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FISCAL NOTE

Drafting Number: LLS 20-0823
Prime Sponsors: Rep. Geitner

Date: February 3, 2020
Bill Status: House Public Health
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Bill Topic: COLORADO TRAILS SYSTEM REQUIREMENTS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill prohibits the Department of Human Services from putting a person suspected of child abuse or neglect into the state's child welfare information system until a hearing finds sufficient evidence to support the allegations and the person has exhausted or waived their right to appeal. The bill may increase state revenue and will increase state and local government expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: This bill requires an appropriation of \$256.5 million to the Department of Human Services and the Department of Personnel and Administration.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 20-1105

Table with 4 columns: Category, Sub-category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

This bill prohibits the Department of Human Services (DHS) from entering a person suspected of child abuse or neglect into state child welfare data system (TRAILS) until after a hearing is held in front of an administrative law judge (ALJ) and the ALJ finds there is sufficient evidence to support the allegations and the person has exhausted or waived their right to appeal. A person suspected of child abuse or neglect has the right to be represented by counsel appointed by the ALJ. A hearing is not required if the court issues an order in a civil, criminal, administrative, or juvenile proceeding in which allegations of child abuse or neglect are at issue. Before the hearing, the DHS must send a notice to the person suspected of child abuse or neglect of their intention to put the individual into TRAILS within 14 days after a finding of child abuse or neglect is made.

If the allegations are substantiated and a person is listed in TRAILS, the DHS must determine a length of time the person will be listed in TRAILS, not to exceed 10 years. The bill also allows persons currently listed in TRAILS to have their name expunged by submitting a written request to the DHS. Anyone who is listed in TRAILS after the bill becomes effective can also request to be expunged if they submit a written request accompanied by an affidavit showing there is good cause for a hearing. If the request is denied, the person must wait two years before requesting to be expunged.

Background

TRAILS. TRAILS is the state's comprehensive child welfare information system that is required by federal law. The system is a central registry for substantiated findings related to child abuse and neglect. Among its various functions, TRAILS is also used as:

- a reporting tool for the number of assessments, investigations, and the ongoing provision of child welfare services;
- a delivery and payment tool for child welfare prevention services and other referrals;
- a delivery and payment tool for child welfare placement services and post-adoption services;
- a tool for the coordination of child care licensing investigations;
- a tool for background check activities for child care licensing; and
- a coordination and documentation tool for licensing activities for foster parents and other placement providers.

Appeals. Under current law, when a county department of human services finds, through the preponderance of the evidence, that allegations of child abuse or neglect are founded, the county department lists those finding in TRAILS. Upon listing, counties are required to notify the person being listed in TRAILS of the finding and their right to appeal the finding. When a person chooses to appeal, the DHS receives the appeal and settlement discussions between the person and the DHS may begin. The parties then have 120 days to come to an agreement. Through these discussions, the DHS may overturn a county's findings or enter into a settlement agreement that may modify the background check results that are generated by the person's information in TRAILS. The person may request an administrative hearing with an ALJ at any time in this process. If the appeal is filed, a hearing is held and the ALJ will issue an initial decision. The DHS then reviews this decision and enters a final agency decision. Final agency decisions are subject to judicial review.

Currently, there are approximately 144,000 incidents recorded in TRAILS. In FY 2018-19, there were 9,745 founded instances of child abuse or neglect recorded into TRAILS. On average, 8 percent of all founded allegations currently appeal each year.

Assumptions

Concerning the appeal of initial findings of child abuse and neglect prior to entering information into TRAILS, the fiscal note makes the following assumptions:

- Each year there will be approximately 6,700 additional hearings in front of an ALJ concerning initial findings of child abuse or neglect.
- For each new case, on average, the DHS will require 200 hours of legal services from the Department of Law.
- 75 percent of persons challenging an initial finding of child abuse or neglect will have counsel appointed, and each case will require about 200 hours of legal representation from ALJ-appointed counsel at a cost of \$80 per hour.
- Further, 10 percent of cases (670 cases) are assumed to appeal the ALJ decision to district court, which will result in an additional 25 hours of legal services for these cases. The number of cases are prorated for a half-year impact in FY 2020-21.

Concerning expungement of existing records from trails, the fiscal note makes the following assumptions:

- It is assumed that the DHS requires 200 hours of legal services from the Department of Law for each expungement hearing. The fiscal note also assumes that court-appointed counsel is not required during hearings to determine expungement due to new evidence.
- 8,800 individuals with information already in TRAILS will request expungement in the first year and 3,800 individuals will request expungement of existing TRAILS records in the second year.
- On an ongoing basis, 140 people per year will request a hearing for their information to be expunged based on new evidence, of which 25 percent (35 requesters) will be issued a new hearing.

For both the review of review of initial findings and the expungement of existing records, it is assumed each case will take about 25 hours of ALJ staff time, including hearings, as well about 12 hours of administrative staff time.

State Revenue

Under current law, costs associated with appeals processed by the DHS are covered by fees collected for conducting TRAILS background checks. This revenue is deposited in the Records and Reports Cash Fund. The TRAILS background check fee is set by rule by the State Board of Human Services. The fiscal note assumes that the costs associated with this bill are too high to be covered by this fee. However, to the extent the State Board decides to raise the fee associated with background checks to offset some of the new costs, state cash fund revenue will increase. This revenue is subject to TABOR.

State Expenditures

Starting in FY 2020-21, state expenditures will increase in the DHS, the Department of Personnel (DPA), and the Department of Law by \$256.5 million and 895.8 FTE in FY 2020-21 and by \$254.2 million and 932.0 FTE in FY 2021-22. These costs, which are paid from the General Fund, are shown in Table 2 and discussed below.

**Table 2
Expenditures Under HB 20-1105**

Cost Components	FY 2020-21	FY 2021-22
Department of Human Services		
Personal Services	\$3,986,160	\$3,802,820
Operating Expenses	\$85,995	\$73,710
Capital Outlay Costs	\$396,800	-
Legal Services	\$143,736,775	\$145,375,750
Computer Programing	\$11,200,000	\$5,200,000
Certified Mail and Report Printing Costs	\$55,945	\$55,945
Insurance, Supplemental Retirement, and Leased Space	\$1,295,830	\$1,235,175
FTE – Personal Services	57.3 FTE	54.6 FTE
FTE – Legal Services	749.1 FTE	757.6 FTE
DHS (Subtotal)	\$160,757,505	\$155,743,400
Department of Personnel and Administration		
Personal Services	\$7,364,680	\$9,871,582
Operating Expenses	\$134,190	\$161,730
Capital Outlay Costs	\$613,800	-
Software License	\$64,100	\$85,897
Other ALJs Costs	\$26,760	\$1,311
ALJ Appointed Counsel	\$80,400,000	\$80,400,000
Insurance, Supplemental Retirement, and Leased Space	\$2,170,910	\$2,909,351
FTE – Personal Services	89.4 FTE	119.8 FTE
DPA (Subtotal)	\$90,774,440	\$93,429,871
Department of Law		
Leased Space	\$4,944,042	\$5,000,417
Law (Subtotal)	\$4,944,042	\$5,000,417
Total	\$256,475,987	\$254,173,688
Total FTE	895.8 FTE	932.0 FTE

Department of Human Services. The bill will increase state expenditures in the DHS as shown in Table 2 above. These costs include FTE, legal services, a child welfare tracking system, and printing and mail costs.

Staffing costs. This bill will require 57.3 FTE compliance specialist in FY 2020-21 and 54.6 FTE in FY 2021-22 for compliance investigators and other staff to evaluate evidence concerning persons suspected of child abuse and neglect, review case material, and prepare for hearings. Based on the amount of work currently required during appeals of founded cases of child abuse and neglect entered into TRAILS, the fiscal note assumes each new case will take 8 hours of work. The FTE amounts above also include supervisory, administrative, legal, and data system staff to support this work. Staffing costs reflect standard operating and capital outlay costs. Costs are prorated for a September 1 start date and the General Fund paydate shift.

Legal services. Based on the workload described in the Assumptions section of the fiscal note, the DHS will require over 1.4 million hours of legal services for the Department of Law to represent the DHS in the initial TRAILS hearings and expungement hearings. Legal services are provided by the at a rate of \$106.60 per hour.

IT system. Because TRAILS is currently used as a case management system, a new system is required for county case workers to track cases. This new system will track cases until there is a substantiated claim of child abuse or neglect, and then the person's name will be added into TRAILS. It is estimated that the new system will require 53,220 hours of development at a cost of \$117 per hour, resulting in an initial cost of \$6.2 million in FY 2020-21. In addition, software licenses and support for DHS and county users is estimate to cost \$5.0 million per year starting in FY 2020-21. It is possible that some federal funds may be used to offset some of this cost; however, a specific amount has not been identified at the time of this writing.

Certified mail and printing. Costs will increase to send notices through certified mail and to print reports, as required by the bill. The fiscal note assumes that certified mail will cost \$3.35 per case and printing the required report will be a 20-page report at \$0.25 per page, resulting in a total cost of \$5 per case.

Department of Personnel and Administration. Expenditures in the DPA will increase as shown in Table 2 in order to hire additional ALJs and technicians.

Staffing costs. The DPA will require an additional 80.9 FTE ALJs starting in FY 2020-21 to hear cases concerning the entry of child abuse and neglect cases into TRAILS. This additional staff also includes supervising judges. The number of ALJs are based on the number of cases and the length of cases outlined in the Assumptions section. In addition, the DPA will require 38.9 FTE technicians in FY 2020-21 to manages the court docket and provide administrative support to the ALJs. It is estimated that on average each case will take 1 hours of work. All staffing costs are shown above in Table 2 and include personnel costs, operating costs, and capital outlay costs. First-year costs are prorated for a September 1 start date and the General Fund paydate shift.

Software licenses. The Office of Administrative Courts uses Salesforce as its case management system. Each new FTE added in the bill will require a license to SalesForce at a cost of \$717.

Other ALJ costs. Each ALJ requires telephone recording software for phone hearings, while each supervisory ALJ require recorders and microphones. These costs are shown in Table 2 under Other Costs. Equipment costs are one-time.

Appointed counsel. Expenditures in DPA will increase by \$80.4 million starting in FY 2020-21 to provide counsel to indigent persons at hearings regarding the entry of case information into TRAILS. The fiscal note assumes an attorney rate of \$80, based on the average rate charged by the Judicial Department for contract attorneys. The number of cases in which counsel will be appointed and the hours per cases are outlined in the Assumptions section.

Department of Law. Costs in the Department of Law are reappropriated from DHS. Like DHS, the department will require leased space, as explained further below.

Judicial Department. To the extent there are more cases appealed to the trial courts, expenditures and workload will increase in the trial courts to hear these additional cases. Because it is unknown how many cases will be appealed to the courts, the fiscal note assumes that any increase in funding will be handled through the annual budget process.

Employee insurance, supplemental retirement, and leased space. Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs, which include employee insurance, supplemental employee retirement payments, and leased space are estimated to be \$8.4 million in FY 2020-21 and \$9.1 million in FY 2021-22.

Capital construction. Due to large amount of FTE, capital projects may be required in order to house all the additional FTE. At this time, the fiscal note includes costs for leased space, but has not identified an exact cost for any capital construction. It is assumed that affected departments will request any required funding through the annual budget process.

TABOR refunds. The bill may increase state General Fund obligations for TABOR refunds in FY 2020-21 and FY 2021-22 to the extent the State Board of Human Services chooses to raise the fee for TRAILS background checks to help offset some of the costs associated with this bill. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government

Starting in FY 2020-21, expenditures in county departments of human services will increase to attend more hearings. An exact cost to each county cannot be determined at this time.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2020-21, this bill requires the following General Fund appropriations:

- \$160,757,505 to the Department of Human Services and 57.3 FTE. Of this amount:
 - \$143,736,775 is reappropriated to the Department of Law with 749.1 FTE; and
 - \$11,200,000 is reappropriated to the Office of Information Technology; and
- \$90,774,440 to the Department of Personnel and Administration and 89.4 FTE.

Departmental Difference

The Department of Law estimates that expenditures will increase by \$234,628,092 per year based on 2.2 million hours of legal services provided to the DHS. This is based on an estimate of 7,350 cases requiring an administrative hearing before an ALJ, with 10 percent of cases being appealed to district court. The fiscal note estimates a lower number of cases to account for the fact that 8 percent of cases currently appeal the decision to enter founded allegations of child abuse and neglect into TRAILS. The fiscal note also includes a lower average amount of time per case, assuming that a portion of the required hearings will not be contested, thus lowering the average time compared to current appeals.

State and Local Government Contacts

Counties
Judicial

Human Services
Personnel

Information Technology
Law