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Final Fiscal Note

Drafting Number: LLS 23-0745
Prime Sponsors: Rep. Evans

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Bill Status: Deemed Lost
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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 would have prohibited the Department of Human Services from placing 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 increases state and local government expenditures on an ongoing basis beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of \$53.3 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was deemed postponed indefinitely by the House Appropriations Committee on May 9, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 23-1160

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

This bill prohibits the Department of Human Services (CDHS) from entering a person suspected of child abuse or neglect into state child welfare data system (TRAILS) until after:

- the CDHS sends a notice to the person suspected of child abuse or neglect of its intention to put the individual into TRAILS; and
- the person suspected of child abuse or neglect requests a hearing in front of an administrative law judge (ALJ) within 90 days, 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. 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 that is proportionate to the severity of the crime.

The bill also prevents a finding from being entered against a person under 13 years old and allows agencies to keep records of unsubstantiated reports to aid in future assessments, but not to release them for the public or employment purposes.

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.

Assumptions

Concerning the administrative hearings required to determine if child abuse and neglect findings can be entered into TRAILS by the CDHS, the fiscal note makes the following assumptions.

- Each year 109,200 written notices will be sent to individuals involved in a report of child abuse or neglect and there will be approximately 7,700 additional hearings in front of an ALJ.
- For each hearing, CDHS will require legal services from the Department of Law (DOL) at a cost of \$2,912 per hearing, on average.
- 75 percent of persons with hearings will require counsel from the Office of Respondent Parents’ Counsel (ORPC) and each case will require about 27.5 hours of legal representation at a cost of \$85 per hour.

State Expenditures

The bill increases state expenditures in CDHS, DPA, and ORPC by about \$53.3 million in FY 2023-24 and \$64.4 million in FY 2024-25, paid from the General Fund. It may also increase workload for the Judicial Department and require capital construction or leased space beginning FY 2023-24. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 23-1160**

	FY 2023-24	FY 2024-25
Department of Human Services		
Personal Services	\$5,749,091	\$7,665,457
Operating Expenses	\$145,125	\$174,150
Capital Outlay Costs	\$860,430	-
Employee insurance and supplemental retirement	\$1,627,252	\$2,168,921
Legal Services	\$18,685,333	\$22,422,400
Mailing Costs	\$68,796	\$68,796
FTE – Personal Services	96.8 FTE	129.0 FTE
FTE – Legal Services	98.2 FTE	117.8 FTE
CDHS Subtotal	\$27,136,027	\$32,499,724

**Table 2
Expenditures Under HB 23-1160 (Cont.)**

Department of Personnel and Administration		
Personal Services	\$11,726,163	\$15,634,884
Operating Expenses	\$195,075	\$234,225
Capital Outlay Costs	\$1,153,910	-
Employee insurance and supplemental retirement	\$2,563,476	\$3,418,344
FTE – Personal Services	130.1 FTE	173.5 FTE
DPA Subtotal	\$15,638,624	\$19,287,453
Office of Respondent Parents’ Counsel		
Attorney Representation	\$10,533,762	\$12,640,514
ORPC Subtotal	\$10,533,762	\$12,640,514
Total	\$53,308,413	\$64,427,691
Total FTE	226.9 FTE	302.5 FTE

Department of Human Services. The bill will increase state expenditures in the DHS as shown in Table 2 above. These costs include additional staff, legal services, administrative hearing costs, and mailing costs.

- **Staffing costs.** This bill will require 129 FTE of social services specialists and other staff beginning in FY 2023-24 to provide written notification and compile other information for persons requesting a hearing. 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 that each FTE can process 14 written notifications and compile 5 information packets per hour. 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. First-year 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 200,000 hours of legal services for the Department of Law to represent the DHS in the initial TRAILS hearings. Legal services are provided by the at a rate of \$105.75 per hour. Costs in the Department of Law are reappropriated from DHS and are prorated for a September 1 start date.
- **Administrative hearings.** The DHS will have costs to pay for administrative hearings conducted by the Office of Administrative Courts in Department of Personnel and Administration. These costs are outlined on the next page of this fiscal note.
- **Mailing.** Costs will increase to send notices through certified mail and to print reports, as required by the bill. The fiscal note assumes that mailing 2,100 notifications per week will cost \$0.63 each.

Office of Administrative Courts (DPA). The DPA will require an additional 125.0 FTE of ALJs starting in FY 2023-24 to hear cases concerning the entry of child abuse and neglect cases into TRAILS. This additional staff also includes supervising judges. In addition, the DPA will require 48.0 FTE technicians to manage the court docket and provide administrative support to the ALJs. The fiscal note assumes 28.7 hours of an ALJ and 14 hours of a technician are required per hearing, determined based on DPA's current number of cases and the length of cases. Staffing costs reflect standard operating and capital outlay costs. Costs in the DPA are reappropriated from DHS and first-year costs are prorated for a September 1 start date and the General Fund paydate shift.

Office of Respondent Parents' Counsel. Expenditures in ORPC will increase by to provide counsel to indigent persons at hearings regarding the entry of case information into TRAILS. The fiscal note assumes an attorney rate of \$85 an hour. The number of cases in which counsel will be required and the hours per cases are outlined in the Assumptions section. The first year of costs are prorated for a September 1 start date.

Department of Law. In addition to legal services to DHS in administrative courts detailed above, if parties were to appeal the ALJ decision to district court, additional legal services will be required for these 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.

Judicial Department. To the extent that 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.

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 does not include costs for leased space or any capital construction. It is assumed that affected departments will request any required funding through the annual budget process.

Employee insurance and supplemental retirement. 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 and supplemental employee retirement payments for the Department of Human Services and the Department of Personnel and Administration, are estimated to be \$4.2 million in FY 2023-24 and \$5.6 million in FY 2024-25.

Local Government

Starting in FY 2023-24, expenditures in county departments of human services may increase to attend more hearings. An exact cost or level of impact to each county cannot be determined at this time.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires the following General Fund appropriations:

- \$42,774,651 to the Department of Human Services and 96.8 FTE. Of this amount \$18,685,33 is reappropriated to the Department of Law with an additional 98.2 FTE and \$15,638,624 is reappropriated to the Department of Personnel and Administration and an additional 130.1 FTE; and
- \$10,533,762 to the Office of Respondent Parents' Counsel.

State and Local Government Contacts

Counties
Law

Human Services
Personnel

Information Technology