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Fiscal Note Memorandum

February 17, 2023

TO: Members of the House Public & Behavioral Health Committee

FROM: Shukria Maktabi, Fiscal Analyst
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SUBJECT: Fiscal Assessment of Proposed Amendment **HB1160_L.001**

This memorandum is an assessment of the fiscal impact of the attached proposed amendment L.001 to HB23-1160. This fiscal assessment is for the impact of the bill with inclusion of this amendment only. Any other added amendment could influence the fiscal impact.

Summary of Proposed Amendment

Amendment L.001 modifies the bill to clarify that counties and state departments can enter information of individuals suspected of child abuse or neglect into TRAILS, but findings are not reportable until all administrative appeals are exhausted or waived.

Within 14 days of entering substantiated findings into TRAILS, the state must provide written notice notifying the suspected person of the opportunity to appeal the decision. The individual has 90 days to request an appeal, or the opportunity to appeal is waived and the finding is considered reportable, unless the individual can provide a good reason for failing to respond within that time. Amendment L.001 allows a person to file an appeal through a dispute resolution process in CDHS or a hearing before an administrative law judge (ALJ). In the dispute resolution process, CDHS may enter into settlement negotiations where they can agree to not release findings or to modify, overturn, or expunge the report in TRAILS. If the individual chooses to appeal through a hearing and the ALJ does not find evidence in support of the state's decision, the finding is removed from TRAILS. If appeals occur through these processes, or the deadline to appeal passes without good reason, the finding becomes reportable.

Until the opportunity to appeal is exhausted or waived, the findings from county and state departments are not to be released for the purpose of employment or background checks. The findings can be kept to assist in future risk and safety assessments.

The amendment also requires relevant state agencies to establish rules by July 2024.

Fiscal Impact of Amendment

With the adoption of Amendment L.001, costs would significantly decrease in the CDHS, Department of Personnel and Administration (DPA), and Office of Respondent Parents' Counsel (ORPC) to \$590,328 in FY 2023-24 and \$399,155 in FY 2024-25. The changes to the fiscal impact are detailed below.

Department of Human Services

Staffing, legal services, and administrative hearing costs would reduce. However, there would be additional costs for updating TRAILS.

Staffing. With the adoption of Amendment L.001, CDHS would require significantly less staff than indicated in the initial fiscal note. With the amendment, CDHS will require:

- 3.0 FTE to send written notices to individuals and any counsel of record for all appealable findings, reduced from the fiscal note as necessary information can now be compiled using TRAILS; and
- 1.0 FTE to develop the resolution process as described in the amendment, as one does not currently exist at the state level.

Legal services and administrative hearings. Amendment L.001 eliminates the need for additional legal services in CDHS and for additional expenditures for administrative hearings conducted by the Office of Administrative Courts in the Department of Personnel and Administration that are included in the initial fiscal note. Costs for these items would remain at current levels, as the amended bill would not likely prompt an increase in appeals or hearings before an administrative law judge.

IT system changes. With Amendment L.001, CDHS would need to add additional reporting functionality in TRAILS, including creating new statuses for findings as either awaiting appeal or appeal expired. Programming costs are estimated at taking 1,820 work hours at \$157 per hour and 200 hours of maintenance in out years. TRAILS costs have a 35 percent federal match. This work would be conducted by the Office of Information Technology.

Office of Respondent Parents' Counsel

Based on the current low number of dependency and neglect proceedings that choose to appeal a child abuse or neglect finding in administrative courts, the costs for services from ORPC will become absorbable with the adoption of Amendment L.001.

Department of Law, Judicial Department, and Capital Construction

Workload will not be impacted for these departments with the adoption of Amendment L.001. Because the number of ALJ hearings are not expected to increase as a result of this amendment, it is unlikely that a greater number of appeals of ALJ decisions to trial courts would occur.

Due to the reduction in FTE required, capital projects are no longer required.

Bill’s Revised Fiscal Impact with Amendment

With Amendment L.001, the bill is will have the fiscal impact identified in Table 1 below. For FY 2023-24, the bill will require an appropriation of \$590,328 to the Department of Human Services, including \$412,133 from the General Fund and \$124,056 from federal funds.

Table 1
State Fiscal Impacts Under HB 23-1160

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$412,133	\$289,013
	Federal Funds	\$124,056	\$39,424
	Centrally Appropriated	\$54,139	\$70,718
	Total Expenditures	\$590,328	\$399,155
Total FTE		3.1 FTE	4.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$69,941	\$43,352

HB1160_L.001

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Public & Behavioral Health & Human Services.

HB23-1160 be amended as follows:

1 Amend printed bill, page 3, strike line 1 and substitute "**written notice**
2 **- no release of records until appeals exhausted - definitions.**".

3 Page 3, strike line 2.

4 Page 3, strike line 8 and substitute "FOUND RESPONSIBLE FOR AN INCIDENT
5 OF CHILD ABUSE OR NEGLECT BY A COUNTY DEPARTMENT."

6 Page 3, strike lines 9 through 11 and substitute:

7 "(2) **Written notice of opportunity for appeal.** (a) A".

8 Page 3, line 12, strike "STATE" and substitute "COUNTY".

9 Page 3, line 12, after "NOTICE" insert "PURSUANT TO SECTION 19-3-313.5
10 (3)".

11 Page 3, lines 14 and 15, strike "JUDGE AFTER THE PERSON EXHAUSTS THE
12 STATE DEPARTMENT'S RESOLUTION PROCESS." and substitute "JUDGE".

13 Page 3, line 18, strike "STATE DEPARTMENT ISSUED ITS FINDINGS." and
14 substitute "COUNTY DEPARTMENT ENTERED ITS FINDINGS. IF THE PERSON
15 IS A MINOR, THE WRITTEN NOTICE MUST BE SENT TO THE MINOR, THE
16 MINOR'S PARENT OR LEGAL GUARDIAN, AND ANY GUARDIAN AD LITEM OR
17 COUNSEL FOR YOUTH, AS DEFINED IN SECTION 13-91-103, APPOINTED IN A
18 DEPENDENCY AND NEGLECT, CRIMINAL, OR DELINQUENCY CASE. IF THE
19 PERSON IS ENROLLED IN THE FOSTER YOUTH IN TRANSITION PROGRAM
20 PURSUANT TO PART 3 OF ARTICLE 7 OF TITLE 19, THE WRITTEN NOTICE
21 MUST BE SENT TO ANY GUARDIAN AD LITEM OR COUNSEL FOR YOUTH
22 ASSIGNED TO THE YOUTH."

23 Page 5, line 1, strike "SYSTEM;" and substitute "SYSTEM, SUBJECT TO ANY
24 REDACTIONS REQUIRED BY LAW;".

25 Page 5, line 2, strike "A" and substitute "INFORMATION ABOUT HOW THE
26 PERSON MAY OBTAIN A".

27 Page 5, strike lines 4 through 6 and substitute:

28 "(V) INFORMATION ABOUT THE OFFICE OF THE CHILD".

1 Page 5, strike lines 8 through 10 and substitute:

2 "(b) THE PERSON MUST SUBMIT AN APPEAL WITHIN NINETY DAYS
3 AFTER THE DATE OF THE WRITTEN NOTICE USING THE PROCEDURES SET
4 FORTH IN STATE DEPARTMENT RULES."

5 Page 5, line 11, strike "**action**" and substitute "**release of records**".

6 Page 5, lines 13 and 14, strike "OR A LAW ENFORCEMENT ENTITY".

7 Page 5, line 17, after "WAIVED." add "THE STATE DEPARTMENT MAY
8 RESOLVE AN APPEAL THROUGH SETTLEMENT NEGOTIATIONS WITH THE
9 PERSON. IF A SETTLEMENT IS REACHED, THE SETTLEMENT IS A WAIVER OF
10 FURTHER ADMINISTRATIVE APPEALS. AS PART OF THE SETTLEMENT
11 NEGOTIATION PROCESS, THE STATE DEPARTMENT MAY ENTER INTO AN
12 AGREEMENT TO NOT RELEASE THE FINDINGS OR TO MODIFY, OVERTURN, OR
13 EXPUNGE REPORTS AS REFLECTED IN THE STATE PORTION OF THE
14 AUTOMATED CHILD WELFARE SYSTEM. NOTHING IN THIS SECTION
15 PROHIBITS A STATE REVIEW TEAM FROM SHARING INFORMATION AS PART
16 OF THE TEAM'S DUTY IN CONDUCTING AN INSTITUTIONAL ABUSE AND CHILD
17 FATALITY REVIEW REQUIRED PURSUANT TO STATE AND FEDERAL LAW."

18 Page 6, line 6, strike "COUNSEL." and substitute "COUNSEL, IF DESIRED.
19 COUNSEL IS ONLY APPOINTED PURSUANT TO THIS SECTION."

20 Page 6, strike line 12 and substitute "COUNSEL. IF COUNSEL FOR YOUTH
21 HAS BEEN APPOINTED TO REPRESENT THE YOUTH IN A DEPENDENCY AND
22 NEGLECT OR FOSTER YOUTH IN TRANSITION PROGRAM CASE THROUGH THE
23 OFFICE OF THE CHILD'S REPRESENTATIVE ESTABLISHED IN SECTION
24 13-91-102, THE YOUTH'S COUNSEL FOR YOUTH MAY CONTINUE
25 REPRESENTING THE YOUTH THROUGHOUT THE HEARING REQUESTED
26 PURSUANT TO SUBSECTION (2) OF THIS SECTION IF APPROVED BY THE
27 OFFICE OF THE CHILD'S REPRESENTATIVE. IF A GUARDIAN AD LITEM IS
28 APPOINTED TO REPRESENT THE BEST INTERESTS OF THE PERSON IN A
29 DEPENDENCY AND NEGLECT, CRIMINAL, OR DELINQUENCY CASE THROUGH
30 THE OFFICE OF THE CHILD'S REPRESENTATIVE, THE PERSON'S GUARDIAN AD
31 LITEM MAY CONTINUE REPRESENTING THE BEST INTERESTS OF THE PERSON
32 THROUGHOUT THE HEARING REQUESTED PURSUANT TO SUBSECTION (2) OF
33 THIS SECTION IF APPROVED BY THE OFFICE OF THE CHILD'S
34 REPRESENTATIVE."

35 Page 6, line 22, strike "UPON, AT A MINIMUM," and substitute "UPON".

- 1 Page 6, strike lines 23 through 27.
- 2 Page 7, strike lines 1 through 17.
- 3 Reletter succeeding paragraphs accordingly.
- 4 Page 7, line 19, strike "AGE." and substitute "AGE, OR AGAINST A PERSON
5 WHO IS THIRTEEN TO EIGHTEEN YEARS OF AGE UNLESS THE PERSON IS A
6 PARENT OF THE ALLEGED VICTIM OR THE LEVEL OF THE FINDING IS SEVERE,
7 EGREGIOUS, NEAR-FATAL, OR FATAL."
- 8 Page 7, strike lines 20 through 22.
- 9 Page 7, strike line 24 and substitute "**reports.** THE STATE DEPARTMENT
10 AND COUNTY DEPARTMENTS".
- 11 Page 7, line 25, strike "ENFORCEMENT ENTITIES".
- 12 Page 7, line 27, strike "TO ASSIST IN FUTURE RISK AND SAFETY" and
13 substitute "AND THE AUTOMATED CHILD WELFARE SYSTEM TO ASSIST IN
14 FUTURE".
- 15 Page 8, strike line 1 and substitute "THE STATE DEPARTMENT AND COUNTY
16 DEPARTMENTS".
- 17 Page 8, line 2, strike "ENFORCEMENT ENTITIES".
- 18 Page 8, line 6, strike "(4)(g)" and substitute "(4)(f)".
- 19 Page 8, after line 6 insert:
- 20 "(6) NOTHING IN THIS SECTION ALTERS THE REQUIREMENTS
21 CONCERNING THE INVESTIGATION OR REPORTING OF ANY SUSPICIOUS
22 INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, NEAR
23 FATALITY, OR FATALITY OF A CHILD DUE TO ABUSE OR NEGLECT PURSUANT
24 TO SECTION 26-1-139.
- 25 (7) **Rules.** NO LATER THAN JULY 1, 2024, THE STATE BOARD, IN
26 COLLABORATION WITH COUNTY DEPARTMENTS, THE OFFICE OF THE CHILD'S
27 REPRESENTATIVE, AND THE OFFICE OF RESPONDENT PARENTS' COUNSEL,
28 SHALL PROMULGATE RULES AS NECESSARY FOR THE IMPLEMENTATION OF
29 THIS SECTION AND TO PROMOTE FAIRNESS AND EFFICIENCY IN THE APPEALS
30 PROCESS."

1 Page 8, strike lines 7 through 16 and substitute:

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

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