM" MEANS THE STATE
6 DEPARTMENT OF HUMAN SERVICES AUTOMATED CHILD WELFARE SYSTEM.

7 (b) "PERSON" MEANS A PERSON, INCLUDING A CHILD OR YOUTH,
8 SUSPECTED OF CHILD ABUSE OR NEGLECT.

9 (2) **Written notice of opportunity for hearing.** (a) BEFORE THE
10 STATE DEPARTMENT ADDS A PERSON TO THE AUTOMATED CHILD WELFARE
11 SYSTEM AS A PERSON RESPONSIBLE FOR CHILD ABUSE OR NEGLECT, THE
12 STATE DEPARTMENT SHALL PROVIDE A WRITTEN NOTICE TO THE PERSON OF
13 THE OPPORTUNITY FOR A HEARING BEFORE A STATE DEPARTMENT
14 ADMINISTRATIVE LAW JUDGE AFTER THE PERSON EXHAUSTS THE STATE
15 DEPARTMENT'S RESOLUTION PROCESS. THE WRITTEN NOTICE MUST BE SENT
16 TO THE PERSON AND ANY COUNSEL OF RECORD FOR THE PERSON IN A
17 RELATED DEPENDENCY AND NEGLECT CASE NO LATER THAN FOURTEEN
18 DAYS AFTER THE DATE THE STATE DEPARTMENT ISSUED ITS FINDINGS. THE
19 WRITTEN NOTICE MUST INCLUDE:

20 (I) A CLEAR STATEMENT THAT INCLUDES:

21 (A) THE TYPE AND SEVERITY OF THE ABUSE OR NEGLECT;

22 (B) THE DATE OF THE REFERRAL TO THE COUNTY DEPARTMENT OF
23 HUMAN OR SOCIAL SERVICES;

24 (C) THE NAME OF THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL
25 SERVICES THAT COMPLETED THE INVESTIGATION OF CHILD ABUSE OR
26 NEGLECT;

27 (D) THE DATE THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL

1 SERVICES MADE THE FINDING OF CHILD ABUSE OR NEGLECT IN THE STATE
2 AUTOMATED CHILD WELFARE SYSTEM;

3 (E) INFORMATION CONCERNING PERSONS OR AGENCIES THAT HAVE
4 ACCESS TO THE FINDING OF CHILD ABUSE OR NEGLECT;

5 (F) THE CIRCUMSTANCES UNDER WHICH INFORMATION CONTAINED
6 IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM WILL BE PROVIDED
7 TO OTHER INDIVIDUALS OR AGENCIES;

8 (G) HOW TO ACCESS INFORMATION ON THE COUNTY DEPARTMENT
9 OF HUMAN OR SOCIAL SERVICE'S DISPUTE RESOLUTION PROCESS;

10 (H) INFORMATION DETAILING THE RIGHT OF THE PERSON TO
11 REQUEST A STATE-LEVEL APPEAL;

12 (I) A BLANK COPY OF THE STATE DEPARTMENT'S APPROVED APPEAL
13 FORM;

14 (J) NOTICE THAT THE SCOPE OF AN APPEAL IS LIMITED TO
15 CHALLENGES THAT THE FINDINGS OF CHILD ABUSE OR NEGLECT ARE NOT
16 SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE OR THAT THE
17 ACTIONS FOUND TO BE CHILD ABUSE OR NEGLECT DO NOT MEET THE LEGAL
18 DEFINITIONS OF CHILD ABUSE OR NEGLECT PURSUANT TO SECTION
19 19-1-103; AND

20 (K) A FULL EXPLANATION OF THE PROCESS AND TIMELINES FOR A
21 STATE-LEVEL APPEAL.

22 (II) THE CONSEQUENCES OF BEING ADDED TO THE AUTOMATED
23 CHILD WELFARE SYSTEM, INCLUDING POSSIBLE NEGATIVE IMPACTS ON THE
24 PERSON'S EMPLOYMENT, LICENSURE, AND ABILITY TO HAVE FUTURE
25 CONTACT WITH CHILDREN, INCLUDING VOLUNTEER OR SCHOOL ACTIVITIES;

26 (III) INFORMATION ABOUT HOW THE PERSON MAY OBTAIN, AT NO
27 COST TO THE PERSON, A COMPLETE COPY OF THE RECORD THAT WILL BE

1 ADDED TO THE AUTOMATED CHILD WELFARE SYSTEM;

2 (IV) A COMPLETE COPY OF THE LAW ENFORCEMENT RECORD, IF
3 ANY, OF THE ALLEGED INCIDENT OF CHILD ABUSE OR NEGLECT; AND

4 (V) INFORMATION ABOUT RESOURCES AVAILABLE TO THE PERSON
5 FOR ASSISTANCE IN NAVIGATING THE ADMINISTRATIVE AND APPEAL
6 PROCESSES, INCLUDING INFORMATION FOR THE OFFICE OF THE CHILD
7 PROTECTION OMBUDSMAN CREATED IN SECTION 19-3.3-102.

8 (b) THE PERSON MUST REQUEST A HEARING BEFORE A STATE
9 DEPARTMENT ADMINISTRATIVE LAW JUDGE NO LATER THAN NINETY DAYS
10 AFTER THE DATE OF THE WRITTEN NOTICE.

11 (3) **No action until appeals exhausted.** THE STATE DEPARTMENT
12 SHALL NOT RELEASE A FINDING OF A PERSON RESPONSIBLE FOR CHILD
13 ABUSE OR NEGLECT AND THE STATE DEPARTMENT OR A LAW
14 ENFORCEMENT ENTITY SHALL NOT RELEASE INFORMATION ABOUT THE
15 PERSON OR INFORMATION ABOUT THE ALLEGATIONS AGAINST THE PERSON
16 TO A THIRD PARTY UNTIL ALL ADMINISTRATIVE APPEALS ARE EITHER
17 EXHAUSTED OR WAIVED.

18 (4) **Hearing procedures.** (a) IF A PERSON REQUESTS A HEARING
19 PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT
20 ADMINISTRATIVE LAW JUDGE SHALL CONTACT THE PARTIES TO SCHEDULE
21 A DATE FOR THE HEARING, WHICH MUST BE HELD NO LATER THAN ONE
22 HUNDRED TWENTY DAYS AFTER THE DATE THE PERSON REQUESTS A
23 HEARING.

24 (b) A HEARING HELD PURSUANT TO THIS SECTION IS CONSIDERED
25 A CONTESTED HEARING AND IS ELIGIBLE FOR APPEAL.

26 (c) PRIOR TO THE HEARING, THE STATE DEPARTMENT SHALL
27 PROVIDE THE PERSON WITH THE FULL INVESTIGATIVE FILE AND ANY

1 EXCULPATORY EVIDENCE IN THE STATE DEPARTMENT'S POSSESSION OR
2 CONTROL AT NO COST TO THE PERSON, SUBJECT TO ANY REDACTION
3 REQUIRED BY LAW.

4 (d) AT THE HEARING, THE PERSON SUSPECTED OF CHILD ABUSE OR
5 NEGLECT HAS THE RIGHT TO:

6 (I) BE REPRESENTED BY COUNSEL. IF COUNSEL HAS BEEN
7 APPOINTED TO REPRESENT THE PERSON THROUGH THE OFFICE OF
8 RESPONDENT PARENTS' COUNSEL ESTABLISHED IN SECTION 13-92-103, THE
9 PERSON'S COUNSEL MAY CONTINUE REPRESENTING THE PERSON
10 THROUGHOUT THE HEARING REQUESTED PURSUANT TO SUBSECTION (2) OF
11 THIS SECTION IF APPROVED BY THE OFFICE OF RESPONDENT PARENTS'
12 COUNSEL;

13 (II) PRESENT SWORN EVIDENCE, LAW, OR RULES RELATED TO THE
14 ALLEGATIONS; AND

15 (III) SUBPOENA WITNESSES, CROSS-EXAMINE THE STATE
16 DEPARTMENT'S WITNESSES, OBJECT TO EVIDENCE INTRODUCED BY THE
17 STATE DEPARTMENT, AND MAKE AN OPENING STATEMENT AND CLOSING
18 ARGUMENT.

19 (e) WITHIN THIRTY-FIVE DAYS AFTER THE CONCLUSION OF THE
20 HEARING, THE STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE SHALL
21 ENTER AN ORDER CONTAINING THE JUDGE'S FINDINGS OF FACT AND LAW
22 BASED UPON, AT A MINIMUM, A PREPONDERANCE OF THE EVIDENCE.

23 (f) IF THE STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE FINDS
24 THAT THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE STATE
25 DEPARTMENT'S ALLEGATIONS:

26 (I) THE STATE DEPARTMENT SHALL ENTER THE SUBSTANTIATED
27 FINDINGS AGAINST THE PERSON INTO THE AUTOMATED CHILD WELFARE

1 SYSTEM FOR A PERIOD OF TIME PROPORTIONATE TO THE SEVERITY OF THE
2 FINDINGS; AND

3 (II) ANY LAW ENFORCEMENT ENTITY THAT CREATED A RECORD OF
4 THE ALLEGED INCIDENT OF CHILD ABUSE OR NEGLECT SHALL RETAIN THE
5 RECORD PURSUANT TO SUBSECTION (5) OF THIS SECTION.

6 (g) IF THE STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE FINDS
7 THAT THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE STATE
8 DEPARTMENT'S ALLEGATIONS:

9 (I) THE STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE SHALL
10 ORDER THE STATE DEPARTMENT TO AMEND THE STATE DEPARTMENT'S
11 FINDINGS ACCORDINGLY AND ORDER THAT THE STATE DEPARTMENT SHALL
12 NOT ENTER THE ALLEGATION INTO THE AUTOMATED CHILD WELFARE
13 SYSTEM; AND

14 (II) ANY LAW ENFORCEMENT ENTITY THAT CREATED A RECORD OF
15 THE ALLEGED INCIDENT OF CHILD ABUSE OR NEGLECT SHALL MARK THE
16 RECORD AS UNSUBSTANTIATED AND RETAIN AND RELEASE THE RECORD
17 PURSUANT TO SUBSECTION (5) OF THIS SECTION.

18 (h) A FINDING SHALL NOT BE ENTERED AGAINST A PERSON WHO IS
19 UNDER THIRTEEN YEARS OF AGE.

20 (i) A FINDING OF INJURIOUS ENVIRONMENT BY THE STATE
21 DEPARTMENT ADMINISTRATIVE LAW JUDGE IS NOT CONCLUSIVE EVIDENCE
22 TO SUPPORT AN ORDER FOR SUMMARY JUDGMENT.

23 (5) **Retention and unauthorized release of unsubstantiated**
24 **reports.** THE STATE DEPARTMENT, COUNTY DEPARTMENTS, AND LAW
25 ENFORCEMENT ENTITIES MAY RETAIN INFORMATION CONCERNING
26 UNSUBSTANTIATED REPORTS OF CHILD ABUSE AND NEGLECT IN CASEWORK
27 FILES TO ASSIST IN FUTURE RISK AND SAFETY ASSESSMENTS; EXCEPT THAT

1 THE STATE DEPARTMENT, COUNTY DEPARTMENTS, AND LAW
2 ENFORCEMENT ENTITIES SHALL NOT RELEASE ANY OF THE INFORMATION
3 CONTAINED IN ANY RECORDS AND REPORTS THAT ARE ACCESSIBLE TO THE
4 GENERAL PUBLIC OR ARE USED FOR PURPOSES OF EMPLOYMENT OR
5 BACKGROUND CHECKS IN CASES DETERMINED TO BE UNSUBSTANTIATED OR
6 FALSE PURSUANT TO SUBSECTION (4)(g) OF THIS SECTION.

7 **SECTION 2. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part will not take effect
14 unless approved by the people at the general election to be held in
15 November 2020 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.