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# Fiscal Note

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**Drafting Number:** LLS 23-0252  
**Prime Sponsors:** Sen. Buckner  
Rep. Amabile

**Date:** February 9, 2023  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Aaron Carpenter | 303-866-4918  
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**Bill Topic:** **REDUCE CHILD & INCARCERATED PARENT SEPARATION**

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**Summary of Fiscal Impact:**

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes several changes to the dependency and neglect process for parents who are incarcerated in a state prison or local jail. Starting in FY 2023-24, the bill increases state and local expenditures on an ongoing basis.

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**Appropriation Summary:** For FY 2023-24, the bill requires an appropriation of \$60,747 to multiple state agencies.

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**Fiscal Note Status:** The fiscal note reflects the introduced bill.

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**Table 1**  
**State Fiscal Impacts Under SB 23-039**

		<b>Budget Year</b> <b>FY 2023-24</b>	<b>Out Year</b> <b>FY 2024-25</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$56,266	\$101,285
	Federal Funds	\$4,481	\$2,808
	Centrally Appropriated	\$8,675	\$21,918
	<b>Total Expenditures</b>	<b>\$69,422</b>	<b>\$126,011</b>
	<b>Total FTE</b>	<b>0.5 FTE</b>	<b>1.3 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	<b>\$8,440</b>	<b>\$15,193</b>

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## **Summary of Legislation**

The bill makes several changes to the dependency and neglect process for parents who are incarcerated in a state or local facility, as described below.

**Rights for parents who are incarcerated and going through dependency and neglect.** The bill establishes several requirements for parents who are incarcerated during dependency and neglect hearings, including having an attorney be appointed and having the right to attend and fully participate in all proceedings either in person or virtually. The bill requires the Colorado Department of Human Services (CDHS) to make rules to facilitate communication and family time between children and parents who are incarcerated.

**Dispositional hearings and treatment plans.** Prior to the dispositional hearing, a case worker must submit a report detailing services and treatment available to an incarcerated parent, as well as opportunities for family time at the facility in which the parent is incarcerated. The county department must also make reasonable efforts to involve the parent in planning services, if the report finds the child is eligible for services. The bill also outlines what needs to be included in a treatment plan for an incarcerated parent, and how to amend the plan if the parent becomes incarcerated after the dispositional hearing.

**Permanent placements.** If an incarcerated parent has maintained a meaningful and safe relationship with the child, the court must consider permanent placement that permits the parent to maintain a relationship with the child, including transferring the parent to another facility. The bill specifies what the court must consider when deciding if the parent has a meaningful and safe relationship.

**Termination of parental relationship.** The bill makes several changes to when an incarcerated parent can have their parental relationship terminated. First, the bill removes the provision that the court may terminate the parent-child relationship because an appropriate treatment plan cannot be devised due to the long term confinement of the parent. If the reason for adjudication is because a parent has not reasonably complied with a treatment plan, the bill requires the court to also consider the limitations caused by incarceration. Finally, the bill allows a county department of human services to not file a motion to terminate the parent-child legal relationship if it can show that a parent who is incarcerated has a meaningful and safe relationship with the child while incarcerated, detained, or deported.

**Criminal justice requirements.** During a criminal trial, the bill requires a presentence report and the mittimus to include whether the person is a respondent to a dependency and neglect proceeding.

Finally, the bill requires the Department of Corrections (DOC) to: inform the court if the department cannot facilitate a parent's transportation to a dependency and neglect hearing, requiring the parent to attend virtually; consider placing a person in a facility that facilitates opportunities for family time and notify the county of the location of that facility; develop opportunities to facilitate continued family relationships designed to mitigate trauma; designate an employee to serve as a family service coordinator; submit a report about incarcerated parents; and develop policies for communication and family time between the parent and child conducted both in-person and virtually.

## Assumptions

The fiscal note assumes that 35 parents within the DOC will participate in remote dependency and neglect hearings, based on the following assumptions:

- of the 2,762 dependency and neglect cases filed per year, 25 percent of them will include parents who are incarcerated (691 parents);
- of those 691 parents who are incarcerated, 25 percent of them currently do not participate in a hearing and could under the bill (173 parents);
- of those 173 parents, 40 percent of them are incarcerated in the DOC; and
- of those 69 parents within the DOC, half of them will choose not to participate in a dependency and neglect hearing.

## State Expenditures

The bill increases state General Fund expenditures by \$69,422 in FY 2023-24 and \$126,011 in FY 2024-25 in the Judicial Department, CDHS, and the DOC as shown in Table 2 and detailed below.

**Table 2**  
**Expenditures Under SB 23-039**

	FY 2023-24	FY 2024-25
<b>Judicial Department</b>		
Personal Services	\$7,425	\$17,821
Centrally Appropriated Costs <sup>1</sup>	\$1,798	\$4,973
FTE – Personal Services	0.1 FTE	0.3 FTE
<b>Judicial Subtotal</b>	<b>\$9,223</b>	<b>\$22,794</b>
<b>Department of Human Services</b>		
Facilitator	\$10,800	\$21,600
Computer Programming	\$8,792	-
<b>DHS Subtotal</b>	<b>\$19,592</b>	<b>\$21,600</b>
<b>Department of Corrections</b>		
Personal Services	\$26,385	\$63,322
Operating Expenses	\$675	\$1,350
Capital Outlay Costs	\$6,670	-
Centrally Appropriated Costs <sup>1</sup>	\$6,877	\$16,945
FTE – Personal Services	0.4 FTE	1.0 FTE
<b>DOC Subtotal</b>	<b>\$40,607</b>	<b>\$81,617</b>
<b>Total</b>	<b>\$69,422</b>	<b>\$126,011</b>
<b>Total FTE</b>	<b>0.5 FTE</b>	<b>1.3 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department.** Starting in FY 2023-24, the Judicial Department requires 0.3 FTE to communicate with county departments of human services, the DOC, and counsel to collect treatment plans, report on parent's compliance, report on whether there is a safe and meaningful relationship, and report on opportunities for family time. The fiscal note assumes this work will take 15 minutes per hearing. Staffing costs are shown in Table 2 and assume a January 1, 2024, start date.

**Independent judicial agencies.** Starting in FY 2023-24, expenditures in the Office of Respondent Parents' Counsel (ORPC) and the Office of the Child's Representative (OCR) will increase to the extent there are more or longer dependency and neglect hearings. In addition, if additional incarcerated parents are appointed an attorney from the ORPC, expenditures in the ORPC will increase. For informational purposes, the ORPC and OCR contract with attorneys at a rate of \$85 per hour. The fiscal note assumes that this caseload increase can be accomplished within existing appropriations

**Department of Human Services.** Expenditures in the DHS will increase by about \$20,000 in FY 2023-24 and \$22,000 in FY 2024-25 to hire a facilitator and to update "TRAILS," its child welfare data system, as described below.

- **Facilitator.** From FY 2023-24 through FY 2025-26, expenditures in the DHS will increase to contract with a facilitator to help promulgate rules around family visits in incarcerated settings. The fiscal note assumes rulemaking will involve larger stakeholder groups including representatives from state and private correctional facilities, local jails, and county social workers. The fiscal note assumes a cost of \$200 per month, 9 hours each month, for 24 months. Roughly 13 percent of this cost will be paid with federal funds.
- **TRAILS upgrades.** In FY 2023-24 through FY 2024-25, expenditures in the DHS will increase to add an indicator to TRAILS that shows if a parent is incarcerated. This indicator will generate a reminder to the caseworkers that a new treatment plan is required. TRAILS modifications are estimated at 56 hours at \$157 per hour with 65 percent coming from General Fund and 35 percent coming from federal funds.

**Department of Corrections.** Starting in FY 2023-24, the DOC will require 1.0 FTE to serve as a family coordinator, as required by the bill. Costs associated with the family coordinator include personal services, operating expenses, and capital outlay costs. First-year costs are prorated for a January 1, 2024, start date and the General Fund pay date shift.

In addition to the FTE, workload in the DOC will increase to manage an increase in dependency and neglect hearing participation. Since the fiscal note estimates the bill will impact approximately 35 inmates, it assumes this workload can be accomplished within existing resources. Hearing participation is expected to take place remotely through virtual meetings hosted by the Judicial Department. For informational purposes, the DOC is not expected to have funding for its virtual meeting licenses for which federal funding lapses on June 30, 2023. If virtual options are not available or not supported, the DOC will have additional costs to transport parents to court hearings. Finally, DOC's existing visitation facilities are assumed to be suitable for family time.

**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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

## **Other Budget Impacts**

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## **Local Government**

Starting in FY 2023-24, expenditures in county departments of human services and county jails will increase as described below.

**County caseworker impact.** Expenditures in county departments of human services will increase for county caseworkers to submit a report detailing services and treatment available in the facility and opportunities for family time, to make reasonable efforts to involve parent in planning services, to include additional information in the treatment plan, to coordinate additional family time for parents incarcerated, and to accommodate and transport any children to a facility for in-person family time. For informational purposes, according to a caseworker workload study, currently it is estimated that having a parent incarcerated adds from 70 minutes to 160 minutes of case work per month depending on the county.

**Local jails.** The bill will increase expenditures in county jails to make any necessary modifications to allow for family visits, and to transport any parents (both incarcerated in jail or the DOC) to court hearings.

## **Effective Date**

The bill takes effect January 1, 2024.

## **State Appropriations**

For FY 2023-24, the bill requires a total appropriation of \$60,747 including:

- \$7,425 from the General Fund to the Judicial Department and 0.1 FTE;
- \$19,592 to the Department of Human Services, of which \$15,111 is from the General Fund and \$4,481 is from federal funds; and
- \$33,730 from the General Fund to the Department of Corrections and 0.4 FTE.

## **State and Local Government Contacts**

Corrections  
Information Technology  
Sheriffs

Counties  
Judicial

Human Services  
Law