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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Duhigg/Berghmans **ORIGINAL DATE** 1/29/2025

BILL

SHORT TITLE Sharing of Certain CYFD Info **NUMBER** Senate Bill 84

ANALYST Hernandez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	No fiscal impact	\$460.0- \$2,605.0	\$460.0- \$2,605.0	\$920.0- \$5,210.0	Recurring	General Fund

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

Sources of Information

LFC Files
 Child Welfare Information Gateway

Agency Analysis Received From
 Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Office of Family Representation and Advocacy (OFRA)

Agency Analysis was Solicited but Not Received From
 Attorney General

SUMMARY

Synopsis of Senate Bill 84

Senate Bill 84 (SB84) amends and adds to the Children’s Code (32A-4 et. seq. NMSA 1978). The bill allows media to attend child abuse and neglect hearings so long as they refrain from divulging publicly identifiable information. Additionally, SB84 revises the Children’s Code so that the Children, Youth and Families Department (CYFD) has broader ability to share personally identifiable information under specific circumstances, including when the child’s family has been publicly identified through new reports. However, the department is not required to disclose department information if the district attorney successfully petitions the court that disclosure would cause specific, material harm to a criminal investigation or prosecution.

SB84 defines personal identifier information and makes the court docket number public record. Additionally, CYFD is required to provide a summary report to any person who reports a potential child abuse and neglect case.

The bill adds a definition of “near fatality” and requires that CYFD release information about the near child fatality, which adds to the section of law that already details information CYFD must release in cases of fatalities (34A-4-33.1 NMSA 1978). SB84 requires that the department create a dashboard and annual report to the legislature and governor, which includes all fatalities and near-fatalities. Importantly, nothing in this bill applies to the Indian Family Protection Act or individuals subject to the Act.

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

The Administrative Office of the Courts (AOC) notes that “allowing for an immediate appeal when media is excluded from a courtroom, will increase the number of appellate cases filed and heard in front of the Court of Appeals and the Supreme Court. The number of appeals and time needed for each case is unknown and dependent on multiple factors such as number of cases, media requests, and judicial rulings”

CYFD states that they would need three additional FTEs in order to meet the reporting requirements outlined in SB84 on near fatalities and fatalities. CYFD did not report that they would need additional staff to provide a summary of each investigation to anyone who reported on a child abuse and neglect case. The above tables reflect the costs CYFD stated they would face. LFC analyses for similar bills introduced in previous years indicated a much larger estimated additional operating budget impact, which is what is reflected in the table above.

SIGNIFICANT ISSUES

LFC and Office of Family Representation and Advocacy (OFRA) analysis indicates that requiring the department to provide a summary of the outcome of a department investigation to the person who reported will likely greatly constrain department resources. In 2023, there were 28.6 thousand children who CYFD investigated for instances of abuse and neglect. While the number of reports is likely smaller because some investigations involve multiple children, the Department would likely have to devote serious resources to ensure they are in compliance with SB84.

According to the Child Welfare Information Gateway, 23 states and Puerto Rico allow the person or agency that made the initial report of suspected child abuse or neglect to receive a summary of the outcome of the investigation. New Mexico does not maintain this practice. In 19 states, a prospective foster or adoptive parent is provided with information from the child’s records in order to help the parent or caregiver meet the needs of the child. New Mexico allows for this practice in statute.

Additionally, both analyses suggest concerns for the privacy of the child, as well as the broader family. SB84 would require CYFD to release information if there is reasonable suspicion of abuse and neglect in a fatality or near fatality. According to OFRA, this could be a concern for two reasons. First, it does not allow the district attorney and CYFD to investigate a case freely without intervention from the public. Second, it may cause further harm to a family that has not been convicted or found guilty of a crime.

LFC and AOC analysis raises regarding the two sections of SB84 that explicitly do not apply to the Indian Family Protection Act. AOC states that “although immediately identifying whether or not a child is an Indian child is essential, in some cases a child may not be identified as an Indian child until a later stage of the case. In these instances where a child is not identified as an Indian child until after information about that child or family has been released, what is the remedy? Information previously published cannot be disgorged from the public eye.”

AOC raised concerns about the:

Amendment to Subsection I of Section 32A-4-20 NMSA 1978, found in SB84’s Section 2, [which] allows for the filing of an immediate appeal of Subsection D which governs the presence of accredited representatives of the news media at closed hearings. The judicial branch, under constitutional separation of powers, has the authority to specify procedural requisites involving judicial proceedings. *State v. Sanchez*, 1982, 98 N.M. 428, 649 P.2d 496. Immediate appeal of a judge’s decision to exclude persons from a courtroom challenges the judge’s inherent power to control his/her/their own courtrooms.

Allowing immediate appeal of the judge’s decision regarding courtroom hearing attendance challenges judicial discretion. For an appeal to succeed, the judicial discretion used when making a decision to exclude or include the media over the objection of a child would have to rise to the level of abuse of discretion. “An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case.” *State v. Simonson*, 100 N.M. 297, 301, 669 P.2d 1092, 1096 (1983). “We cannot say the trial court abused its discretion by its ruling unless we can characterize it as clearly untenable or not justified by reason.” *State v. Litteral*, 110 N.M. 138, 141, 793 P.2d 268, 271 (1990).

Currently under Section 32A-4-20, Subsection D, a child present at their hearing can object to the media’s presence at the hearing, and this objection can be raised at each hearing a child attends. Subsection D further states that a judge can determine to exclude the media if the judge finds the presence of the media is ‘contrary to the best interests of the child.’ The judge’s determination regarding best interests of the child and media presence may change based on the nature of the hearing and whether any sensitive information about the child may be heard. As the decision to include or exclude the media could be made on a hearing by hearing bases, the ability of immediate appeal can give rise to an endless cycle of multiple appeals and possible delays.

OFRA raises concerns about the new exception to confidentiality “in the case of the death or near death of a child”, stating that it:

Served no 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.”

Focusing on the fatalities and near fatalities section of SB84, OFRA states that “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.”

Additionally, OFRA states that:

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 32A-4-33 NMSA 1978, 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.

CYFD states that “SB84 creates a technical issue by treating abandonment separately from neglect, even though abandonment is already defined as a form of neglect under Section 32A-4-2(G)(1). However, on page 17, line 20 of SB 84, the bill separates abandonment as its own cause in cases of child fatalities and near fatalities. This separation will cause confusion for CYFD workers.”

CYFD already reports near fatalities to the LFC for their quarterly report cards. However, the near fatality measure is a rate and LFC staff are not provided with the raw numbers. Additionally, for the first quarter of FY25, CYFD did not report on any measures to LFC staff for their report card.

CYFD already has a dashboard, Together We Thrive. However, the data has not been updated since July 2024 and is only partially complete.

TECHNICAL ISSUES

OFRA stated that Section 3 “subsection H should say that CYFD is ‘not allowed’ rather than ‘not required.’”

AEH/rl/hj