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SB 20-162

**REVISED
FISCAL NOTE**

(replaces fiscal note dated June 6, 2020)

Drafting Number: LLS 20-0917 **Date:** June 11, 2020
Prime Sponsors: Sen. Rankin; Moreno **Bill Status:** House Public Health Care
Rep. Gonzales-Gutierrez; **Fiscal Analyst:** Aaron Carpenter | 303-866-4918
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Bill Topic: **CHANGES RELATED TO FEDERAL FAMILY FIRST POLICY**

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill makes several changes to the child welfare system to align state law with the federal Family First Prevention Services Act. The bill will increase state and local expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, this bill requires and includes appropriations totaling \$936,412 to multiple state agencies. See State Appropriations section.

Fiscal Note Status: This fiscal note reflects the rengrossed bill.

**Table 1
State Fiscal Impacts Under SB 20-162**

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	-	\$1,525,774
	Cash Funds*	\$936,412	-
	Federal Funds	\$91,039	\$12,427
	Centrally Appropriated	\$27,345	\$64,852
	Total	\$1,054,796	\$1,603,053
	Total FTE	1.9 FTE	4.1 FTE
Transfers		-	-
TABOR Refund		-	-

* This amount is from reappropriated funds paid from indirect cost recoveries from various fund sources. Costs to implement Families First are paid from the General Fund; however, this bill also includes a reduction in General Fund appropriations elsewhere in the DHS to fund implementation of the bill and refinances this existing spending with the reappropriation of indirect cost recoveries, resulting in no net General Fund increase in the first year.

Summary of Legislation

This bill makes several changes to the child welfare system to align state law with the federal Family First Prevention Services Act, as described below.

Out-of-home placements. The bill makes several changes to out-of-home placements. First, the bill limits the placement of children between the ages of 5 and 18 in residential child care facilities, but allows children under the age of 5 to be placed if accompanied by a parent. Second, the bill increases the minimum age for placement in specialized group facilities from 3 years of age to 7. Children under the age of 7 may be placed in a group facility if accompanied by a parent. Third, the bill requires residential child care facilities to be licensed annually.

Qualified residential treatment programs. Before a child is placed in a qualified residential treatment program (QRTP), a court or the Administrative Review Division (division) of the Department of Human Services (DHS) in a case where a juvenile has been committed to the Division of Youth Services, must first consider a placement assessment prepared by a qualified individual within 60 days (unless there is an objection, then 30 days) after the new placement. In considering the placement, the court or the division must give great weight to the recommendation for placement provided by the qualified individual. If the court or the division deviates from the assessment and recommendation, the body must make specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child.

After the initial hearing, the bill requires that a subsequent hearing, in front of either the court or the division, review evidence submitted by a county at least every 90 days during the duration of the placement in a QRTP.

Juvenile justice system. Before committing a youth to the custody of the Division of Youth Services in the DHS, the bill requires the court to make a finding that the commitment is not the result of a lack of available QRTP placements.

Foster care prevention services. The bill allows counties to provide child welfare and prevention services, which includes foster care prevention services to families, kin caregivers, and children. The bill also makes information concerning prevention services and referrals confidential and not available to the public.

Child Welfare Services Task Force recommendations. The bill requires the Child Welfare Services Task Force to make recommendations on a method to incentivize counties to provide services and placements based on the child's needs by December 15, 2020. After the recommendations are made, the DHS must submit a report to the Joint Budget Committee on or before January 15, 2021, outlining the recommendations from the task force.

Appropriations. Finally, the bill reduces General Fund appropriations to the Executive Director's Office for Employment and Regulatory Affairs within the DHS and refinances this existing spending in the FY 2020-21 Long Bill with a reappropriation of indirect cost recoveries. The General Fund savings are used to offset the cost of implementing Families First.

Background

On February 9, 2018, the federal government passed the Families First Prevention Services Act, which changed how states can spend federal Title IV-E funds. Under the law, states may be reimbursed by the federal government for "prevention services" that allow candidates for foster care placement to stay with parents or relatives instead of being placed into foster care. The law also changes how the federal government will reimburse states. Under the law, the federal government will not reimburse states for children placed in group care settings for longer than two weeks. Instead, states will be reimbursed for placements into QRTPs that use a trauma-informed treatment model. The law also has requirements for assessments by a qualified individual to make sure children are being placed in the most appropriate setting. Colorado must submit a plan to the federal government and have it approved before the state can start to receive federal funding under the new federal law. For more information on Families First, see: <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>

Assumptions

The fiscal note makes the following assumptions:

- 60 initial hearings will be conducted each month for placement of children in a QRTP, with about 75 percent of hearings requiring 30 minutes and 25 percent of hearings requiring 2 hours to conduct a full evidentiary hearing;
- 90 children each month will have a review conducted regarding a current or ongoing placement, and 25 percent of these cases will require a one-hour court hearing and 75 percent will be reviewed by the DHS administratively;
- the licensing fee for residential child care facilities will be close to the continuation fee facilities currently pay, therefore the state will not receive additional revenue; and
- the state will have its implementation plan approved by the federal government before January 1, 2020.

State Expenditures

This bill will increase state expenditures by \$1.1 million and 1.9 FTE in FY 2020-21 and \$1.6 million and 4.1 FTE in FY 2021-22. These costs, which are in the DHS and various independent judicial agencies involved in the child welfare system, are discussed below and summarized in Table 2. The bill will also increase workload in the trial courts in the Judicial Department. Costs to implement Family First are primarily paid from the General Fund, as well as federal funds; these costs are offset by an included appropriation in the bill that correspondingly decreases and refinances General Fund costs elsewhere in the DHS using indirect cost recoveries.

**Table 2
Expenditures Under SB 20-162**

	FY 2020-21	FY 2021-22
Department of Human Services		
Personal Services	\$119,585	\$287,005
Operating Expenses	\$2,700	\$5,400
Capital Outlay Costs	\$18,600	\$6,200
Travel Costs	\$35,280	\$70,560
TRAILS Modifications	\$242,250	-
Qualified Assessor	\$180,900	\$361,800
Legal Services	\$38,376	\$27,716
Centrally Appropriated Costs*	\$27,345	\$64,852
FTE – Personal Services	1.7 FTE	4.0 FTE
FTE – Legal Services	0.2 FTE	0.1 FTE
DHS (Subtotal)	\$665,036	\$823,533
Office of the Child's Representative		
Contract Attorney Payments	\$211,200	\$422,400
OCR (Subtotal)	\$211,200	\$422,400
Office of Respondent Parents' Counsel		
Contract Attorney Payments	\$178,560	\$357,120
ORPC (Subtotal)	\$178,560	\$357,120
Total Cost	\$1,054,796	\$1,603,053
Total FTE	1.9 FTE	4.1 FTE

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

Department of Human Services. State expenditures in the DHS will increase by \$665,036 and 1.7 FTE in FY 2020-21 and by \$823,533 and 4.0 FTE in FY 2021-22. These costs are discussed in more detail below.

- *Staffing costs.* Starting in FY 2020-21, the bill will require 3.0 FTE compliance investigators and 1.0 FTE social services specialist. The compliance investigators will review the placement of each child placed into a QRTP every 90 days. The fiscal note assumes that an FTE can conduct 4 reviews per day and that time is necessary to travel to where the child is placed for an on-site review. Workload for this position includes reviewing the assessment made by the qualified individual, reviewing evidence submitted by a county, determining whether the needs of a child can be met in another placement, and determining if the long-term goals of the child can be met through placement in a QRTP.

The social services specialist will be responsible for the annual licensing of QRTPs. Workload includes performing annual licensing inspections, providing technical assistance to providers, reviewing policies and procedure of facilities for compliance, and promulgating rules regarding annual licensing. Costs associated with these staff include personal services costs, operating expenses, and capital outlay, as shown in Table 2 above. First-years costs and FTE are prorated to account for the General Fund paydate shift and a January 1, 2021, start date.

- *Travel costs.* Costs in the DHS will increase by \$35,280 in FY 2020-21 and \$70,560 in FY 2021-22 for the compliance investigators to travel to counties to conduct in-person reviews with parties involved in the case. This cost includes reimbursements for room, board, and vehicle mileage. Costs in FY 2020-21 are prorated for a January 1, 2020, start date.
- *TRAILS modifications.* In FY 2020-21, the DHS requires \$242,250, including \$157,462 General Fund and \$97,253 federal funds, to modify its child welfare data system (TRAILS). These system changes are necessary to segregate information on families receiving prevention services from parts of the system that contain data on families with an open dependency and neglect case. The fiscal note assumes that this work will take 1,615 hours of programmer time at a rate of \$150 per hour. This work will be accomplished by the Office of Information Technology (OIT). Additional TRAILS modifications may be needed to reflect the new reimbursement rates and costs for any additional system changes will be addressed through the annual budget process once details on the new rate implementation are known.
- *Qualified assessments.* Costs in the DHS will increase by an estimated \$361,800 per year to contract with a third-party assessor. This amount is prorated for a January 1, 2021, start date.
- *Division of Youth Services.* Starting in FY 2020-21, to the extent that children are placed in a QRTP rather than being committed to the Division of Youth Services in the DHS during a delinquency action, state expenditures will decrease. The fiscal note assumes that cases of a juvenile being committed to the DHS because there are no qualified treatment beds available is minimal and therefore, any decreases is expected to be minimal.
- *Legal services.* Under the bill, the DHS will require 360 hours of legal services in FY 2020-21 and 260 hours in FY 2021-22 to develop notices of rights and remedies, to represent the department if residential care facilities appeal a denied renewal license, to promulgate rules related to renewing residential care facilities annually, and to update reimbursement rules. Legal services are provided by the Department of Law at a rate of \$106.60 per hour, resulting in a cost of \$38,376 and 0.2 FTE in FY 2020-21 and \$27,716 and 0.1 FTE in FY 2021-22 and future years.
- *State reimbursements to counties.* Starting in FY 2020-21, state spending on child welfare will decrease to the extent that counties continue to place children in non-QRTPs. Assuming that counties will continue to place children in non-QRTPs, and assuming a state reimbursement rate of 65 percent, it is estimated that state spending will decrease by \$1.2 million, and county expenditures will increase to make payments to providers. The exact decrease in state spending will be depend on the rate established by the DHS, and how counties choose to place children. Based on current placements, state reimbursement to counties may decrease up to \$2.4 million. The fiscal note assumes that any adjustments in appropriations for child welfare funding will be handled through the annual budget process.

- *Refinancing of costs in Executive Director's Office.* The bill reduces General Fund appropriations to the Executive Director's Office for Employment and Regulatory Affairs within the DHS by \$936,412 and refinances this existing spending in the FY 2020-21 Long Bill with a reappropriation of indirect cost recoveries.

Office of the Child's Representative. Expenditures and workload in the Office of the Child's Representative (OCR) will increase for guardians ad litem (GALs) to attend additional hearings concerning placement of a child in a QRTP. The fiscal note assumes there will be a GAL at each initial QRTP hearing and review hearing. Assuming an initial QRTP placement hearing takes 6 hours of attorney time and ongoing reviews take 1 hour of attorney time at a rate of \$80 per hour, then expenditures in the OCR will increase by \$422,400 per year. Costs in FY 2020-21 are prorated by half.

Office of the Respondent Parents' Council. Expenditures and workload in the Office of the Respondent Parents' Council (ORPC) will increase by at least \$357,120 to represent indigent parents during QRTP placements and reviews. This amount assumes that there will be 300 initial QRTP placement cases and 432 review cases a year where a ORPC attorney is involved and that attorney time for each case will be 12 hours for initial placements and 2 hours for reviews. The ORPC pays attorney's a rate of \$80 per hour. To the extent the QRTP cases require more attorney time or require additional expenses, such as hiring additional experts during QRTP placement hearings, the fiscal note assumes the ORPC will request additional funding through the annual budget process. Costs in FY 2020-21 are prorated by half.

Trial courts. Starting in FY 2020-21, workload in the trial courts in the Judicial Department will increase to hold initial hearings and to review the placement of children placed in a QRTP. Based on the number and length of hearings discussed in the Assumptions Section above, the fiscal note assumes that this increase in workload can be accomplished within existing appropriations.

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 estimated to be \$27,345 in FY 2020-21 and \$64,852 in FY 2021-22.

Local Government

As outlined in the State Expenditures section, starting in FY 2020-21, county expenditures will increase to the extent children are placed in non-QRTPs that qualify for a lower reimbursement rate. Based on current placements, the fiscal note estimates this cost may be up to \$2.4 million. In addition, to the extent that fewer children are committed to the Division of Youth Services in the DHS as part of a delinquency proceeding, costs to counties will increase to place the child in a QRTP. The fiscal note assumes that any increase from such a shift will be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2020-21, the bill includes a reduction in General Fund appropriations of \$936,412 to the Executive Director's Office for Employment and Regulatory Affairs within the DHS and a corresponding increase in reappropriated funds to the office of \$936,412 from indirect cost recoveries.

In addition, the bill requires and includes the following appropriations for FY 2020-21:

- \$637,691 and 1.7 FTE to the DHS, of which \$546,652 is General Fund and \$91,039 is federal funds;
- of the DHS appropriation above, \$242,250 is reappropriated to the Office of Information Technology; and \$38,376 is reappropriated to the Department of Law, with an additional allocation of 0.2 FTE,;
- \$211,200 General Fund to the Office of the Child's Representative; and
- \$178,560 General Fund to the Office of the Respondent Parents' Counsel.

State and Local Government Contacts

Alternate Defense Counsel
Counties
Health Care Policy and Financing
Information Technology
Public Defender

Child Welfare
District Attorneys
Human Services
Law
Regulatory Agencies