

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

LLS NO. 23-0745.01 Shelby Ross x4510

HOUSE BILL 23-1160

HOUSE SPONSORSHIP

Evans, Epps

SENATE SPONSORSHIP

(None),

House Committees
Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS BEFORE ADDING A PERSON SUSPECTED**
102 **OF CHILD ABUSE OR NEGLECT TO THE AUTOMATED CHILD**
103 **WELFARE SYSTEM.**

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>.)

Before adding a person suspected of child abuse or neglect (person) to the automated child welfare system (system), the bill requires the department of human services (state department) to provide a written notice to the person of the opportunity for a hearing. The person must request a hearing no later than 90 days after the date of the written notice.

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.

UNOFFICIAL PREAMENDED VERSION

The bill prohibits the state department from releasing a finding of a person responsible for child abuse or neglect or the state department or a law enforcement entity from releasing information about the person or the allegations against the person to a third party until all administrative appeals are either exhausted or waived.

When a hearing is requested, the bill requires an administrative law judge (ALJ) to contact the parties to schedule the hearing no later than 120 days after the date the person requests a hearing.

If the ALJ finds that there is sufficient evidence to support the state department's allegations, the bill requires:

- The state department to enter the substantiated findings against the person into the system for a period of time proportionate to the severity of the findings; and
- Any law enforcement entity that created a record of the alleged incident of child abuse or neglect to retain the record pursuant to certain restrictions.

If the ALJ finds there is insufficient evidence to support the state department's allegations, the bill requires:

- The ALJ to order the state department to amend the state department's findings accordingly and order that allegation not be entered into the system; and
- Any law enforcement entity that created a record of the alleged incident of child abuse or neglect to mark the record as unsubstantiated and retain and release the record pursuant to certain restrictions.

The bill prohibits a finding from being entered against a person who is less than 13 years of age.

The bill authorizes the state department, county departments of human and social services (county departments), and law enforcement entities to retain information concerning unsubstantiated reports of child abuse and neglect in casework files to assist in future risk and safety assessments; except that the state department, county departments, and law enforcement entities shall not release any information contained in any records that are accessible to the public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 19-3-313.3 as
3 follows:

4 **19-3-313.3. State department automated child welfare system**

1 **- written notice - no release of records until appeals exhausted -**

2 **definitions.** (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (a) "AUTOMATED CHILD WELFARE SYSTEM" MEANS THE STATE
5 DEPARTMENT OF HUMAN SERVICES AUTOMATED CHILD WELFARE SYSTEM.

6 (b) "PERSON" MEANS A PERSON, INCLUDING A CHILD OR YOUTH,
7 FOUND RESPONSIBLE FOR AN INCIDENT OF CHILD ABUSE OR NEGLECT BY A
8 COUNTY DEPARTMENT.

9 (2) **Written notice of opportunity for appeal.** (a) A COUNTY
10 DEPARTMENT SHALL PROVIDE A WRITTEN NOTICE PURSUANT TO SECTION
11 19-3-313.5 (3) TO THE PERSON OF THE OPPORTUNITY FOR A HEARING
12 BEFORE A STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE. THE WRITTEN
13 NOTICE MUST BE SENT TO THE PERSON AND ANY COUNSEL OF RECORD FOR
14 THE PERSON IN A RELATED DEPENDENCY AND NEGLECT CASE NO LATER
15 THAN FOURTEEN DAYS AFTER THE DATE THE COUNTY DEPARTMENT
16 ENTERED ITS FINDINGS. IF THE PERSON IS A MINOR, THE WRITTEN NOTICE
17 MUST BE SENT TO THE MINOR, THE MINOR'S PARENT OR LEGAL GUARDIAN,
18 AND ANY GUARDIAN AD LITEM OR COUNSEL FOR YOUTH, AS DEFINED IN
19 SECTION 13-91-103, APPOINTED IN A DEPENDENCY AND NEGLECT,
20 CRIMINAL, OR DELINQUENCY CASE. IF THE PERSON IS ENROLLED IN THE
21 FOSTER YOUTH IN TRANSITION PROGRAM PURSUANT TO PART 3 OF ARTICLE
22 7 OF TITLE 19, THE WRITTEN NOTICE MUST BE SENT TO ANY GUARDIAN AD
23 LITEM OR COUNSEL FOR YOUTH ASSIGNED TO THE YOUTH. THE WRITTEN
24 NOTICE MUST INCLUDE:

- 25 (I) A CLEAR STATEMENT THAT INCLUDES:
- 26 (A) THE TYPE AND SEVERITY OF THE ABUSE OR NEGLECT;
- 27 (B) THE DATE OF THE REFERRAL TO THE COUNTY DEPARTMENT OF

1 HUMAN OR SOCIAL SERVICES;

2 (C) THE NAME OF THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL
3 SERVICES THAT COMPLETED THE INVESTIGATION OF CHILD ABUSE OR
4 NEGLECT;

5 (D) THE DATE THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL
6 SERVICES MADE THE FINDING OF CHILD ABUSE OR NEGLECT IN THE STATE
7 AUTOMATED CHILD WELFARE SYSTEM;

8 (E) INFORMATION CONCERNING PERSONS OR AGENCIES THAT HAVE
9 ACCESS TO THE FINDING OF CHILD ABUSE OR NEGLECT;

10 (F) THE CIRCUMSTANCES UNDER WHICH INFORMATION CONTAINED
11 IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM WILL BE PROVIDED
12 TO OTHER INDIVIDUALS OR AGENCIES;

13 (G) HOW TO ACCESS INFORMATION ON THE COUNTY DEPARTMENT
14 OF HUMAN OR SOCIAL SERVICE'S DISPUTE RESOLUTION PROCESS;

15 (H) INFORMATION DETAILING THE RIGHT OF THE PERSON TO
16 REQUEST A STATE-LEVEL APPEAL;

17 (I) A BLANK COPY OF THE STATE DEPARTMENT'S APPROVED APPEAL
18 FORM;

19 (J) NOTICE THAT THE SCOPE OF AN APPEAL IS LIMITED TO
20 CHALLENGES THAT THE FINDINGS OF CHILD ABUSE OR NEGLECT ARE NOT
21 SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE OR THAT THE
22 ACTIONS FOUND TO BE CHILD ABUSE OR NEGLECT DO NOT MEET THE LEGAL
23 DEFINITIONS OF CHILD ABUSE OR NEGLECT PURSUANT TO SECTION
24 19-1-103; AND

25 (K) A FULL EXPLANATION OF THE PROCESS AND TIMELINES FOR A
26 STATE-LEVEL APPEAL.

27 (II) THE CONSEQUENCES OF BEING ADDED TO THE AUTOMATED

1 CHILD WELFARE SYSTEM, INCLUDING POSSIBLE NEGATIVE IMPACTS ON THE
2 PERSON'S EMPLOYMENT, LICENSURE, AND ABILITY TO HAVE FUTURE
3 CONTACT WITH CHILDREN, INCLUDING VOLUNTEER OR SCHOOL ACTIVITIES;

4 (III) INFORMATION ABOUT HOW THE PERSON MAY OBTAIN, AT NO
5 COST TO THE PERSON, A COMPLETE COPY OF THE RECORD THAT WILL BE
6 ADDED TO THE AUTOMATED CHILD WELFARE SYSTEM, SUBJECT TO ANY
7 REDACTIONS REQUIRED BY LAW;

8 (IV) A COMPLETE COPY OF THE LAW ENFORCEMENT RECORD, IF
9 ANY, OF THE ALLEGED INCIDENT OF CHILD ABUSE OR NEGLECT; AND

10 (V) INFORMATION ABOUT THE OFFICE OF THE CHILD PROTECTION
11 OMBUDSMAN CREATED IN SECTION 19-3.3-102.

12 (b) THE PERSON MUST SUBMIT AN APPEAL WITHIN NINETY DAYS
13 AFTER THE DATE OF THE WRITTEN NOTICE USING THE PROCEDURES SET
14 FORTH IN STATE DEPARTMENT RULES.

15 (3) **No release of records until appeals exhausted.** THE STATE
16 DEPARTMENT SHALL NOT RELEASE A FINDING OF A PERSON RESPONSIBLE
17 FOR CHILD ABUSE OR NEGLECT AND THE STATE DEPARTMENT SHALL
18 NOT RELEASE INFORMATION ABOUT THE PERSON OR INFORMATION ABOUT
19 THE ALLEGATIONS AGAINST THE PERSON TO A THIRD PARTY UNTIL ALL
20 ADMINISTRATIVE APPEALS ARE EITHER EXHAUSTED OR WAIVED. THE
21 STATE DEPARTMENT MAY RESOLVE AN APPEAL THROUGH SETTLEMENT
22 NEGOTIATIONS WITH THE PERSON. IF A SETTLEMENT IS REACHED, THE
23 SETTLEMENT IS A WAIVER OF FURTHER ADMINISTRATIVE APPEALS. AS
24 PART OF THE SETTLEMENT NEGOTIATION PROCESS, THE STATE
25 DEPARTMENT MAY ENTER INTO AN AGREEMENT TO NOT RELEASE THE
26 FINDINGS OR TO MODIFY, OVERTURN, OR EXPUNGE REPORTS AS REFLECTED
27 IN THE STATE PORTION OF THE AUTOMATED CHILD WELFARE SYSTEM.

1 NOTHING IN THIS SECTION PROHIBITS A STATE REVIEW TEAM FROM
2 SHARING INFORMATION AS PART OF THE TEAM'S DUTY IN CONDUCTING AN
3 INSTITUTIONAL ABUSE AND CHILD FATALITY REVIEW REQUIRED PURSUANT
4 TO STATE AND FEDERAL LAW.

5 (4) **Hearing procedures.** (a) IF A PERSON REQUESTS A HEARING
6 PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT
7 ADMINISTRATIVE LAW JUDGE SHALL CONTACT THE PARTIES TO SCHEDULE
8 A DATE FOR THE HEARING, WHICH MUST BE HELD NO LATER THAN ONE
9 HUNDRED TWENTY DAYS AFTER THE DATE THE PERSON REQUESTS A
10 HEARING.

11 (b) A HEARING HELD PURSUANT TO THIS SECTION IS CONSIDERED
12 A CONTESTED HEARING AND IS ELIGIBLE FOR APPEAL.

13 (c) PRIOR TO THE HEARING, THE STATE DEPARTMENT SHALL
14 PROVIDE THE PERSON WITH THE FULL INVESTIGATIVE FILE AND ANY
15 EXCULPATORY EVIDENCE IN THE STATE DEPARTMENT'S POSSESSION OR
16 CONTROL AT NO COST TO THE PERSON, SUBJECT TO ANY REDACTION
17 REQUIRED BY LAW.

18 (d) AT THE HEARING, THE PERSON SUSPECTED OF CHILD ABUSE OR
19 NEGLECT HAS THE RIGHT TO:

20 (I) BE REPRESENTED BY COUNSEL, IF DESIRED. COUNSEL IS ONLY
21 APPOINTED PURSUANT TO THIS SECTION. IF COUNSEL HAS BEEN APPOINTED
22 TO REPRESENT THE PERSON THROUGH THE OFFICE OF RESPONDENT
23 PARENTS' COUNSEL ESTABLISHED IN SECTION 13-92-103, THE PERSON'S
24 COUNSEL MAY CONTINUE REPRESENTING THE PERSON THROUGHOUT THE
25 HEARING REQUESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION IF
26 APPROVED BY THE OFFICE OF RESPONDENT PARENTS' COUNSEL. IF COUNSEL
27 FOR YOUTH HAS BEEN APPOINTED TO REPRESENT THE YOUTH IN A

1 DEPENDENCY AND NEGLECT OR FOSTER YOUTH IN TRANSITION PROGRAM
2 CASE THROUGH THE OFFICE OF THE CHILD'S REPRESENTATIVE ESTABLISHED
3 IN SECTION 13-91-102, THE YOUTH'S COUNSEL FOR YOUTH MAY CONTINUE
4 REPRESENTING THE YOUTH THROUGHOUT THE HEARING REQUESTED
5 PURSUANT TO SUBSECTION (2) OF THIS SECTION IF APPROVED BY THE
6 OFFICE OF THE CHILD'S REPRESENTATIVE. IF A GUARDIAN AD LITEM IS
7 APPOINTED TO REPRESENT THE BEST INTERESTS OF THE PERSON IN A
8 DEPENDENCY AND NEGLECT, CRIMINAL, OR DELINQUENCY CASE THROUGH
9 THE OFFICE OF THE CHILD'S REPRESENTATIVE, THE PERSON'S GUARDIAN AD
10 LITEM MAY CONTINUE REPRESENTING THE BEST INTERESTS OF THE PERSON
11 THROUGHOUT THE HEARING REQUESTED PURSUANT TO SUBSECTION (2) OF
12 THIS SECTION IF APPROVED BY THE OFFICE OF THE CHILD'S
13 REPRESENTATIVE.

14 (II) PRESENT SWORN EVIDENCE, LAW, OR RULES RELATED TO THE
15 ALLEGATIONS; AND

16 (III) SUBPOENA WITNESSES, CROSS-EXAMINE THE STATE
17 DEPARTMENT'S WITNESSES, OBJECT TO EVIDENCE INTRODUCED BY THE
18 STATE DEPARTMENT, AND MAKE AN OPENING STATEMENT AND CLOSING
19 ARGUMENT.

20 (e) WITHIN THIRTY-FIVE DAYS AFTER THE CONCLUSION OF THE
21 HEARING, THE STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE SHALL
22 ENTER AN ORDER CONTAINING THE JUDGE'S FINDINGS OF FACT AND LAW
23 BASED UPON [REDACTED] A PREPONDERANCE OF THE EVIDENCE.

24 [REDACTED]

25 [REDACTED]

26 (f) A FINDING SHALL NOT BE ENTERED AGAINST A PERSON WHO IS
27 UNDER THIRTEEN YEARS OF AGE, OR AGAINST A PERSON WHO IS THIRTEEN

1 TO EIGHTEEN YEARS OF AGE UNLESS THE PERSON IS A PARENT OF THE
2 ALLEGED VICTIM OR THE LEVEL OF THE FINDING IS SEVERE, EGREGIOUS,
3 NEAR-FATAL, OR FATAL.

4

5 (5) **Retention and unauthorized release of unsubstantiated**
6 **reports.** THE STATE DEPARTMENT AND COUNTY DEPARTMENTS MAY
7 RETAIN INFORMATION CONCERNING UNSUBSTANTIATED REPORTS OF CHILD
8 ABUSE AND NEGLECT IN CASEWORK FILES AND THE AUTOMATED CHILD
9 WELFARE SYSTEM TO ASSIST IN FUTURE ASSESSMENTS; EXCEPT THAT THE
10 STATE DEPARTMENT AND COUNTY DEPARTMENTS SHALL NOT
11 RELEASE ANY OF THE INFORMATION CONTAINED IN ANY RECORDS AND
12 REPORTS THAT ARE ACCESSIBLE TO THE GENERAL PUBLIC OR ARE USED FOR
13 PURPOSES OF EMPLOYMENT OR BACKGROUND CHECKS IN CASES
14 DETERMINED TO BE UNSUBSTANTIATED OR FALSE PURSUANT TO
15 SUBSECTION (4)(f) OF THIS SECTION.

16 (6) NOTHING IN THIS SECTION ALTERS THE REQUIREMENTS
17 CONCERNING THE INVESTIGATION OR REPORTING OF ANY SUSPICIOUS
18 INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR
19 FATALITY, OR FATALITY OF A CHILD DUE TO ABUSE OR NEGLECT PURSUANT
20 TO SECTION 26-1-139.

21 (7) **Rules.** NO LATER THAN JULY 1, 2024, THE STATE BOARD, IN
22 COLLABORATION WITH COUNTY DEPARTMENTS, THE OFFICE OF THE CHILD'S
23 REPRESENTATIVE, AND THE OFFICE OF RESPONDENT PARENTS' COUNSEL,
24 SHALL PROMULGATE RULES AS NECESSARY FOR THE IMPLEMENTATION OF
25 THIS SECTION AND TO PROMOTE FAIRNESS AND EFFICIENCY IN THE APPEALS
26 PROCESS.

27 **SECTION 2. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly; except
3 that, if a referendum petition is filed pursuant to section 1 (3) of article V
4 of the state constitution against this act or an item, section, or part of this
5 act within such period, then the act, item, section, or part will not take
6 effect unless approved by the people at the general election to be held in
7 November 2024 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.