

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0823.01 Shelby Ross x4510

HOUSE BILL 20-1105

HOUSE SPONSORSHIP

Geitner,

SENATE SPONSORSHIP

(None),

House Committees

Public Health Care & 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 COLORADO TRAILS
103 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>.)

The bill prohibits the department of human services (department) from including information about a person suspected of child abuse or neglect to the Colorado TRAILS system (system) absent notice and a hearing.

The bill requires the department to provide the person with written

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

notice of the department's intent to list the person's name in the system and request a hearing before a department administrative law judge (ALJ) within 14 days after making a finding substantiating the allegations. A hearing is not required if a court has issued an order in a proceeding in which allegations of child abuse or neglect are at issue. The bill specifies the procedural requirements for a hearing before an ALJ.

The department is prohibited from releasing information about the person or the allegations against the person to a third party until all appeals are exhausted or waived.

The bill requires the department to maintain each report of suspected child abuse or neglect for 2 years from the date the report is received. Two years after the date of the original adjudication, a person listed in the system may request to have the person's name expunged from the system by submitting a written request to the department. If the request for expungement is denied, the person must wait an additional 2 years before submitting another request for expungement. The department may administratively expunge the person's name from the system.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article
3 1 of title 26 as follows:

4 **PART 8**

5 **COLORADO TRAILS SYSTEM**

6 **REPORTING REQUIREMENTS**

7 **26-1-801. Colorado TRAILS system reporting requirements**
8 **- written notice.** (1) THE STATE DEPARTMENT SHALL NOT INCLUDE IN THE
9 COLORADO TRAILS SYSTEM INFORMATION ABOUT A PERSON SUSPECTED
10 OF CHILD ABUSE OR NEGLECT ABSENT NOTICE AND A HEARING.

11 (2) THE MINIMUM STANDARD FOR LISTING A PERSON SUSPECTED OF
12 CHILD ABUSE OR NEGLECT IN THE COLORADO TRAILS SYSTEM IS A
13 PREPONDERANCE OF THE EVIDENCE.

14 (3) BEFORE THE STATE DEPARTMENT MAY ADD A PERSON
15 SUSPECTED OF CHILD ABUSE OR NEGLECT TO THE COLORADO TRAILS
16 SYSTEM, THE STATE DEPARTMENT SHALL PROVIDE THE PERSON WITH

1 WRITTEN NOTICE OF THE STATE DEPARTMENT'S INTENT TO LIST THE
2 PERSON'S NAME IN THE COLORADO TRAILS SYSTEM WITHIN FOURTEEN
3 DAYS AFTER MAKING A FINDING SUBSTANTIATING THE ALLEGATIONS. THE
4 WRITTEN NOTICE MUST INCLUDE:

5 (a) A CLEAR STATEMENT OF THE SPECIFIC ALLEGATIONS THAT WILL
6 BE ADDED TO THE COLORADO TRAILS SYSTEM, INCLUDING THE NAME OF
7 THE ALLEGED VICTIM, THE INJURIES OR HARM ALLEGED TO HAVE
8 RESULTED FROM ABUSE OR NEGLECT, AND THE DATE ON WHICH THE
9 REPORT WAS MADE;

10 (b) THE CONSEQUENCES OF BEING ADDED TO THE COLORADO
11 TRAILS SYSTEM, INCLUDING POSSIBLE NEGATIVE IMPACTS ON THE
12 PERSON'S EMPLOYMENT, LICENSURE, AND ABILITY TO HAVE FUTURE
13 CONTACT WITH CHILDREN, INCLUDING VOLUNTEER OR SCHOOL ACTIVITIES;

14 (c) A COMPLETE COPY OF THE RECORD THAT WILL BE ADDED TO
15 THE COLORADO TRAILS SYSTEM;

16 (d) CONFIRMATION THAT THE STATE DEPARTMENT HAS REQUESTED
17 A HEARING BEFORE A STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE,
18 APPOINTED PURSUANT TO SECTION 26-1-106, TO REVIEW THE STATE
19 DEPARTMENT'S FINDINGS AND THE CONTACT INFORMATION FOR THE
20 ADMINISTRATIVE LAW JUDGE; AND

21 (e) THE MAXIMUM AMOUNT OF TIME THE PERSON'S NAME MAY BE
22 INCLUDED IN THE COLORADO TRAILS SYSTEM.

23 (4) THE STATE DEPARTMENT SHALL ALSO SUBMIT A REQUEST FOR
24 A HEARING BEFORE A STATE DEPARTMENT ADMINISTRATIVE LAW JUDGE
25 WITHIN FOURTEEN DAYS AFTER MAKING A FINDING SUBSTANTIATING
26 ALLEGATIONS AGAINST A PERSON SUSPECTED OF CHILD ABUSE OR
27 NEGLECT.

1 (5) THE STATE DEPARTMENT SHALL NOT ADD A PERSON SUSPECTED
2 OF CHILD ABUSE OR NEGLECT TO THE COLORADO TRAILS SYSTEM, OR
3 RELEASE INFORMATION ABOUT THE PERSON OR INFORMATION ABOUT THE
4 ALLEGATIONS AGAINST THE PERSON TO A THIRD PARTY, UNTIL ALL
5 APPEALS ARE EITHER EXHAUSTED OR WAIVED.

6 (6) A HEARING PURSUANT TO THIS SECTION IS NOT REQUIRED IF A
7 COURT HAS ISSUED AN ORDER IN A CIVIL, CRIMINAL, ADMINISTRATIVE, OR
8 JUVENILE PROCEEDING IN WHICH ALLEGATIONS OF CHILD ABUSE OR
9 NEGLECT ARE AT ISSUE.

10 **26-1-802. Administrative hearing - requirements.** (1) UPON
11 RECEIPT OF A REQUEST FOR A HEARING FROM THE STATE DEPARTMENT
12 REGARDING ITS INTENTION TO LIST A PERSON SUSPECTED OF CHILD ABUSE
13 OR NEGLECT IN THE COLORADO TRAILS SYSTEM, THE STATE
14 DEPARTMENT ADMINISTRATIVE LAW JUDGE SHALL CONTACT THE PARTIES
15 TO SCHEDULE A DATE FOR THE HEARING, WHICH SHALL BE HELD NO LATER
16 THAN SIXTY DAYS FROM THE DATE THE STATE DEPARTMENT ISSUED ITS
17 FINDINGS.

18 (2) A HEARING PURSUANT TO THIS SECTION IS CONSIDERED A
19 CONTESTED HEARING AND ELIGIBLE FOR APPEAL.

20 (3) PRIOR TO THE HEARING, THE STATE DEPARTMENT SHALL
21 PROVIDE THE PERSON SUSPECTED OF CHILD ABUSE OR NEGLECT WITH THE
22 FULL INVESTIGATIVE FILE AND ANY EXCULPATORY EVIDENCE WITHIN THE
23 STATE DEPARTMENT'S POSSESSION OR CONTROL.

24 (4) DISCOVERY PROCEDURES PRIOR TO THE HEARING MUST BE
25 CONDUCTED PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE.

26 (5) AT THE HEARING, THE PERSON SUSPECTED OF CHILD ABUSE OR
27 NEGLECT HAS THE RIGHT TO:

1 (a) BE REPRESENTED BY COUNSEL. IF THE PERSON SUSPECTED OF
2 CHILD ABUSE OR NEGLECT IS INDIGENT, THE ADMINISTRATIVE LAW JUDGE
3 SHALL APPOINT COUNSEL TO REPRESENT THE PERSON PRIOR TO THE
4 HEARING DATE.

5 (b) PRESENT SWORN EVIDENCE, LAW, OR RULES RELATED TO THE
6 ALLEGATIONS; AND

7 (c) SUBPOENA WITNESSES, CROSS-EXAMINE THE STATE
8 DEPARTMENT'S WITNESSES, INTRODUCE EVIDENCE AND OBJECT TO
9 EVIDENCE INTRODUCED BY THE OPPOSING PARTY, AND MAKE A CLOSING
10 ARGUMENT.

11 (6) WITHIN THIRTY DAYS AFTER THE CONCLUSION OF A HEARING
12 HELD PURSUANT TO THIS SECTION, THE PRESIDING STATE DEPARTMENT
13 ADMINISTRATIVE LAW JUDGE SHALL ENTER AN ORDER CONTAINING THE
14 JUDGE'S FINDINGS OF FACT AND LAW BASED UPON, AT A MINIMUM, A
15 PREPONDERANCE OF THE EVIDENCE.

16 (7) IF THE PRESIDING STATE DEPARTMENT ADMINISTRATIVE LAW
17 JUDGE FINDS THAT THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE STATE
18 DEPARTMENT'S ALLEGATIONS, THE STATE DEPARTMENT SHALL ENTER INTO
19 THE COLORADO TRAILS SYSTEM THE SUBSTANTIATED FINDINGS AGAINST
20 THE PERSON SUSPECTED OF CHILD ABUSE OR NEGLECT FOR A PERIOD OF
21 TIME PROPORTIONATE TO THE SEVERITY OF THE FINDINGS, NOT TO EXCEED
22 TEN YEARS.

23 (8) IF THE PRESIDING STATE DEPARTMENT ADMINISTRATIVE LAW
24 JUDGE FINDS THAT THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THE
25 STATE DEPARTMENT'S ALLEGATIONS, THE STATE DEPARTMENT
26 ADMINISTRATIVE LAW JUDGE SHALL ORDER THE STATE DEPARTMENT TO
27 AMEND THE STATE DEPARTMENT'S FINDINGS ACCORDINGLY AND PROHIBIT

1 THE ALLEGATION FROM BEING ENTERED INTO THE COLORADO TRAILS
2 SYSTEM.

3 (9) A PERSON SUSPECTED OF CHILD ABUSE OR NEGLECT HAS THE
4 RIGHT TO APPEAL AN ADVERSE DECISION.

5 **26-1-803. Reports of suspected child abuse or neglect -**
6 **retention - expungement.** (1) WITH THE EXCEPTION OF SUBSTANTIATED
7 ALLEGATIONS OF CHILD ABUSE OR NEGLECT, THE STATE DEPARTMENT
8 SHALL MAINTAIN EACH REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT
9 FOR TWO YEARS FROM THE DATE THE REPORT IS RECEIVED.

10 (2) NOTWITHSTANDING THE PROVISIONS OF SECTION 26-1-802 (7),
11 A PERSON LISTED IN THE COLORADO TRAILS SYSTEM PRIOR TO THE
12 EFFECTIVE DATE OF THIS PART 8 MAY REQUEST TO HAVE THE PERSON'S
13 NAME EXPUNGED FROM THE COLORADO TRAILS SYSTEM BY SUBMITTING
14 A WRITTEN REQUEST TO THE STATE DEPARTMENT.

15 (3) A PERSON LISTED IN THE COLORADO TRAILS SYSTEM MAY
16 REQUEST TO HAVE THE PERSON'S NAME EXPUNGED FROM THE COLORADO
17 TRAILS SYSTEM BY SUBMITTING A WRITTEN REQUEST TO THE STATE
18 DEPARTMENT ACCOMPANIED BY AN AFFIDAVIT SWORN TO BY A PERSON
19 WITH PERSONAL KNOWLEDGE STATING FACTS SUFFICIENT TO SHOW THAT
20 THERE IS GOOD CAUSE FOR A HEARING. GOOD CAUSE INCLUDES, BUT IS NOT
21 LIMITED TO:

22 (a) NEWLY DISCOVERED EVIDENCE THAT A SUBSTANTIATED
23 REPORT OF CHILD ABUSE OR NEGLECT IS INACCURATE; OR

24 (b) EVIDENCE THAT THE PERSON SUSPECTED OF CHILD ABUSE OR
25 NEGLECT IN A SUBSTANTIATED REPORT NO LONGER POSES A RISK AND NO
26 SIGNIFICANT PUBLIC PURPOSE WOULD BE SERVED BY CONTINUING TO LIST
27 THE PERSON IN THE COLORADO TRAILS SYSTEM.

1 (4) A WRITTEN REQUEST FOR EXPUNGEMENT SUBMITTED
2 PURSUANT TO THIS SECTION DOES NOT NEED TO BE IN A SPECIFIC FORM OR
3 FORMAT WITH THE EXCEPTION OF THE AFFIDAVIT REQUIRED PURSUANT TO
4 SUBSECTION (3) OF THIS SECTION.

5 (5) PRIOR TO A HEARING REQUESTED PURSUANT TO SECTION
6 26-1-802, THE STATE DEPARTMENT MAY ADMINISTRATIVELY EXPUNGE THE
7 PERSON'S NAME FROM THE COLORADO TRAILS SYSTEM.

8 (6) ANY HEARING REQUESTED PURSUANT TO THIS PART 8 MUST BE
9 CONDUCTED IN ACCORDANCE WITH THE PROCEDURES OUTLINED IN
10 SECTION 26-1-802.

11 (7) A PERSON SUSPECTED OF CHILD ABUSE OR NEGLECT WHO IS
12 LISTED IN THE COLORADO TRAILS SYSTEM MUST WAIT TWO YEARS FROM
13 THE DATE OF THE ORIGINAL ADJUDICATION BEFORE REQUESTING AN
14 EXPUNGEMENT.

15 (8) IF A PERSON'S REQUEST FOR EXPUNGEMENT IS DENIED, THE
16 PERSON SUSPECTED OF CHILD ABUSE OR NEGLECT MUST WAIT TWO YEARS
17 BEFORE SUBMITTING ANOTHER REQUEST FOR EXPUNGEMENT.

18 **SECTION 2. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2020 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.