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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Duhigg</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/2/2024</u>
<b>SHORT TITLE</b> <u>Sharing of Certain CYFD Information</u>	<b>BILL NUMBER</b> <u>Senate Bill 258</u>
	<b>ANALYST</b> <u>Garcia</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD		\$3,110.0	\$3,110.0	\$6,220.0	Recurring	General Fund
AOC		Unknown	Unknown	Unknown	Recurring	

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

Duplicates House Bill 175

### Sources of Information

LFC Files  
 Child Welfare Information Gateway

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

## SUMMARY

### Synopsis of Senate Bill 258

Senate Bill 258 would make a variety of changes to and adds a new section to the Children’s Code, outlining how the Children, Youth and Families Department (CYFD) handles information related to child abuse and neglect cases. Broadly speaking, the bill instructs CYFD to construe as openly as possible the release of information under federal and state law.

Within the definitions section of the bill, SB258 would define “personal identifier information” as a person’s name and contact information, including address, and make the court docket number of abuse and neglect hearings public record.

The bill would amend Section 32-A-4-20(D) to require a judge to submit written orders explaining the reasons for excluding the media from abuse and neglect hearings.

The bill creates a new section of the Children’s Code, outlining the circumstances under which CYFD has the discretion to release or not release otherwise confidential or personal identifier information and establishes a set of circumstances under which CYFD may, with consultation with a district attorney, withhold certain information. The bill directs CYFD to provide a summary of a CYFD investigation to the person who submitted the report of suspected child abuse or neglect and directs CYFD to adopt rules to facilitate the accessibility of department information, and the bill would disallow any information released under the exceptions list in Section 32-A-4-33(D)(1-19) NMSA 1978 and create a new exception for the Office of the State Medical Investigator.

The bill amends Section 32A-4-33.1 to include cases that are ruled a “near fatality” as certified by a physician and distinguishes information allowed to be released in “near fatality” cases, as opposed to exclusively fatality cases and increases information that can be released in cases of fatalities and near fatalities.

Finally, the bill creates a new section in the Abuse and Neglect Act which would require CYFD create and maintain a dashboard on the department’s website and report to the governor and Legislature information, which includes information about the number of children in care and their outcomes, information about complaints and investigation counts, counts of fatalities and near fatalities among children in custody, and cases transferred to the jurisdiction of Indian tribes, nations, and pueblos pursuant to the Indian Family Protection Act, among other information.

The bill does not contain an appropriation.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## **FISCAL IMPLICATIONS**

CYFD reports implementation of SB258 would require 30 additional FTE to compile and maintain dashboard data and respond to requests for information, including 3 additional attorneys to ensure the disclosure of information complies with the law, at a cost of \$3.05 million annually. CYFD also notes the dashboard would cost an estimated \$60 thousand annually.

The Administrative Office of the Courts notes the proposed amendment to Section 32A-4-20, allowing for immediate appeal when media is excluded from the courtroom may increase the number of appellate cases filed and heard by the Court of Appeals and the Supreme Court. The number of appeals and time needed for each case is unknown. In addition, requiring a written order from a judge will also require additional judge time and resources, and the courts may experience minimal administrative cost for statewide update, distribution, and documentation of statutory changes. As state agencies participate in performance-based budgeting, AOC notes an increase in cases and appeals may impact performance measures as they related to judicial budgeting.

## **SIGNIFICANT ISSUES**

State child welfare agencies are required to maintain records of the reports of suspected child

abuse and neglect which they receive, including identifying information about the child, the child’s family, and other information about the child’s environment.

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<sup>1</sup>.

**Release of Child Abuse and Neglect Information.** In general, the federal Child Abuse Prevention and Treatment Act (CAPTA) requires states preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and the child’s parent or guardian. However, CAPTA allows states to release information to certain individuals and entities. States may release child abuse and neglect reports that are made in accordance with CAPTA to individuals who are the subject of the report, a grand jury or court, and entities or classes of people who are authorized by statute to receive information pursuant to a legitimate state purpose.

States must provide certain otherwise confidential child abuse and neglect information to any federal, state, or local government entity who needs the information to carry out its responsibilities related to child abuse and neglect cases and child abuse citizen review panels. Section 106(b)(2)(B)(x) of CAPTA requires states to provide disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality.

States have the option to allow public access to court proceedings that determine child abuse and neglect cases as long as the state, at a minimum, ensures the safety and well-being of the child, parents, and families<sup>2</sup>.

**Agency Bill Analysis.** CYFD provided the following information related to the House version of the bill:

While CYFD agrees that certain provisions of the Abuse and Neglect Act should be amended to allow for greater transparency and disclosure of information. However, there are myriad issues which should be addressed prior to enacting the statutory amendments set forth in this bill.

The agency’s lists its concerns as follows:

“Near death” of a child is not currently defined in statute or administrative code, and the state would need to define “near deaths” and the certifying medical personnel who can make this determination. However, the bill defines “near fatalities” as an act that, as certified by a physician, places a child in serious or critical medical condition.

“Bona fide research” is not defined in this bill according to who is conducting this

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<sup>1</sup> Children Welfare Information Gateway. <https://www.childwelfare.gov/resources/disclosure-confidential-child-abuse-and-neglect-records/>

<sup>2</sup> U.S. Health and Human Services, Administration of Children and Families. ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated 9/12/12

research and for what purpose, and all research pertaining to exception for research in the bill would require data-sharing agreements or memorandums of understanding to ensure the use of case-specific data is used in a limited way, for a specific purpose, including safeguarding and retention of records.

The bill does not define how records may be disclosed to grandparents, parents of a sibling, relative, or fictive kin.

The bill does not provide specificity as to what “a summary of the outcome of a department investigation” entails when providing this information to a person who made an abuse and neglect report. The department notes as written, this requirement could be broadly interpreted and could compromise the safety, security, and right to privacy of a family if the reporter acted in bad faith.

Providing “a detailed synopsis of prior reports of abuse or neglect involving the child, siblings, or other children in the house” after a fatality may lead to sensitive information being disclosed about living siblings—potentially still children—who could be easily identified by those who know them in the community.

CYFD notes providing clarifying information to the community may allow for more transparent collaboration in situations in which the community may have incorrect information, as long as the additional information does not impact the safety and well-being of child victims.

The Office of Family Representation and Advocacy (OFRA) noted the following about the bill:

OFRA notes the bill would provide the media the right to an immediate appeal when excluded from a children’s court proceeding, which could delay proceedings or deprive the children’s court of jurisdiction during the pendency of appeal. OFRA notes it is in the best interests of children for cases to continue without delay, and a delay could prevent the state from meeting federal Adoption and Safe Families Act timelines. OFRA recommends language could be added to clarify the continued jurisdiction of the Children’s Court.

Broad public disclosure of the child’s or parent’s contact information is unnecessary and could expose children and parents to harassment or harm.

The bill references personal identifier information of the child and or “the child’s parents” but does not include guardians or custodians, who may also be respondents in children’s court proceedings, and OFRA suggests guardians and custodians should be entitled to the same protections as their parents.

Requiring CYFD to summarize and release “any other information that is publicly known,” as referenced in the bill.

The Administrative Office of the Courts reports the bill encroaches upon judicial discretion and autonomy over court proceedings in abuse and neglect cases by allowing for the immediate appeal of representatives of the media at closed hearings:

The judicial branch, under constitutional separation of powers, has authority to specify procedural requisites involving judicial proceedings. 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.”

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. Currently, judges can also determine to exclude the media if the judge finds the presence of the media, "contrary to the best interests of the child." As the decision to include or exclude the media could be made on a hearing-by-hearing basis, the ability of immediate appeal may give rise to an endless cycle of multiple appeals and delays.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 258 is a duplicate of House Bill 175.

## **TECHNICAL ISSUES**

OFRA recommends changing any language referencing a child or youth who "was a runaway" to "had run away from their home or placement."

OFRA also notes the following technical issues:

One page 11, line 8 the bill refers to Subsection F but should refer to Subsection E

Noting "abandonment" throughout the bill may be unnecessary because it is already included in the statutory definition of "neglect."

## **OTHER SUBSTANTIVE ISSUES**

CYFD notes child welfare data is complex, and much of the data described in the dashboard outlined in the bill will need to be presented in summary or aggregate form, for example the median time in foster care or in a type of placement. In addition, data for small counties or sample sizes may be subject to standard data suppression practices to avoid compromising an individual's right to privacy.

The department also notes the quality of data pertaining to certain variables would be questionable using the state's current system. The department recommends a potential phased in approach, with full compliance within six months of the state implementing the comprehensive child welfare information system (CCWIS). CCWIS is a case management information system that state and tribal Title IV-E (child welfare) agencies may develop to support program needs. Known as the New Mexico Impact Project, the CCWIS project is intended to place CYFD's previous data system known as the Family Automated Client Tracking System (FACTS). Initially expected in FY23, the first phase of the project is now projected to complete in October 2024, and the final phase of the project is projected to go live in October 2026.

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