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Final Fiscal Note

Drafting Number: LLS 24-0675 Date: July 17, 2024
Prime Sponsors: Rep. Evans Bill Status: Deemed Lost
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Bill Topic: RESOURCES FOR PERSONS IN CHILD WELFARE SYSTEM

Summary of Fiscal Impact:
State Revenue [] State Transfer [] Local Government [x]
State Expenditure [x] TABOR Refund [] Statutory Public Entity []

The bill would have made several changes for persons found responsible for child abuse and neglect in the areas of appeal rights and legal representation, the timing of hearings, and notice provided about their case and process. Starting in FY 2024-25, the bill would have increased state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2024-25, the bill would have required an appropriation of \$3.2 million to multiple state agencies.

Fiscal Note Status: The final fiscal note reflects the introduced bill. The bill was deemed lost in the House Appropriations Committee on May 9, 2024; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 24-1120

Table with 4 columns: Category, Sub-category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue, Expenditures (General Fund, Federal Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

When a person has been found responsible for child abuse or neglect by a county department of human services, the bill modifies what information the county must provide to the person when it records the finding in the state child welfare data system, including the fact of the case, the circumstances in which information in the data system may be provided to others, and information on the appeals process and legal representation. If a person appeals the finding and requests a hearing, the Colorado Department of Human Services (CDHS) must schedule a hearing within 120 days after receiving the request, and the person has the right to be represented by counsel, including by the Office of the Respondent Parents' Counsel (ORPC).

Background

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 the statewide children welfare data system (known as 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 CDHS receives the appeal and settlement discussions between the person and the CDHS may begin. The parties then have 120 days to come to an agreement. Through these discussions, the CDHS may overturn a county's findings or enter into a settlement agreement with the individual to modify the background check results that are generated by the person's information in TRAILS. The person may request an administrative hearing with an Administrative Law Judge (ALJ) at any time in this process or the CDHS may forward the case for a hearing if it appears the case will not be settled within the 120 days. 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. Under current law, there is not an established timeframe for hearings to be held after it is requested.

Assumptions

New appeals. For FY 2023-24, the CDHS reports that there are 7,700 events logged in the child welfare data system that person deemed responsible for child abuse and neglect may appeal to the CDHS. Of these events, it is estimated that 22 percent of them also have a dependency and neglect petition. Of the 1,694 events with a dependency and neglect petition, it is assumed that 50 percent of cases will appeal the finding of child abuse or neglect. The CDHS currently receives around 100 appeals per year associated with dependency and neglect cases, resulting in a net increase of 747 additional appeals per year. Of the 747 new appeals, 507 are assumed to be settled and 240 will request a hearing to take place, based on the current rates of hearings and settlements. New appeals are expected to have legal representation provided by the ORPC.

State Expenditures

The bill increases state expenditures in the CDHS, the Department of Personnel and Administration (DPA), and the ORPC by \$3.3 million in FY 2024-25 and \$3.1 million in FY 2025-26, paid from the General Fund and federal funds. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 24-1120**

	FY 2024-25	FY 2025-26
Department of Human Services		
Personal Services	\$246,293	\$292,473
Operating Expenses	\$4,096	\$4,864
Capital Outlay Costs	\$26,680	-
Legal Services	\$1,362,901	\$1,017,247
Centrally Appropriated Costs ¹	\$59,317	\$70,438
FTE – Personal Services	3.2 FTE	3.8 FTE
FTE – Legal Services	5.9 FTE	4.4 FTE
CDHS Subtotal	\$1,699,287	\$1,385,022
Department of Personnel and Administration		
Personal Services	\$359,942	\$422,459
Operating Expenses	\$5,248	\$6,144
Capital Outlay Costs	\$33,350	-
Centrally Appropriated Costs ¹	\$82,724	\$96,947
FTE – Personal Services	4.1 FTE	4.8 FTE
DPA Subtotal	\$481,264	\$525,550
Office of the Respondent Parents’ Counsel		
Personal Services	\$130,112	\$162,640
Operating Expenses	\$1,024	\$1,280
Capital Outlay Costs	\$6,670	-
Contract Attorney	\$989,415	\$1,036,530
Centrally Appropriated Costs ¹	\$21,415	\$26,768
FTE – Personal Services	0.8 FTE	1.0 FTE
ORPC Subtotal	\$1,148,636	\$1,227,218
	<i>General Fund</i>	<i>\$632,514</i>
	<i>Federal Funds</i>	<i>\$494,707</i>
	<i>Centrally Appropriated</i>	<i>\$21,415</i>
Total Costs	\$3,329,186	\$3,137,792
Total FTE	14.0 FTE	14.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Human Services. Starting in FY 2024-25, expenditures in the CDHS will increase to hire additional appeals staff and to cover increased legal services and hearing costs.

- **Staffing.** The CDHS requires 6.8 FTE to respond to the assumed increase of appeals. The fiscal note estimates that an FTE can respond to 250 appeals per year and under the bill, the fiscal note assumes the department will receive a total of 1,797 appeals. Since the CDHS already has 3.0 FTE for this purpose, this results in a need of 3.8 FTE. Staff costs are assumed to start on September 1, 2024, and include personal services, operating, and capital outlay costs outlined in Table 2.
- **Legal services.** Currently, the average cost for cases that are referred to the Department of Law (whether it is ultimately settled or goes in front of a full hearing) is \$4,238, which includes costs for case preparation and redaction of certain case materials shared with appellants. Based on the number of appeals outlined in the Assumption Section, legal service costs in the DHS are estimated to increase by \$1.0 million per year for an additional 7,946 hours of legal services at a rate of \$128, which equates to 4.4 FTE in the Department of Law. Costs in FY 2024-25 are prorated for a September start date. Costs in FY 2024-25 also include 2,700 hours (equivalent of 1.5 FTE) for general counsel for rulemaking to implement the bill.
- **Administrative law judge billing.** In addition to legal services cost, the CDHS will also be billed for additional hearings in front of ALJs. More information on these costs can be found below in the Department of Personnel and Administration section.

Department of Personnel and Administration. Starting in FY 2024-25, expenditures in the Office of Administrative Courts in the DPA will increase to hire additional ALJs and support staff to hold additional hearings.

- **Staffing.** The DPA will require 4.8 FTE to hold additional administrative hearings. The fiscal note assumes that of the new appeals outlined in the assumption section, about 30 percent, or 240 appeals, will heard before an ALJ. Hearings on average last about 29 hours resulting in a need of 3.3 FTE ALJs. In addition, the DPA will require 13 hours per case for support staff, resulting in a need for an additional 1.5 FTE. Staffing costs assume a September 1, 2024, start date and include personnel services, operating expense, and capital outlay costs, as shown in Table 2.

Office of Respondent Parents' Counsel. Starting in FY 2024-25, expenditures in the ORPC will increase to hire additional staff and to reimburse contract attorneys, as described below.

- **Staffing.** The ORPC requires 1.0 FTE to support and train attorneys on the appeals process and screen additional requests for ORPC attorneys. Staff is assumed to begin on September 1, 2024, and includes personnel services, operating expenses, and capital outlay costs shown in Table 2.

- **Contract attorney.** Starting in FY 2024-25, costs to the ORPC will increase to pay contract attorneys for their hours of working on appeals. The fiscal note assumes that cases that end in a settlement will take 5 hours of attorney time, and cases that end up at appeal will take about 29 hours. In addition, the fiscal note assumes that about 30 percent of the assumed new appeals will go in front of an ALJ and will require 29 hours of work. Contract attorneys are paid a rate of \$105 per hour in FY 2024-25 and \$110 in FY 2025-26. Costs in FY 2024-25 are prorated for a September 1, 2024 start date. Finally, the fiscal note also assumes that 50 percent of costs will be eligible for federal reimbursement using Title IV-E funding from the CDHS.

Office of the Child’s Representative. Expenditures in the OCR will increase to the extent guardians ad litem are involved with administrative appeals. At the time of this writing, it is unknown how many GALs will be appointed for administrative hearings, therefore the fiscal note assumes that any additional resources will be sought through the annual budget process. For informational purposes, GALs receive a contract rate of \$100 per hour.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2 above.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Workload for county departments of human services will be impacted by the bill to provide the additional information in written notices to individuals, as required by the bill.

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 2024-25, the bill requires a total appropriation of \$3,165,731 including:

- \$2,038,510 from the General Fund to the Department of Human Services and 3.2 FTE. Of this amount, \$1,362,901 and an additional 5.9 FTE is reappropriated to the Department of Law for legal services and \$398,540 and an additional 4.1 FTE is reappropriated to the Department of Personnel and Administration for administrative law hearings; and
- \$1,127,221 and 0.8 FTE to the Office of the Respondent Parents' Counsel in the Judicial Department, of which \$632,514 is from the General Fund and \$494,707 is from federal Title IV-E funds.

Departmental Difference

The fiscal note received a range of differing assumptions from departments on the potential impact of the bill. The CDHS estimates that 75 percent of events logged in TRAILS with an associated dependency and neglect case will appeal their case under the bill. The ORPC estimates that 20 percent of cases will be appealed. The fiscal note assumes that 50 percent of cases will be appealed, in between these two estimates. More information about total costs estimated by departments may be found below.

Departments of Human Services, Law, and Personnel and Administration. Using the CDHS assumption, the CDHS, Department of Law, and DPA estimate that the cost of the bill will total \$12.6 million (\$8.5 for DHS with \$7.7 million going to Law, and \$3.3 million for the DPA) once fully implemented. These costs are based on the assumption that 75 percent of new cases with a petition for dependency and neglect will choose to appeal under the bill. The fiscal note assumes that 50 percent of those cases will appeal based on feedback that many parties with dependency and neglect petitions admit to the findings records in TRAILS as part of the dependency and neglect process, and would be unlikely to appeal administrative decisions.

In addition, the CDHS and DPA cost estimates assume that a hearing must take place within 120 days from when the individuals initiates the appeal process. Under this assumption, the CDHS would be required to prepare for a potential hearing whenever an appeal is received to ensure a hearing is held within 120 days. The fiscal note assumes that costs for hearings and any preparation required for a hearing, will only be required if and when a hearing is explicitly requested by the individual or the state at any point during the appeals or settlement process, after which the department must schedule and prepare the hearing in 120 days. The fiscal note assumes that only 30 percent will end up at hearing based on the current rate of cases being sent from the CDHS for hearing.

Office of Respondent Parents' Counsel. The ORPC estimates that the bill will increase their costs by about \$616,000. This is based on the assumption that 99 percent of cases will take 5 hours of work, and 1 percent of cases will go to hearing and require 27 hours of work. The fiscal note estimates that 30 percent of new cases will go to hearing, based on the current rate of cases being sent to a hearing and assumes about 29 hours of work, in line with the case time reported by ALJs. In addition, the ORPC estimates that only 20 percent of cases will appeal due

to the high number of dependency and neglect cases that involve admissions to the findings of child abuse and neglect. The fiscal note assumes that 50 percent of cases will appeal, after taking into account the perspectives of all affected departments.

State and Local Government Contacts

Child Welfare	Counties	Early Childhood
Human Services	Judicial	Law
Personnel		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).