

LFC Requester: _____

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2025.01.25 *Check all that apply:*
Bill Number: SB 0084 Original Correction
 Amendment Substitute

Sponsor: Katy Duhigg + Heather Berghmans **Agency Name and Code** OFRA 68000
Short Title: Sharing of Certain CYFD Information **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
100K	120K	220K recurring	general

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0	0	0

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	100K	120K	140K	360K	360K recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1: in NMSA 1978, §32A-4-2, a new definition of “personal identifier information” lists name, physical address, email address, and telephone number.

Subsequent definitions are re-lettered accordingly.

Section 2: in NMSA 1978, §32A-4-20, the docket numbers of abuse and neglect proceedings are to be public records. The media are allowed to be present at closed hearings “on the condition that” (rather than “subject to”) not divulging information that would identify “the” rather than “any” child, subject to enabling “rules” rather than “regulations.” If the media are excluded from a hearing, the judge is required to “submit a written order explaining the reasons for excluding the media from a hearing.” A party aggrieved by an order entered under this new language may file an immediate appeal to the court of appeals (just as already provided for such orders in subsection H of the statute).

Section 3: in NMSA 1978, §32A-4-33, the statute is retitled “Confidentiality – Information,” rather than “Confidentiality – Records.” It proposes to create three (3) wide swaths of fact patterns that would require CYFD to disclose personal identifier information of a child or child’s parent, guardian, or custodian.

1. Death or near death of a child – no limitations on what or to whom the information would be disclosed.
2. In cases in which a child is missing or abducted, in danger of serious injury, or other exigent circumstances – information would provide information to law enforcement and the national clearinghouse for information about missing and exploited children
3. To persons enumerated in Subsection E of the proposed revised statute.

Subsection E of the proposed amendment provides that “unredacted” copies of documents be provided to various categories of institutions or individuals. Many of these categories of institutions and individuals propose removing “records or” in front of “information,” or do not have that language in the current version of the statute. (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, and 17.)

However, categories #11 of institutions or individuals – school personnel – adds information concerning the child’s “medical” needs.

Category #19 (currently #18) – any other person having a legitimate interest in the case now removes “or entity.”

A new category is added, #18 – the office of the state medical investigator.

New language added to A. (now subsection D.) permits release of redacted information to “a person who is conducting bona fide research or investigations” that “should provide the department” with information useful to the department.

New subsection F allows parties to a court proceeding to “comment publicly as long as the party does not disclose personal identifier information that is still confidential.”

Old subsection F, to be relettered as “G” contains proposed clarifying changes.

New subsection H states that CYFD is “not required” to disclose information if the DA successfully petitions the court that disclosures would cause specific, material harm to a criminal investigation or prosecution.

New subsection I directs CYFD to disclose “pertinent” information to prospective adoptive parent, foster parent or guardian.

New subsection J allows individuals to authorize CYFD to disclose information about themselves but does not waive the confidentiality of other individuals’ information.

New subsection K directs CYFD to provide a summary of the outcome of an investigation into a report of abuse or neglect to the person who made the report, and to provide the summary within twenty (20) days after the deadline for closure of the investigation.

Old subsection D, to be re-lettered “L,” contains clean-up language.

Old subsection E, to be re-lettered “M,” states that CYFD “may” promulgate rules, rather than the current version, which states that CYFD “shall” promulgate rules.

New subsection N states that nothing in the statute or NMSA 1978, §32A-4-33.1 limits a person’s right to seek documents or information through other provisions of law.

New subsection O states that nothing in the statute applies to IFPA, information concerning Indian children or their parents, guardians, or custodians, or investigations or proceedings pursuant to IFPA.

Section 4: in NMSA 1978, §32A-4-33.1, the statute is retitled “Fatalities – Near Fatalities – Records Release” and deletes “When a Child Dies.”

New Subsection A defines “near fatality,” and leaves it up to a physician to determine whether an injury “placed a child in a serious or critical medical condition.”

Old Subsection A, to be re-lettered “B,” adds “or near fatality” after “fatality,” adds “abandonment”, deletes the requirement that a request for information be made in writing to the CYFD Cabinet Secretary, and deletes the categories of information to be released.

Current Subsection B is deleted in part and merged with the old A/new B subsection. Categories of information to be released for a fatality are set forth (name, age, gender of child; date and location of death; cause of death, if known), and separate categories of information to be released for a near fatality are set forth (age and gender of child; type and extent of injuries). For either fatalities or near fatalities, additional categories of information are set forth

- whether child currently in CYFD custody, or had been in CYFD custody in the past five (5) years
- whether the child’s family is currently or has been served by CYFD in the last five (5) years
- whether the child’s family is currently or has been under investigation by CYFD in the last five (5) years
- whether the child lived with a parent, guardian, or custodian, or was in foster care, or was in a residential facility or detention facility, or had some other living arrangement

- whether an investigation is being conducted by CYFD or a law enforcement agency, if known
- detailed synopsis of prior reports of abuse or neglect involving the child, siblings, or other children in the home, if applicable
- actions taken by CYFD to ensure the safety of siblings, if applicable
- any other information that is publicly known

Subsection C makes changes to language in keeping with adding “near fatalities,” adds abandonment as a possible cause of death or near death, changes “medical examiner’s” report to “medical investigator’s” report.

Subsection D modifies language in the opening sentence.

- Subparagraph 1 changes “would jeopardize” to “would cause specific material harm” to a criminal investigation or proceeding, as determined by the DA.
- Subparagraph 2 modifies language from “identifying” to “personal identifier” information.
- Subparagraph 3 adds language specifying a particular statute, but keeps “state and federal law” as a catch-all as the basis for privileged, confidential information not subject to disclosure.

Subsection E allows CYFD to comment about a case, without limitation of the scope of the released information.

Subsection F has a minor language modification that does not change the meaning of the sentence.

Subsection H adds “abandonment.”

New Subsection I directs CYFD to continue to provide information to the public about an investigation into the death or serious/critical injury to a child, including actions taken by CYFD in response to the case, and the information described in new Subsections J and K.

New Subsection J details what information shall be included in a summary report involving a child who was residing at home when the child died or suffer serious/critical injury.

New Subsection K details what information shall be included in a summary report involving a child who was in an out-of-home placement when the child died or suffer serious/critical injury

New Subsection L states that nothing in the statute shall apply to IFPA.

Section 5: proposes a new section to the Abuse and Neglect section of the Children’s Code, NMSA 1978, §32A-4, et seq., for the creation and maintenance of a “dashboard” of information easily accessible to the public, to be updated quarterly. This dashboard will include the data reported to the governor and the legislature. The information shall be in the aggregate and safeguard the confidentiality of personal identifier information. Twelve (12) specific categories are to be part of the dashboard. Data will be disaggregated by age, race, ethnicity, gender, disability status and geographic location.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

The additional tasks and requirements put on CYFD will take time of staff to implement and maintain. Though the tasks will be spread out over multiple individuals, ultimately one (1) or two (2) additional staff will be needed to fulfill all of the new duties and expectations. Cost will include salary, benefits, and PERA contributions by CYFD.

SIGNIFICANT ISSUES

SECTION 1: in NMSA 1978, §32A-4-2, if a new definition of “personal identifier information” is added, some people may assume it includes Social Security numbers and dates of birth. These categories of information should be explicitly excluded. Likewise, there is no rational reason for the public to have the physical address, email address, or telephone number of a person whose identity is disclosed under this statute. Such information could jeopardize safety and or subject individuals to invasive or harassing contact.

SECTION 2: in NMSA 1978, §32A-4-20, why is language changed from “any” to “a” child? Oftentimes, there is more than one child in an abuse and neglect proceeding.

What entity will draft/finalize the “rules”?

What oversight will be in place to ensure that such rules are fair while still providing robust protections to the parties to an abuse and neglect proceeding?

SECTION 3: in NMSA 1978, §32A-4-33, **the new exception to confidentiality “in the case of the death or near death of a child”** serves no legitimate purpose other than to allow the public to know where the parent, guardian, or custodian of an injured or dead child lives or how they can be contacted, thereby broadening the public’s ability to vilify and harass the parent, or perhaps worse. This would be the case even when a death or “near death” of a child is not the result of abuse, neglect, or other wrongful conduct. These concerns could be addressed by further restricting the definition of “identifier information.”

The new **exception to confidentiality for missing or abducted children, etcetera** is unnecessary as CYFD already provides information to law enforcement in these circumstances. This provision should be removed.

The new **exception to confidentiality for already existing categories of institutions and individuals** is mostly clean-up language. For instance, unredacted copies of documents are already shared with the existing categories of institutions and individuals. Adding “unredacted” merely clarifies this and is helpful because sometimes CYFD tries to redact documents shared without consistency between one case and another, or between CYFD field offices around the State.

The addition of “medical” to the types of information that may be shared with school personnel makes sense.

Removing “or entity” from individuals [or entities] having a legitimate interest in the work of the courts should be examined further. There are colleges and universities who gather information from New Mexico and other states for legitimate research purposes. Most of that information is metadata, but individual case studies are also sometimes conducted.

Adding the new category of the office of the state medical investigator is unnecessary, as information is already shared with law enforcement when warranted.

The additional language in renamed subsection D regarding a person conducting bona fide research or investigations is overly broad and unnecessary. The courts, department, and federal government all contract with parties engaged in such research, which is already covered by E(1).

New subsection F Is in line with the reasoning in Peck v. McCann, 43 F. 4th 1116 (10th Cir 2022) which found Colorado’s prohibition on disclosure of non-identifying information from child abuse records to be an unconstitutional infringement on free speech, and with the Stipulated Judgment in Atencio v. Bregman, 1:23-cv-00331-JMR-GJF.

New subsection H should say that CYFD is “not allowed,” rather than “not required.”

New subsection I is unnecessary as CYFD already provides information to prospective adoptive parents, foster parents, and guardians. This provision should be removed.

New subsection J should be clarified to require clear practices for ensuring that a person’s authorization to release information is knowing and voluntary and the waiver only results in disclosure of information about the person making the waiver.

New subsection K is unreasonably burdensome, especially for a department that is already understaffed. According to <https://www.cyfd.nm.gov/wp-content/uploads/2025/01/December-2024.pdf>, CYFD received 2,815 reports of abuse or neglect in December 2024, but ruled out 1,341 from investigation. On December 31, 2024, CYFD had 3,317 pending investigations, of which 1,362 were overdue (that is, not closed within the statutory forty-five (45) day deadline). Of the 1,789 investigations completed in December 2024, only 381 were substantiated. This provision should be removed because it will use already scarce department time on efforts that will not help keep children safe.

Renamed subsection D (now L) may not be valid in light of Peck v. McCann, 43 F. 4th 1116 (10th Cir 2022), which did not limit the ability to disclose non-identifying child abuse case information to parties.

New subsection O is a good idea, given New Mexico’s and the rest of the United States’ long, ignominious history of persecution, murder, forced assimilation, and other hostile acts towards the Native American populations that were here long before European settlers. This provision should be adopted.

SECTION 4: in NMSA 1978, §32A-4-33.1, the addition of “near fatalities” to fatalities is subject to misuse or unintended broadening of the definition to include serious injuries such as a broken arm or leg that is not a “near fatality.”

New Subsection A’s reliance on a physician to determine the seriousness of the injury by statute rather than accepted best medical practices may create a conflict between the two standards. This

definition is vague and subject to confusion and different interpretations. It should be reworked with the input of physicians who are not employed by CYFD or other State entities.

Old Subsection A, to be re-lettered “B,” and current Subsection B are reconfigured and merged. The categories of information of information that must be disclosed by CYFD within five (5) days of a child’s death or serious/critical injury is overbroad and serves no purpose other than to satisfy the prurient hunger of the media and public for potentially salacious information. Releasing the information within five (5) days of a child’s death or serious/critical injuries does not provide sufficient time for a thorough investigation to be conducted and completed. The information is to be released if “there is a reasonable *suspicion*” that the death or serious/critical injury was caused by abandonment, abuse or neglect, not *proof*. The release of information will be misinterpreted and misunderstood by the media and public as confirmation that someone intentionally harmed the child. Like the changes in Section 3 of the bill aimed at NMSA 1978, §32A-4-33, the disclosure of all of this information would subject the family to danger. Additionally, such premature disclosure would adversely affect a person’s right to a presumption of innocence and fair trial if the child’s death or serious/critical injuries resulted in a criminal action. These proposed changes should be rejected.

Subsection D requires a higher level of certainty in possible harm and removes discretion from the DA to determine what information may be disclosed to or withheld from the public. This proposed change is ill conceived. At the beginning of a criminal matter, the DA may not have a full understanding of the possible consequences if certain information is released to the public. This could adversely affect the DA’s ability to construct their case and might also create bias in the community making it difficult to seat a jury. In addition, the DA cannot know what future “specific material harm” might occur if or when information is released during an investigation. Initial information may point towards the culpability of a particular individual, while the completed investigation exonerates that same individual. But by that point, the damage is done and cannot be undone. These proposed changes should be rejected.

Subsection E gives too much leeway to CYFD to comment on a case. As stated in above in response to other proposed changes to language, such comments during an investigation are premature, may adversely affect the DA’s ability to conduct their own investigation and determine what charges, if any, should be brought against a person or persons, and put the safety of individual under investigation by CYFD and/or the DA at risk. The safety and due process rights of individual must be protected from the risk of mob mentality in response to the release of painful facts leading to the death or serious/critical injury of a child. These proposed changes should be rejected.

New Subsection I’s directive that CYFD continue to provide “timely allowable information” about an ongoing investigation is ill-conceived. As discussed at length in response to similar proposed changes to language, such disclosures would likely adversely affect the DA’s ability to conduct their own investigation and determine what charges, if any, should be brought against a person or persons, and put the safety of individual under investigation by CYFD and/or the DA at risk. The safety and due process rights of individual must be protected from the risk of mob mentality in response to the release of painful facts leading to the death or serious/critical injury of a child. Moreover, CYFD is not likely to take actions in response to a case until its own investigation into the child’s death or serious/critical injuries is complete, as well as a review of what information was available to CYFD and when, whether CYFD employees followed the policies and procedures already in place or there were lapses, whether or what changes in policies and procedures are workable in real life and not just on paper, and going through any

necessary publication of changes and opportunity for public comment. This process can take several months at best. This proposed new section of the statute should be rejected.

New Subsection J and New Subsection K, delineating specific types/categories of information to be included in the CYFD's ongoing reports to the public as set forth in New Subsection I, are likewise ill-conceived for the same reasons as discussed above. These proposed new sections of the statute should be rejected.

New Subsection L, like the New Subsection O to NMSA 1978, §32A-4-33 discussed above, is a good idea and should be adopted.

SECTION 5's proposed new dashboard of information is already available to CYFD in various locations and databases. OFRA is not privy to how that information is gathered, kept, or updated. Input from CYFD should be sought to best craft the requirement for such a dashboard to the aggregated and disaggregated information already available and being tracked so as to not impose new requirements that are unnecessary.

This section does not include any IFPA protections. Those protections should be added, with the input of CYFD's Office of Tribal Affairs and the Native American tribes and nations in New Mexico.

PERFORMANCE IMPLICATIONS

Because the bill would add new duties to the department, it should provide the necessary funding for sufficient personnel to comply with the new requirements.

ADMINISTRATIVE IMPLICATIONS

CYFD does not currently have the necessary staff to fulfill the new requirements.

Premature disclosure of information to the public will adversely impact both CYFD and DA offices around the state, and in some cases could adversely affect children and families.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Other than the creation of a new "dashboard" available to the public and the requirement for quarterly updates, I do not see any other technical issues.

OTHER SUBSTANTIVE ISSUES

Provisions in this bill could endanger the targets of investigation before the completion of the investigation and could disrupt the investigative processes of both CYFD and District Attorneys' Offices around the state.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo of the several Children's Code Abuse and Neglect statutes that are in the bill, and no new statutes or requirements.

AMENDMENTS

None at this time.