

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0252.01 Jacob Baus x2173

SENATE BILL 23-039

SENATE SPONSORSHIP

Buckner,

HOUSE SPONSORSHIP

Amabile,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO REDUCE FAMILY SEPARATION CAUSED BY**
102 **A PARENT'S DETENTION.**

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>.)

The bill requires the department of human services to promulgate rules that facilitate communication and family time between children and their parents who are incarcerated.

The bill requires the court and the prison or jail where the parent is incarcerated to facilitate the parent's attendance and participation in proceedings for the parent's dependency and neglect case.

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.*

Under current law, after an order of adjudication in a dependency and neglect case, the court holds a dispositional hearing. The bill requires, except in instances when the proposed disposition is termination of the parent-child legal relationship, if a child's parent is incarcerated, that the court approve a treatment plan for the parent that specifies how the parent may participate in future meetings and hearings, including services and treatments available to the parent at the prison or jail, and opportunities for meaningful, in-person family time at the prison unless the family time does not serve the best interests of the child.

Under current law, the court may terminate the parent-child legal relationship based on statutorily created circumstances. The bill eliminates the parent's incarceration and related conditions as a basis for terminating the parent-child relationship.

Under current law, if the court finds that there is not a substantial probability that the child will be returned to a parent or legal guardian within 6 months and the child satisfies criteria for adoption, the court may require the county department of human services to show cause why it should not file a motion to terminate the parent-child legal relationship. The bill states that such cause may exist if the parent is incarcerated, detained by the United States department of homeland security, or deported, and if the parent has maintained a meaningful and safe relationship with the child while incarcerated, detained, or deported.

The bill requires the department of corrections to create and submit an annual report to the judiciary committees of the senate and house of representatives concerning parents who are incarcerated, and make the report publicly available.

The bill requires the department of corrections to develop opportunities and promulgate policies to facilitate continued relationships between children and their parents who are incarcerated.

The bill requires the department of corrections to designate a family services coordinator, who is responsible for duties related to children and their parents who are incarcerated.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) At least seven percent, or more than ninety-two thousand, of
5 Colorado children at some time during their childhood have a parent or
6 guardian who was or is incarcerated;

7 (b) At least one in four Colorado children who are adjudicated

1 dependent or neglected have a parent or guardian who was incarcerated
2 at some time during dependency and neglect proceedings;

3 (c) The incarceration of a parent disproportionately affects
4 children of color and exacerbates the number of children living in
5 poverty;

6 (d) Having a parent who is incarcerated hinders a child's academic
7 achievement. In particular, children who have mothers who are
8 incarcerated have a greater risk of dropping out of school, and the number
9 of children who have a mother who is incarcerated has more than doubled
10 over the last three decades; and

11 (e) Preserving children's relationships with parents who are
12 incarcerated benefits families by decreasing risks to children's mental
13 health, including the potential to experience depression and anxiety, and
14 benefits society by reducing recidivism rates and facilitating successful
15 returns to our communities.

16 (2) Therefore, the general assembly declares that measures are
17 necessary to reduce the trauma of family separation caused by
18 incarceration and to promote strong and healthy family relationships for
19 the benefit of children, their parents, and society.

20 **SECTION 2.** In Colorado Revised Statutes, **add** 19-1-131 as
21 follows:

22 **19-1-131. Children of parents who are incarcerated - rules.**

23 THE DEPARTMENT SHALL PROMULGATE RULES THAT FACILITATE
24 COMMUNICATION AND FAMILY TIME BETWEEN CHILDREN AND THEIR
25 PARENTS WHO ARE INCARCERATED IN A DEPARTMENT OF CORRECTIONS
26 FACILITY, A PRIVATE CORRECTIONAL FACILITY UNDER CONTRACT WITH
27 THE DEPARTMENT OF CORRECTIONS, OR A JAIL. THE PURPOSE OF THE

1 RULES IS TO NORMALIZE, TO THE EXTENT POSSIBLE, THE CHILD AND
2 PARENT RELATIONSHIP, TO AID AND ENCOURAGE HEALTHY CHILD
3 DEVELOPMENT, AND REDUCE RECIDIVISM AND INTERGENERATIONAL
4 INCARCERATION. THE RULES MUST CONSIDER THE BENEFITS TO THE CHILD
5 THROUGH MAINTAINING CONTACT WITH THE CHILD'S PARENT AND THE
6 PARENT'S WILLINGNESS AND DESIRE TO MAINTAIN A MEANINGFUL
7 RELATIONSHIP WITH THE CHILD, AND ASSIST IN THE REUNIFICATION OF THE
8 CHILD AND PARENT WHEN APPROPRIATE.

9 **SECTION 3.** In Colorado Revised Statutes, 19-3-202, **amend** (1)
10 as follows:

11 **19-3-202. Right to counsel and jury trial.** (1) At the first
12 appearance of a respondent parent, guardian, or legal custodian, the court
13 shall fully advise the respondent of ~~his or her~~ THE RESPONDENT'S legal
14 rights, including the right to a jury trial, the right to be represented by
15 counsel at every stage of the proceedings, and the right to seek the
16 appointment of counsel through the office of respondent parents' counsel
17 established in section 13-92-103, ~~C.R.S.~~; if the respondent is unable to
18 financially secure counsel on ~~his or her~~ THE RESPONDENT'S own. THE
19 COURT SHALL APPOINT COUNSEL FOR A RESPONDENT WHO IS
20 INCARCERATED IN A DEPARTMENT OF CORRECTIONS FACILITY, A PRIVATE
21 CORRECTIONAL FACILITY UNDER CONTRACT WITH THE DEPARTMENT OF
22 CORRECTIONS, OR A JAIL; HELD IN FEDERAL CUSTODY; OR INVOLUNTARILY
23 COMMITTED, UNLESS THE COURT DETERMINES THE RESPONDENT IS ABLE
24 TO FINANCIALLY SECURE COUNSEL ON THE RESPONDENT'S OWN. The court
25 shall fully explain to the respondent the informational notice of rights and
26 remedies for families prepared pursuant to section 19-3-212 and shall
27 recommend that the respondent discuss such notice with ~~his or her~~ THE

1 RESPONDENT'S counsel. Further, the court shall advise the respondent of
2 the minimum and maximum time frames for the dependency and neglect
3 process, including the minimum and maximum time frames for
4 adjudication, disposition, and termination of parental rights for a child
5 who is under six years of age at the time the petition is filed in a county
6 designated pursuant to section 19-1-123. Nothing in this section limits the
7 power of the court to appoint counsel prior to the filing of a petition for
8 good cause.

9 **SECTION 4.** In Colorado Revised Statutes, 19-3-502, **add** (5.5)
10 as follows:

11 **19-3-502. Petition form and content - limitations on claims in**
12 **dependency or neglect actions.** (5.5) (a) A PERSON NAMED A
13 RESPONDENT IS A PARTY TO THE PROCEEDINGS AND HAS THE RIGHT TO
14 ATTEND AND FULLY PARTICIPATE IN ALL PROCEEDINGS UNLESS THE
15 RESPONDENT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVES,
16 EITHER PERSONALLY OR THROUGH COUNSEL, THE RESPONDENT'S
17 ATTENDANCE AND PARTICIPATION, OR THE COURT FINDS IT NECESSARY TO
18 HOLD SEPARATE HEARINGS PURSUANT TO SECTION 19-1-106. IF A
19 RESPONDENT VOLUNTARILY WAIVES THE RESPONDENT'S ATTENDANCE AND
20 PARTICIPATION, THE RESPONDENT WAIVES THE RESPONDENT'S ABILITY TO
21 CLAIM THAT THE RESPONDENT'S RIGHT TO ATTEND AND FULLY
22 PARTICIPATE IN ALL PROCEEDINGS WAS VIOLATED. IF THE RESPONDENT IS
23 REPRESENTED BY COUNSEL, COUNSEL SHALL MAKE DILIGENT EFFORTS TO
24 PROVIDE NOTICE TO THE RESPONDENT OF ALL HEARINGS.

25 (b) (I) IF THE COURT BECOMES AWARE THAT A RESPONDENT IS
26 INCARCERATED IN A DEPARTMENT OF CORRECTIONS FACILITY, A PRIVATE
27 CORRECTIONAL FACILITY UNDER CONTRACT WITH THE DEPARTMENT OF

1 CORRECTIONS, OR A JAIL, THE COURT SHALL ISSUE A WRIT FOR THE
2 RESPONDENT'S PERSONAL ATTENDANCE OR ATTENDANCE THROUGH
3 AUDIO-VISUAL COMMUNICATION TECHNOLOGY AT ALL HEARINGS, UNLESS
4 THE COURT FINDS IT NECESSARY TO HOLD SEPARATE HEARINGS PURSUANT
5 TO SECTION 19-1-106. IF THE RESPONDENT IS REPRESENTED BY COUNSEL,
6 COUNSEL SHALL FILE A MOTION FOR THE RESPONDENT'S PERSONAL
7 ATTENDANCE OR ATTENDANCE THROUGH AUDIO-VISUAL COMMUNICATION
8 TECHNOLOGY AT THE HEARING IF COUNSEL KNOWS THE RESPONDENT IS
9 INCARCERATED AND WANTS TO PERSONALLY ATTEND A CONTESTED
10 HEARING OR ATTEND ANY HEARING THROUGH AUDIO-VISUAL
11 COMMUNICATION TECHNOLOGY. IF THE RESPONDENT IS NOT REPRESENTED
12 BY COUNSEL, THE COURT SHALL FILE A WRIT FOR THE RESPONDENT'S
13 PERSONAL APPEARANCE OR APPEARANCE THROUGH AUDIO-VISUAL
14 COMMUNICATION TECHNOLOGY. IF A WRIT FOR APPEARANCE THROUGH
15 AUDIO-VISUAL COMMUNICATION TECHNOLOGY IS ISSUED, THE COURT
16 SHALL INCLUDE INFORMATION ON THE WRIT CONCERNING THE MANNER BY
17 WHICH THE RESPONDENT MAY APPEAR AND SHALL ENSURE THE WRIT IS
18 PROVIDED TO THE LITIGATION COORDINATOR AT THE FACILITY OR JAIL
19 WHERE THE RESPONDENT IS INCARCERATED. IF THE RESPONDENT IS
20 REPRESENTED BY COUNSEL, THE COURT MAY ORDER THE COUNSEL TO
21 INFORM THE LITIGATION COORDINATOR.

22 (II) IF THE WRIT ISSUED BY THE COURT PURSUANT TO SUBSECTION
23 (5.5)(b)(I) OF THIS SECTION IS NOT HONORED, THE COURT MUST PERMIT
24 THE RESPONDENT TO ATTEND AND PARTICIPATE IN A HEARING THROUGH
25 AUDIO-VISUAL COMMUNICATION TECHNOLOGY.

26 (c) (I) A COURT, THE COUNTY DEPARTMENT OF HUMAN SERVICES,
27 THE SHERIFF, OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF

1 CORRECTIONS MAY DEVELOP AND IMPLEMENT PROCEDURES TO FACILITATE
2 THE NOTIFICATION OF PROCEEDINGS AND PERSONAL APPEARANCE OF A
3 RESPONDENT WHO IS INCARCERATED.

4 (II) A REPRESENTATIVE OF THE FACILITY OR JAIL WHERE THE
5 RESPONDENT IS INCARCERATED SHALL, WHEN POSSIBLE, INFORM THE
6 COURT NOT LESS THAN SEVENTY-TWO HOURS PRIOR TO THE PROCEEDING
7 IF IT CANNOT FACILITATE TRANSPORTATION OF THE RESPONDENT TO A
8 PROCEEDING.

9 (III) A REPRESENTATIVE OF THE FACILITY OR JAIL WHERE THE
10 RESPONDENT IS INCARCERATED SHALL INFORM THE COURT IF THE
11 RESPONDENT REFUSES TRANSPORTATION, AND THE CIRCUMSTANCES OF
12 THE REFUSAL, AS SOON AS PRACTICABLE.

13 (IV) IF THE FACILITY WHERE THE RESPONDENT IS INCARCERATED
14 CANNOT FACILITATE TRANSPORTATION OF THE RESPONDENT TO A HEARING
15 PURSUANT TO THIS SUBSECTION (5.5), THE FACILITY SHALL MAKE EVERY
16 REASONABLE EFFORT TO FACILITATE THE RESPONDENT'S PARTICIPATION
17 AT THE HEARING THROUGH AUDIO-VISUAL COMMUNICATION TECHNOLOGY,
18 SO LONG AS THE REQUIREMENTS PURSUANT TO SUBSECTION (5.5)(b)(I) OF
19 THIS SECTION ARE SATISFIED.

20 **SECTION 5.** In Colorado Revised Statutes, 19-3-507, **add** (1)(d)
21 and (1)(e) as follows:

22 **19-3-507. Dispositional hearing - rules.** (1) (d) IF A CHILD'S
23 PARENT IS INCARCERATED IN A DEPARTMENT OF CORRECTIONS FACILITY,
24 A PRIVATE CORRECTIONAL FACILITY UNDER CONTRACT WITH THE
25 DEPARTMENT OF CORRECTIONS, OR A JAIL, THEN PRIOR TO ANY
26 DISPOSITIONAL HEARING, THE CASEWORKER ASSIGNED TO THE CASE SHALL
27 SUBMIT TO THE COURT A REPORT THAT DETAILS THE SERVICES AND

1 TREATMENT AVAILABLE TO A PARENT AT THE FACILITY OR JAIL WHERE THE
2 PARENT IS INCARCERATED AND THE OPPORTUNITIES FOR FAMILY TIME AT
3 THE FACILITY OR JAIL BETWEEN THE CHILD AND PARENT, OR THE
4 CASEWORKER'S REASONABLE EFFORTS TO OBTAIN SUCH INFORMATION.

5 (e) (I) IF A CHILD IS ELIGIBLE FOR SERVICES PURSUANT TO SECTION
6 19-3-208, AND THE CHILD'S PARENT IS INCARCERATED IN A DEPARTMENT
7 OF CORRECTIONS FACILITY, A PRIVATE CORRECTIONAL FACILITY UNDER
8 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS, OR A JAIL, THEN
9 PRIOR TO ANY DISPOSITIONAL HEARING, THE COUNTY DEPARTMENT SHALL
10 MAKE REASONABLE EFFORTS TO INVOLVE THE PARENT WHO IS
11 INCARCERATED IN PLANNING THE SERVICES FOR THE CHILD. REASONABLE
12 EFFORTS INCLUDE:

13 (A) IN ANY MEETING CUSTOMARILY ATTENDED BY A PARENT,
14 PERMITTING AND FACILITATING, TO THE EXTENT REASONABLY
15 PRACTICABLE, A PARENT'S REMOTE ATTENDANCE AND PARTICIPATION
16 THROUGH AUDIO-VISUAL COMMUNICATION TECHNOLOGY; AND

17 (B) OPPORTUNITIES FOR MEANINGFUL IN-PERSON FAMILY TIME
18 BETWEEN THE CHILD AND PARENT AT THE FACILITY OR JAIL WHERE THE
19 PARENT IS INCARCERATED. IF IN-PERSON FAMILY TIME _____ IS NOT
20 REASONABLY PRACTICABLE, THEN THE FACILITY OR JAIL SHALL
21 FACILITATE FAMILY TIME BETWEEN THE CHILD AND PARENT THROUGH
22 AUDIO-VISUAL COMMUNICATION TECHNOLOGY. THE COURT SHALL
23 CONSIDER THE PREFERENCES OF THE CHILD AND PARENT WHEN
24 DETERMINING WHETHER IN-PERSON FAMILY TIME SHOULD OCCUR.
25 NOTHING IN THIS SUBSECTION (1)(e) REQUIRES THE COURT TO ORDER
26 FAMILY TIME IF A PROTECTION ORDER PROHIBITS CONTACT BETWEEN THE
27 CHILD AND THE PARENT, OR IF THE COURT DETERMINES THAT FAMILY TIME

1 WOULD JEOPARDIZE THE CHILD'S MENTAL, EMOTIONAL, OR PHYSICAL
2 HEALTH. THE COURT SHALL NOT DETERMINE THAT FAMILY TIME IS NOT IN
3 THE CHILD'S BEST INTERESTS BASED SOLELY ON THE FACT THAT IN-PERSON
4 FAMILY TIME WOULD OCCUR IN A FACILITY OR JAIL.

5 (II) THE DEPARTMENT MAY PROMULGATE RULES NECESSARY TO
6 COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (1)(e).

7 **SECTION 6.** In Colorado Revised Statutes, 19-3-508, **add**
8 (1)(e)(III), (1)(e)(IV), and (9) as follows:

9 **19-3-508. Neglected or dependent child - disposition -**
10 **concurrent planning - definition.** (1) When a child has been
11 adjudicated to be neglected or dependent, the court may enter a decree of
12 disposition the same day, but in any event it shall do so within forty-five
13 days unless the court finds that the best interests of the child will be
14 served by granting a delay. In a county designated pursuant to section
15 19-1-123, if the child is under six years of age at the time a petition is
16 filed in accordance with section 19-3-501 (2), the court shall enter a
17 decree of disposition within thirty days after the adjudication and shall not
18 grant a delay unless good cause is shown and unless the court finds that
19 the best interests of the child will be served by granting the delay. It is the
20 intent of the general assembly that the dispositional hearing be held on the
21 same day as the adjudicatory hearing, whenever possible. If a delay is
22 granted, the court shall set forth the reasons why a delay is necessary and
23 the minimum amount of time needed to resolve the reasons for the delay
24 and shall schedule the hearing at the earliest possible time following the
25 delay. When the proposed disposition is termination of the parent-child
26 legal relationship, the hearing on termination must not be held on the
27 same date as the adjudication, and the time limits set forth above for

1 dispositional hearings do not apply. When the proposed disposition is
2 termination of the parent-child legal relationship, the court may continue
3 the dispositional hearing to the earliest available date for a hearing in
4 accordance with the provisions of subsection (3)(a) of this section and
5 part 6 of this article 3. When the decree does not terminate the
6 parent-child legal relationship, the court shall approve an appropriate
7 treatment plan that must include but not be limited to one or more of the
8 following provisions of subsections (1)(a) to (1)(d) of this section:

9 (e) (III) EXCEPT WHEN THE PROPOSED DISPOSITION IS
10 TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, IF A CHILD'S
11 PARENT IS INCARCERATED IN A DEPARTMENT OF CORRECTIONS FACILITY,
12 A PRIVATE CORRECTIONAL FACILITY UNDER CONTRACT WITH THE
13 DEPARTMENT OF CORRECTIONS, OR A JAIL, THE COURT SHALL APPROVE AN
14 APPROPRIATE TREATMENT PLAN AND THE DEPARTMENT SHALL PROVIDE
15 THE COURT-ORDERED TREATMENT PLAN TO THE FACILITY OR JAIL WHERE
16 THE PARENT IS HELD. THE TREATMENT PLAN MUST:

17 (A) SPECIFY HOW THE PARENT MAY PARTICIPATE IN ALL MEETINGS
18 AND HEARINGS WITH THE COURT AND COUNTY DEPARTMENT THAT A
19 PARENT CUSTOMARILY ATTENDS;

20 (B) INCLUDE RELEVANT SERVICES AND TREATMENTS AVAILABLE
21 AT THE FACILITY OR JAIL FOR THE PARENT THAT ADDRESS THE ISSUES
22 AFFECTING THE CHILD'S HEALTH, SAFETY, AND WELFARE THAT REQUIRE
23 STATE INTERVENTION; AND

24 (C) INCLUDE OPPORTUNITIES FOR MEANINGFUL, IN-PERSON FAMILY
25 TIME AT THE FACILITY OR JAIL BETWEEN THE CHILD AND PARENT, UNLESS
26 THE COURT DENIES OR RESTRICTS FAMILY TIME PURSUANT TO SECTION
27 19-3-217 OR THE COURT HAS ISSUED A PROTECTION ORDER PROHIBITING

1 CONTACT BETWEEN THE CHILD AND THE PARENT. ABSENT AN ACTIVE
2 PROTECTION ORDER, IF THE COURT DETERMINES THAT IN-PERSON FAMILY
3 TIME DOES NOT SERVE THE CHILD'S BEST INTERESTS, IT SHALL CONSIDER
4 WHETHER FAMILY TIME BY TELEPHONE OR AUDIO-VISUAL
5 COMMUNICATION TECHNOLOGY SERVES THE CHILD'S BEST INTERESTS. THE
6 COURT SHALL CONSIDER THE PREFERENCES OF THE CHILD AND PARENT
7 WHEN DETERMINING WHETHER IN-PERSON FAMILY TIME SHOULD OCCUR.

8 (IV) (A) IF, AFTER THE DISPOSITIONAL HEARING, THE CHILD'S
9 PARENT BECOMES CONTINUOUSLY INCARCERATED IN A DEPARTMENT OF
10 CORRECTIONS FACILITY, A PRIVATE CORRECTIONAL FACILITY UNDER
11 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS, OR A JAIL FOR MORE
12 THAN TWENTY-EIGHT DAYS, THEN THE CASEWORKER ASSIGNED TO THE
13 CASE SHALL SUBMIT TO THE COURT, LESS THAN THIRTY-FIVE DAYS AFTER
14 DISCOVERING THE INCARCERATION, A REPORT REQUIRED PURSUANT TO
15 SECTION 19-3-507 (1)(d) AND AN AMENDED TREATMENT PLAN INCLUDING
16 THE REQUIREMENTS PURSUANT TO SUBSECTION (1)(e)(III) OF THIS
17 SECTION. IF A PARENT IS RELOCATED TO A DIFFERENT FACILITY OR JAIL OR
18 RECEIVES A NEW SENTENCE, THE CASEWORKER SHALL SUBMIT TO THE
19 COURT, LESS THAN THIRTY-FIVE DAYS AFTER DISCOVERING THE
20 RELOCATION OR NEW SENTENCE, A REPORT REQUIRED PURSUANT TO
21 SECTION 19-3-507 (1)(d) AND AN AMENDED TREATMENT PLAN INCLUDING
22 THE REQUIREMENTS PURSUANT TO SUBSECTION (1)(e)(III) OF THIS
23 SECTION.

24 (B) NOTWITHSTANDING SUBSECTION (1)(e)(IV)(A) OF THIS
25 SECTION, THE CASEWORKER OF THE COUNTY DEPARTMENT ASSIGNED TO
26 THE CASE IS NOT REQUIRED TO SUBMIT A REPORT AND AMENDED
27 TREATMENT PLAN PURSUANT TO SUBSECTION (1)(e)(IV)(A) OF THIS

1 SECTION, IF THE PARENT IS RELEASED FROM INCARCERATION PRIOR TO THE
2 THIRTY-FIVE DAY SUBMISSION DEADLINE.

3 (9) (a) IF A CHILD'S PARENT IS INCARCERATED IN A DEPARTMENT
4 OF CORRECTIONS FACILITY, A PRIVATE CORRECTIONAL FACILITY UNDER
5 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS, OR A JAIL, AND HAS
6 MAINTAINED A MEANINGFUL AND SAFE RELATIONSHIP WITH THE CHILD
7 WHILE INCARCERATED, THE COURT SHALL CONSIDER A PERMANENT
8 PLACEMENT FOR THE CHILD THAT PERMITS THE PARENT TO MAINTAIN A
9 RELATIONSHIP WITH THE CHILD, INCLUDING GUARDIANSHIP OR
10 ALLOCATION OF PARENTAL RESPONSIBILITIES. IF THE PROPOSED
11 PERMANENT PLACEMENT WOULD REQUIRE THE CHILD TO TRANSFER TO
12 ANOTHER PLACEMENT, THE COURT SHALL CONSIDER THE FACTORS IN
13 SECTION 19-3-702 (6) IN MAKING ITS DETERMINATION.

14 (b) WHEN DETERMINING WHETHER A PARENT WHO IS
15 INCARCERATED HAS MAINTAINED A MEANINGFUL AND SAFE RELATIONSHIP
16 WITH THE CHILD PURSUANT TO SUBSECTION (9)(a) OF THIS SECTION, THE
17 COURT SHALL CONSIDER:

18 (I) WHETHER THE PARENT WHO IS INCARCERATED HAS ACTED OUT
19 OF CONCERN FOR THE CHILD, INCLUDING COMMUNICATING WITH THE
20 CHILD;

21 (II) WHETHER THE PARENT WHO IS INCARCERATED HAS MADE AN
22 EFFORT TO COMPLY WITH THE PARENT'S TREATMENT PLAN;

23 (III) ANY INFORMATION PROVIDED BY INDIVIDUALS OR AGENCIES
24 IN A REASONABLE POSITION TO ASSIST THE COURT IN ITS DECISION;

25 (IV) LIMITATIONS BEYOND THE CONTROL OF THE PARENT WHO IS
26 INCARCERATED TO ACCESS FAMILY SUPPORT PROGRAMS, THERAPEUTIC
27 SERVICES, FAMILY TIME OPPORTUNITIES, TELEPHONE, MAIL, OR ATTORNEY

1 REPRESENTATION, OR TO ATTEND AND MEANINGFULLY PARTICIPATE IN
2 COURT PROCEEDINGS; AND

3 (V) WHETHER THE INVOLVEMENT OF THE PARENT WHO IS
4 INCARCERATED IN THE CHILD'S LIFE SERVES THE CHILD'S BEST INTERESTS.
5 THE COURT SHALL NOT FIND THAT THE PARENT'S INCARCERATION IS THE
6 SOLE REASON THAT A RELATIONSHIP WITH THE PARENT IS NOT IN THE
7 CHILD'S BEST INTERESTS.

8 **SECTION 7.** In Colorado Revised Statutes, 19-3-604, **repeal**
9 (1)(b)(III); and **add** (1.5) as follows:

10 **19-3-604. Criteria for termination.** (1) The court may order a
11 termination of the parent-child legal relationship upon the finding by clear
12 and convincing evidence of any one of the following:

13 (b) That the child is adjudicated dependent or neglected and the
14 court finds that an appropriate treatment plan cannot be devised to
15 address the unfitness of the parent or parents. In making such a
16 determination, the court shall find one of the following as the basis for
17 unfitness:

18 ~~(III) Long-term confinement of the parent of such duration that~~
19 ~~the parent is not eligible for parole for at least six years after the date the~~
20 ~~child was adjudicated dependent or neglected or, in a county designated~~
21 ~~pursuant to section 19-1-123, if the child is under six years of age at the~~
22 ~~time a petition is filed in accordance with section 19-3-501 (2), the~~
23 ~~long-term confinement of the parent of such duration that the parent is not~~
24 ~~eligible for parole for at least thirty-six months after the date the child~~
25 ~~was adjudicated dependent or neglected and the court has found by clear~~
26 ~~and convincing evidence that no appropriate treatment plan can be~~
27 ~~devised to address the unfitness of the parent or parents;~~

1 (1.5) IN DETERMINING WHETHER THE TREATMENT PLAN APPROVED
2 BY THE COURT HAS NOT BEEN REASONABLY COMPLIED WITH BY THE
3 PARENT PURSUANT TO SUBSECTION (1)(c)(I) OF THIS SECTION, IF THE
4 PARENT IS INCARCERATED IN A DEPARTMENT OF CORRECTIONS FACILITY,
5 A PRIVATE CORRECTIONAL FACILITY UNDER CONTRACT WITH THE
6 DEPARTMENT OF CORRECTIONS, OR A JAIL, THE COURT SHALL ALSO
7 CONSIDER WHETHER LIMITATIONS BEYOND THE CONTROL OF THE PARENT
8 CAUSED BY INCARCERATION INHIBITED THE PARENT'S ABILITY TO COMPLY
9 WITH THE TREATMENT PLAN. SUCH LIMITATIONS MAY INCLUDE ACCESS TO
10 COMMUNICATION WITH THE COURT OR COUNTY DEPARTMENT, ACCESS TO
11 COURT-ORDERED TREATMENT OR SERVICES, OR ACCESS TO FAMILY TIME
12 OR COMMUNICATION WITH THE CHILD.

13 **SECTION 8.** In Colorado Revised Statutes, 19-3-702, **amend**
14 (4)(e)(III) and (4)(e)(IV); and **add** (4)(e)(V) as follows:

15 **19-3-702. Permanency hearing.** (4) (e) If the court finds that
16 there is not a substantial probability that the child or youth will be
17 returned to a parent or legal guardian within six months and the child or
18 youth appears to be adoptable and meets the criteria for adoption in
19 section 19-5-203, the court may order the county department of human or
20 social services to show cause why it should not file a motion to terminate
21 the parent-child legal relationship pursuant to part 6 of this article 3.
22 Cause may include, but is not limited to, any of the following conditions:

23 (III) The child's foster parents are unable to adopt the child
24 because of exceptional circumstances that do not include an
25 unwillingness to accept legal responsibility for the child. The foster
26 parents must be willing and capable of providing the child with a stable
27 and permanent environment, and it must be shown that removal of the

1 child from the physical custody of his or her foster parents would be
2 seriously detrimental to the emotional well-being of the child. ~~or~~

3 (IV) The criteria for termination in section 19-3-604 have not yet
4 been met; OR

5 (V) IF THE PARENT:

6 (A) IS INCARCERATED IN A DEPARTMENT OF CORRECTIONS
7 FACILITY, A PRIVATE CORRECTIONAL FACILITY UNDER CONTRACT WITH
8 THE DEPARTMENT OF CORRECTIONS, OR A JAIL; DETAINED BY THE UNITED
9 STATES DEPARTMENT OF HOMELAND SECURITY; OR DEPORTED; AND

10 (B) HAS A MEANINGFUL AND SAFE RELATIONSHIP WITH THE CHILD
11 OR YOUTH WHILE INCARCERATED, DETAINED, OR DEPORTED. WHEN
12 DETERMINING WHETHER A PARENT WHO IS INCARCERATED HAS
13 MAINTAINED A MEANINGFUL AND SAFE RELATIONSHIP WITH THE CHILD OR
14 YOUTH, THE COURT SHALL CONSIDER THE FACTORS DESCRIBED IN SECTION
15 19-3-508 (9)(b).

16 **SECTION 9.** In Colorado Revised Statutes, 16-11-102, **amend**
17 (4); and **add** (1.2) as follows:

18 **16-11-102. Presentence or probation investigation.** (1.2) EACH
19 PRESENTENCE REPORT MUST INCLUDE INFORMATION INDICATING WHETHER
20 THE PERSON IS A RESPONDENT IN AN OPEN DEPENDENCY AND NEGLECT
21 PROCEEDING PURSUANT TO ARTICLE 3 OF TITLE 19.

22 (4) The court, with the concurrence of the defendant and the
23 prosecuting attorney, may dispense with the presentence examination and
24 report; except that the information required by section 18-1.3-603 (2)
25 ~~C.R.S.~~ AND SUBSECTION (1.2) OF THIS SECTION and a victim impact
26 statement ~~shall~~ MUST be made in every case. The amount of restitution
27 ~~shall~~ MUST be ordered pursuant to section 18-1.3-603 ~~C.R.S.~~, and article

1 18.5 of this ~~title~~ TITLE 16 and endorsed upon the mittimus. THE
2 INFORMATION REQUIRED PURSUANT TO SUBSECTION (1.2) OF THIS SECTION
3 MUST BE INCLUDED ON THE MITTIMUS.

4 **SECTION 10.** In Colorado Revised Statutes, **add** 17-42-105 as
5 follows:

6 **17-42-105. Incarcerated parents - notification to court -**
7 **mittimus - family services coordinator - report - policies.**

8 (1) (a) PURSUANT TO SECTION 19-3-502 (5.5)(c), A REPRESENTATIVE OF
9 THE FACILITY WHERE THE RESPONDENT IS INCARCERATED SHALL, WHEN
10 POSSIBLE, INFORM THE COURT NOT LESS THAN SEVENTY-TWO HOURS PRIOR
11 TO A DEPENDENCY AND NEGLECT PROCEEDING IF IT CANNOT FACILITATE
12 TRANSPORTATION OF THE RESPONDENT TO A PROCEEDING. A
13 REPRESENTATIVE OF THE FACILITY WHERE THE RESPONDENT IS
14 INCARCERATED SHALL INFORM THE COURT IF THE RESPONDENT REFUSES
15 TRANSPORTATION AND THE CIRCUMSTANCES OF THE REFUSAL AS SOON AS
16 PRACTICABLE.

17 (b) IF THE FACILITY WHERE THE RESPONDENT IS INCARCERATED
18 CANNOT FACILITATE TRANSPORTATION OF THE RESPONDENT TO A HEARING
19 PURSUANT TO SECTION 19-3-502 (5.5), THE FACILITY SHALL MAKE EVERY
20 REASONABLE EFFORT TO FACILITATE THE RESPONDENT'S PARTICIPATION
21 AT THE HEARING THROUGH AUDIO-VISUAL COMMUNICATION TECHNOLOGY,
22 SO LONG AS THE REQUIREMENTS PURSUANT TO SECTION 19-3-502
23 (5.5)(b)(I) ARE SATISFIED.

24 (2) IF A PERSON'S MITTIMUS CONTAINS INFORMATION INDICATING
25 THAT THE PERSON IS A PARENT TO A CHILD AND IS A PARTY TO AN OPEN
26 DEPENDENCY AND NEGLECT PROCEEDING PURSUANT TO ARTICLE 3 OF
27 TITLE 19, THE DEPARTMENT SHALL:

1 (a) CONSIDER PLACING THE PERSON IN A CORRECTIONAL FACILITY
2 THAT FACILITATES OPPORTUNITIES FOR FAMILY TIME AT THE FACILITY
3 BETWEEN THE CHILD AND PARENT, UNLESS THE COURT DETERMINES THAT
4 FAMILY TIME DOES NOT SERVE THE CHILD'S BEST INTERESTS, OR A
5 PROTECTION ORDER PROHIBITS CONTACT BETWEEN THE CHILD AND THE
6 PARENT; AND

7 (b) NOTIFY THE COUNTY DEPARTMENT OF HUMAN SERVICES
8 WHERE THE DEPENDENCY AND NEGLECT CASE IS FILED OF THE LOCATION
9 OF THE PARENT'S CORRECTIONAL FACILITY AND THE CONTACT
10 INFORMATION FOR THE DESIGNATED INDIVIDUAL WITHIN THE LEGAL
11 SERVICES UNIT NOT LATER THAN FOURTEEN DAYS AFTER THE PARENT'S
12 ARRIVAL AT THE FACILITY.

13 (3) THE DEPARTMENT SHALL ENSURE CHILDREN AND PARENTS
14 HAVE ACCESS TO OPPORTUNITIES THAT FACILITATE CONTINUED
15 RELATIONSHIPS BETWEEN CHILDREN AND THEIR PARENTS WHO ARE
16 INCARCERATED, REGARDLESS OF WHETHER THEY ARE A RESPONDENT IN A
17 DEPENDENCY AND NEGLECT PROCEEDING. THE OPPORTUNITIES MUST
18 INCLUDE:

19 (a) EVENTS AT THE FACILITY THAT ARE CHILD-FOCUSED AND ARE
20 PUBLICIZED PRIOR TO THE EVENT;

21 (b) FACILITATING ACCESS TO TREATMENT AND SERVICES TO
22 COMPLETE ANY TREATMENT PLAN FOR A PARENT WHO IS A PARTY TO A
23 PENDING DEPENDENCY AND NEGLECT PROCEEDING; AND

24 (c) FACILITATING OPPORTUNITIES FOR A PARENT TO PARTICIPATE
25 IN THE PARENT'S CHILD'S LIFE THROUGH AUDIO-VISUAL COMMUNICATION
26 TECHNOLOGY, INCLUDING SCHOOL CONFERENCES, MEDICAL
27 CONSULTATIONS, AND CELEBRATIONS.

1 (4) THE DEPARTMENT SHALL DESIGNATE AT LEAST ONE
2 INDIVIDUAL WITHIN THE LEGAL SERVICES UNIT TO ASSIST IN FAMILY
3 SERVICES COORDINATION. THE INDIVIDUAL'S DUTIES INCLUDE THE
4 COORDINATION AND SUPERVISION OF THE OPPORTUNITIES DESCRIBED IN
5 SUBSECTION (3) OF THIS SECTION, AND SERVING AS A LIAISON BETWEEN
6 THE DEPARTMENT, SHERIFFS, STATE AND COUNTY DEPARTMENTS OF
7 HUMAN SERVICES, AND AGENCIES CONCERNING MATTERS RELATED TO
8 CHILDREN AND THEIR PARENTS WHO ARE INCARCERATED.

9 (5) (a) ON OR BEFORE MARCH 1, 2024, AND ON OR BEFORE MARCH
10 1 EACH YEAR THEREAFTER, THE EXECUTIVE DIRECTOR OF THE
11 DEPARTMENT SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF
12 THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
13 COMMITTEES, CONCERNING PARENTS WHO ARE INCARCERATED. THE
14 DEPARTMENT SHALL COOPERATE WITH THE STATE DEPARTMENT OF HUMAN
15 SERVICES, COUNTY DEPARTMENTS OF HUMAN SERVICES, AND SHERIFFS AS
16 NECESSARY TO IDENTIFY THE INFORMATION REQUIRED FOR THE REPORT.
17 AT A MINIMUM, THE REPORT MUST SPECIFY PERSONS INCARCERATED IN
18 DEPARTMENT FACILITIES, PRIVATE CORRECTIONAL FACILITIES UNDER
19 CONTRACT WITH THE DEPARTMENT, AND JAILS, DURING THE PRECEDING
20 CALENDAR YEAR WHO WERE A PARTY TO AN OPEN DEPENDENCY AND
21 NEGLECT PROCEEDING, IN TOTAL AND DISAGGREGATED BY RACE OR
22 ETHNICITY, SEX, ANY KNOWN DISABILITY, AND AGE.

23 (b) ON OR BEFORE MARCH 1, 2024, AND ON OR BEFORE MARCH 1
24 EACH YEAR THEREAFTER, THE DEPARTMENT SHALL MAKE THE REPORT
25 PUBLICLY AVAILABLE ON ITS WEBSITE.

26 (c) THE DEPARTMENT SHALL ENSURE THE REPORT DOES NOT
27 DISCLOSE ANY INFORMATION IN VIOLATION OF APPLICABLE STATE AND

1 FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF INDIVIDUALS'
2 INFORMATION.

3 (d) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136
4 (11)(a)(I), THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS
5 SUBSECTION (5) CONTINUES INDEFINITELY.

6 (6) THE DEPARTMENT SHALL ENSURE THAT DEPARTMENTAL
7 POLICIES:

8 (a) FACILITATE COMMUNICATION AND FAMILY TIME BETWEEN
9 CHILDREN AND THEIR PARENTS WHO ARE INCARCERATED IN A
10 DEPARTMENT FACILITY OR A PRIVATE CORRECTIONAL FACILITY UNDER
11 CONTRACT WITH THE DEPARTMENT, REGARDLESS OF WHETHER THEY ARE
12 A RESPONDENT IN A DEPENDENCY AND NEGLECT PROCEEDING. THE
13 POLICIES MUST INCLUDE THE PROVISION OF ACCESS TO A TELEPHONE AND
14 AUDIO-VISUAL COMMUNICATION TECHNOLOGY AND ACCESS TO PHYSICAL
15 SPACE AND RESOURCES FOR IN-PERSON FAMILY TIME. THE PURPOSE OF THE
16 POLICIES IS TO NORMALIZE, TO THE EXTENT POSSIBLE, THE CHILD AND
17 PARENT RELATIONSHIP, TO AID AND ENCOURAGE HEALTHY CHILD
18 DEVELOPMENT, AND REDUCE RECIDIVISM AND INTERGENERATIONAL
19 INCARCERATION. THE POLICIES MUST CONSIDER THE BENEFITS TO THE
20 CHILD THROUGH MAINTAINING CONTACT WITH THE CHILD'S PARENT AND
21 THE PARENT'S WILLINGNESS AND DESIRE TO MAINTAIN A MEANINGFUL
22 RELATIONSHIP WITH THE CHILD, AND ASSIST IN THE REUNIFICATION OF THE
23 CHILD AND PARENT, WHEN APPROPRIATE. THE POLICIES MUST PRIORITIZE
24 ACCESS TO SERVICES PROVIDED BY THE DEPARTMENT FOR PARENTS WITH
25 OPEN DEPENDENCY AND NEGLECT CASES; AND

26 (b) ARE NECESSARY TO COMPLY WITH THE REQUIREMENTS OF THIS
27 SECTION.

1 **SECTION 11. Effective date.** This act takes effect January 1,
2 2024.

3 **SECTION 12. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, or safety.