



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 20-0917 Date: March 9, 2020
Prime Sponsors: Sen. Rankin; Moreno Bill Status: Senate Judiciary
Rep. Gonzales-Gutierrez; Ransom Fiscal Analyst: Aaron Carpenter | 303-866-4918
Aaron.Carpenter@state.co.us

Bill Topic: CHANGES RELATED TO FEDERAL FAMILY FIRST POLICY

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

This bill makes several changes to the child welfare system to align state law with the federal Family First Prevention Services Act. The bill will increase state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, this bill requires an appropriation of \$1.4 million to multiple state agencies. See State Appropriations section.

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

Table 1 State Fiscal Impacts Under SB 20-162

Table with 3 columns: Category, FY 2020-21\*, FY 2021-22. Rows include Revenue, Expenditures (General Fund, Federal Funds, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

\* FY 2020-21 amounts in this table include \$361,800 General Fund that is currently approved to be funded through the 2020 Long Bill.

## **Summary of Legislation**

This bill makes several changes to the child welfare system to align state law with the federal Family First Prevention Services Act.

**Out-of-home placements.** The bill makes several changes to out-of-home placements. First, the bill limits the placement of children between the ages of 5 and 18 in residential child care facilities, but allows children under the age of 5 to be placed if accompanied by a parent. Second, the bill increases the minimum age for placement in specialized group facilities from 3 years of age to 7. Children under the age of 7 may be placed in a group facility if accompanied by a parent. Third, the bill requires residential child care facilities to be licensed annually.

**Qualified residential treatment programs.** Before a child is placed in a qualified residential treatment program (QRTP), a court must first consider a placement assessment prepared by a qualified individual. In considering the placement, the court must give great weight to the recommendation for placement provided by the qualified individual. When a child is placed in a QRTP, a court, within 60 days (unless there is an objection, then 30 days) after the initial placement, must:

- consider the assessment, determination, and documentation made by a qualified individual on the appropriate placement of the child;
- determine if the needs of the child can be met through a different placement;
- determine if the QRTP is the most effective and appropriate level of care; and
- approve or disapprove of the placement in a QRTP.

After the initial hearing, the bill requires that a subsequent hearing, in front of either the court or the Administrative Review Division in the Department of Human Services (DHS), review evidence submitted by a county at least every 90 days during the duration of the placement in a QRTP.

**Juvenile justice system.** Before committing a youth to the custody of the Division of Youth Services in the DHS, the bill requires the court to make a finding that the commitment is not the result of a lack of available QRTP placements.

**Foster care prevention services.** The bill allows counties to provide child welfare prevention services and foster care prevention services to families, kin caregivers, and children. The bill also makes information concerning prevention services and referrals confidential and not available to the public. The DHS must also develop a detailed notice of rights and remedies applicable to prevention services to give to affected parties.

**Child welfare reimbursement.** The bill requires the Child Welfare Services Task Force to make recommendations on a method to incentivize counties to provide services and placements based on the child's needs by July 31, 2020. By December 30, 2020, the DHS, taking into account these recommendations, must establish a new reimbursement rate to counties that is lower than the current rate for out-of-home placements that do not qualify as a QRTP. The reimbursement rate cannot be lower than 50 percent of the reimbursement to counties established on or before December 30, 2020. If the Child Welfare Services Task Force does not make recommendations by July 31, 2020, the DHS must establish new reimbursement rates by January 1, 2021. The new rates become effective when the federal government approves Colorado's Five-Year Title IV-E Prevention Plan.

**Child welfare funding.** The bill creates a new account within the Child Welfare Prevention and Intervention Services Cash Fund, named the Capacity Building Account, to be funded by all federal revenue received pursuant to the federal Family First Prevention Services Act. Money in the account must be used to map existing child welfare services, supporting transition providers who are not eligible for the current reimbursement rate, and to provide additional support for foster parent recruitment and retention. The DHS will determine the allocation of money credited to the account.

## **Background**

On February 9, 2018, the federal government passed the Families First Prevention Services Act, which changed how states can spend federal Title IV-E funds. Under the law, states may be reimbursed by the federal government for "prevention services" that allow candidates for foster care placement to stay with parents or relatives instead of being placed into foster care. The law also changes how the federal government will reimburse states. Under the law, the federal government will not reimburse states for children placed in group care settings for longer than two weeks. Instead, states will be reimbursed for placements into QRTPs that use a trauma-informed treatment model. The law also has requirements for assessments by a qualified individual to make sure children are being placed in the most appropriate setting. Colorado must submit a plan to the federal government and have it approved before the state can start to receive federal funding under the new federal law. For more information on Families First, see: <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>

## **Assumptions**

The fiscal note makes the following assumptions:

- 60 initial hearings will be conducted each month for placement of children in a QRTP, with about 75 percent of hearings requiring 30 minutes and 25 percent of hearings requiring 2 hours to conduct a full evidentiary hearing;
- 90 children each month will have a review conducted regarding a current or ongoing placement, and 25 percent of these cases will require a one-hour court hearing and 75 percent will be reviewed by the DHS administratively;
- the licensing fee for residential child care facilities will be close to the continuation fee facilities currently pay, therefore the state will not receive additional revenue; and
- the state will have its implementation plan approved by the federal government before July 1, 2020.

## **State Expenditures**

This bill will increase state expenditures by \$1.8 million and 3.9 FTE in FY 2020-21 and \$1.6 million and 4.1 FTE in FY 2021-22, paid primarily from the General Fund as well as federal funds. These costs, which are in the DHS and various independent judicial agencies involved in the child welfare system, are discussed below and summarized in Table 2. The bill will also increase workload in the trial courts in the Judicial Department.

**Table 2  
 Expenditures Under SB 20-161**

|  | <b>FY 2020-21</b>  | <b>FY 2021-22</b>  |
|--|--------------------|--------------------|
| <b>Department of Human Services</b>          |                    |                    |
| Personal Services                            | \$263,088          | \$287,005          |
| Operating Expenses                           | \$5,400            | \$5,400            |
| Capital Outlay Costs                         | \$24,800           | -                  |
| Travel Costs                                 | \$70,560           | \$70,560           |
| TRAILS Modifications                         | \$242,250          | -                  |
| Qualified Assessor*                          | \$361,800          | \$361,800          |
| Legal Services                               | \$38,376           | \$27,716           |
| Centrally Appropriated Costs**               | \$59,771           | \$64,852           |
| FTE – Personal Services                      | 3.7 FTE            | 4.0 FTE            |
| FTE – Legal Services                         | 0.2 FTE            | 0.1 FTE            |
| <b>DHS (Subtotal)</b>                        | <b>\$1,066,045</b> | <b>\$817,333</b>   |
| <b>Office of the Child's Representative</b>  |                    |                    |
| Contract Attorney Payments                   | \$422,400          | \$422,400          |
| <b>OCR (Subtotal)</b>                        | <b>\$422,400</b>   | <b>\$422,400</b>   |
| <b>Office of Respondent Parents' Counsel</b> |                    |                    |
| Contract Attorney Payments                   | \$357,120          | \$357,120          |
| <b>ORPC (Subtotal)</b>                       | <b>\$357,120</b>   | <b>\$357,120</b>   |
| <b>Total Cost</b>                            | <b>\$1,845,565</b> | <b>\$1,596,853</b> |
| <b>Total FTE</b>                             | <b>3.9 FTE</b>     | <b>4.1 FTE</b>     |

\* This amount is currently approved for inclusion in the 2020 Long Bill.

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

**Department of Human Services.** State expenditures in the DHS will increase by \$1.1 million and 3.7 FTE in FY 2020-21 and by \$817,333 and 4.0 FTE in FY 2021-22. These costs are discussed in more detail below.

- *Staffing costs.* Starting in FY 2020-21, the bill will require 3.0 FTE compliance investigators and 1.0 FTE social services specialist. The compliance investigators will review the placement of each child placed into a QRTP every 90 days. The fiscal note assumes that an FTE can conduct 4 reviews per day and that time is necessary to travel to where the child is placed for an on-site review. Workload for this position includes reviewing the assessment made by the qualified individual, reviewing evidence submitted by a county, determining whether the needs of a child can be met in another placement, and determining if the long-term goals of the child can be met through placement in a QRTP.

The social services specialist will be responsible for the annual licensing of QRTPs. Workload includes performing annual licensing inspections, providing technical assistance to providers, reviewing policies and procedure of facilities for compliance, and promulgating rules regarding annual licensing. Costs associated with these staff include personal services costs, operating expenses, and capital outlay, as shown in Table 2 above. First-years costs and FTE are prorated to account for the General Fund paydate shift.

- *Travel costs.* Starting in FY 2020-21, costs in the DHS will increase by \$70,560 for the compliance investigators to travel to counties to conduct in-person reviews with parties involved in the case. This cost includes reimbursements for room, board, and vehicle mileage.
- *TRAILS modifications.* In FY 2020-21, the DHS requires \$242,250, including \$157,462 General Fund and \$97,253 federal funds, to modify its child welfare data system (TRAILS). These system changes are necessary to segregate information on families receiving prevention services from parts of the system that contain data on families with an open dependency and neglect case. The fiscal note assumes that this work will take 1,615 hours of programmer time at a rate of \$150 per hour. This work will be accomplished by the Office of Information Technology (OIT). Additional TRAILS modifications may be needed to reflect the new reimbursement rates and costs for any additional system changes will be addressed through the annual budget process once details on the new rate implementation are known.
- *Qualified assessments.* Costs in the DHS will increase by an estimated \$361,800 per year to contract with a third-party assessor. At the time of this writing, this amount was approved by the Joint Budget Committee for inclusion in the 2020 Long Bill. If the budget passes with this funding included, no additional appropriation is required in this bill.
- *Division of Youth Services.* Starting in FY 2020-21, to the extent that children are placed in a QRTP rather than being committed to the Division of Youth Services in the DHS during a delinquency action, state expenditures will decrease. The fiscal note assumes that cases of a juvenile being committed to the DHS because there are no qualified treatment beds available is minimal and therefore, any decreases is expected to be minimal.
- *Legal services.* Under the bill, the DHS will require 360 hours of legal services in FY 2020-21 and 260 hours in FY 2021-22 to develop notices of rights and remedies, to represent the department if residential care facilities appeal a denied renewal license, to promulgate rules related to renewing residential care facilities annually, and to update reimbursement rules. Legal services are provided by the Department of Law at a rate of \$106.60 per hour, resulting in a cost of \$38,376 and 0.2 FTE in FY 2020-21 and \$27,716 and 0.1 FTE in FY 2021-22 and future years.
- *State reimbursements to counties.* Starting in FY 2020-21, state spending on child welfare will decrease to the extent that counties continue to place children in non-QRTPs. Assuming that counties will continue to place children in non-QRTPs, and assuming a state reimbursement rate of 65 percent, it is estimated that state spending will decrease by \$1.2 million, and county expenditures will increase to make payments to providers. The exact decrease in state spending will be depend on the rate established by the DHS, and how counties choose to place children. Based on current placements, state reimbursement to counties may decrease up to \$2.4 million. The fiscal note assumes that any adjustments in appropriations for child welfare funding will be handled through the annual budget process.

**Office of the Child's Representative.** Expenditures and workload in the Office of the Child's Representative (OCR) will increase for guardians ad litem (GALs) to attend additional hearings concerning placement of a child in a QRTP. The fiscal note assumes there will be a GAL at each initial QRTP hearing and review hearing. Assuming an initial QRTP placement hearing takes 6 hours of attorney time and ongoing reviews take 1 hour of attorney time at a rate of \$80 per hour, then expenditures in the OCR will increase by \$422,400 per year.

**Office of the Respondent Parents' Council.** Expenditures and workload in the Office of the Respondent Parents' Council (ORPC) will increase by at least \$357,120 to represent indigent parents during QRTP placements and reviews. This amount assumes that there will be 300 initial QRTP placement cases and 432 review cases a year where a ORPC attorney is involved and that attorney time for each case will be 12 hours for initial placements and 2 hours for reviews. The ORPC pays attorney's a rate of \$80 per hour. To the extent the QRTP cases require more attorney time or require additional expenses, such as hiring additional experts during QRTP placement hearings, the fiscal note assumes the ORPC will request additional funding through the annual budget process.

**Trial courts.** Starting in FY 2020-21, workload in the trial courts in the Judicial Department will increase to hold initial hearings and to review the placement of children placed in a QRTP. Based on the number and length of hearings discussed in the Assumptions Section above, the fiscal note assumes that this increase in workload can be accomplished 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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$59,771 in FY 2020-21 and \$64,852 in FY 2021-22.

## **Local Government**

As outlined in the State Expenditures section, starting in FY 2020-21, county expenditures will increase to the extent children are placed in non-QRTPs that qualify for a lower reimbursement rate. Based on current placements, the fiscal note estimates this cost may be up to \$2.4 million. In addition, to the extent that fewer children are committed to the Division of Youth Services in the DHS as part of a delinquency proceeding, costs to counties will increase to place the child in a QRTP. The fiscal note assumes that any increase from such a shift will be minimal.

## **Effective Date**

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

**State Appropriations**

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

- \$644,474 and 3.7 FTE to the DHS, of which \$547,221 is General Fund and is \$97,253 federal funds (this amount assumes that an appropriation of \$361,800 will be included in the 2020 Long Bill, instead of this bill);
- of the DHS appropriation, \$242,250 is reappropriated to the OIT; and \$38,376 and an additional allocation of 0.2 FTE is reappropriated to the Department of Law;
- \$422,400 from the General Fund to the Office of the Child's Representative; and
- \$357,120 from the General Fund to the Office of the Respondent Parents' Counsel.

**State and Local Government Contacts**

Counties  
Human Services  
Law

District Attorneys  
Information Technology  
Regulatory Agencies

Health Care Policy and Financing  
Judicial