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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Duhigg **ORIGINAL DATE** 2/18/2025

BILL

SHORT TITLE Certain Photos as Confidential **NUMBER** Senate Bill 352

ANALYST Valdez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	No fiscal impact	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bills 139 and 283 and Senate Bill 36

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 State Commission of Public Records (CPR)
 Department of Public Safety (DPS)
 University of New Mexico (UNM)

Agency Analysis was Solicited but Not Received From
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 352

Senate Bill 352 (SB352) amends Section 24-11-7 to make photographic images taken by the medical investigator confidential. The law currently permits photographic images of a body to be taken during investigations of deaths resulting from a criminal act, criminal omission, or obscure cause. SB352 would make the photographs produced during those examinations confidential and not public records except potentially in civil or criminal proceedings.

SB352 also changes the word “he” to the gender-inclusive “the medical investigator” in Section 1.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SB352 would incur minimal administrative costs associated with a statewide update, distribution, and documentation of statutory changes. The Administrative Office of Courts (AOC) notes that “New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.”

SIGNIFICANT ISSUES

AOC points out that SB352 would require that records custodians and other staff handling records would have to spend more time reviewing and redacting court filings in response to Inspection of Public Records Act (IPRA) requests (Section 14-2-6 NMSA 1978).

The State Commission of Public Records (CPR) points out a potential conflict with that might arise for medical investigators,

Autopsy reports, and presumably the photographs within, are public records as they are “...made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government”. Under 1.21.2.845 NMAC - FORENSIC ANALYSIS - MEDICAL INVESTIGATOR, the retention period for medical investigator autopsy photographs would be: permanent, transfer to archives five years from date file closed. A distinction should be made between “public record” and confidentiality. Both public records and non-public records can be confidential or non-confidential.

If autopsy photographs are classified as non-public records, then under the Public Records Act, they would not have a retention schedule that would correlate with the civil and criminal proceedings allowance in the amendment. Those photos could be destroyed at any point. Keeping autopsy photos as public records ensures that happenstance could not occur.

PERFORMANCE IMPLICATIONS

According to AOC:

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percentage of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

The University of New Mexico (UNM) points out that passing this bill would save the Office of the Medical Investigator (OMI) and the UNM IPRA Office time, as each would no longer have to respond to requests for autopsy photographs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB352 would allow photographs to be used in civil or criminal proceedings. However, as AOC points out, “The Inspection of Public Records Act states that ‘no person requesting records shall be required to state the reason for inspecting the records’ per Section 14-2-8(C) NMSA 1978.” Requesting photographs under SB352 would require the requestor to state their reason, thus conflicting with Section 14-2-8(C) NMSA 1978. However, Section 14-2-1(L) states that “Every person has a right to inspect public records of this state except (L) as otherwise provided by law.” While this exception would cover the changes proposed by SB352, the issue of having to provide a reason may still present a conflict under the law.

SB352 relates to House Bill 139, which amends the Inspection of Public Records Act. SB352 also relates to Senate Bill 36, which would prohibit a state employee from intentionally disclosing sensitive personal information to anyone outside the state agency, except in certain circumstances, including in an IPRA request. In addition, SB352 relates to House Bill 283 (HB283), which would prohibit records requested from law enforcement from being used to solicit victims and would require records used for commercial purposes to be certified as such upon request. HB283 would amend Section 14-2-1 NMSA 1978, which details exceptions to law enforcement records being treated as public records. SB352 is consistent with Section 14-2-1.2(A)(3) – Section 14-2-1.2(A)(5).

JV/rl/SR