

LFC Requester:

Rachel Mercer-Garcia

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

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

**Date Prepared:** 1/24/25

*Check all that apply:*

**Bill Number:** SB84

Original  Correction   
Amendment  Substitute

**Sponsor:** Sen. Katy M. Duhigg, Sen. Heather Berghmans, and Sen. Crystal Brantley

**Agency Name and Code Number:** 305 – New Mexico Department of Justice

**Person Writing**

**Short Title:** Sharing of Certain CYFD Info

**Analysis:** Rebecca M. Guay

**Phone:** 505-537-7676

**Email:** legisfir@nmag.gov

### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

This bill amends the Abuse and Neglect Act (the Act), NMSA 1978, Sections 32A-4-2 (definitions), -20 (hearings/findings/disposition), -33 (confidentiality), and -33.1 (fatalities/near-fatalities – records release), and adds a new section to the Act.

**Section 1** amends Section 32A-4-2 to include a definition of personal identifier information.

**Section 2** would amend Section 32A-4-20 to make the docket number of proceedings public and clarifies that the prohibition on media’s release of information collected in closed hearings relates only to the child involved in the proceedings, or their parent(s) or guardian. The amendment would require a written order by the judge to exclude media from proceedings and establishes the right of immediate appeal by media to the court of appeals.

**Section 3** seeks to amend Section 32A-4-33 with regard to investigations by the Children, Youth and Families Department (CYFD or department). The Section would prohibit personal identifier information of the child, their parent, or guardian from being disclosed except to specified persons (asserted in Section 3(E), discussed below) and in specified instances: the case of fatality or near fatality of a child, or when necessary, for immediate action or aid by the nationally recognized organization/clearinghouse for missing and exploited children in the case of a missing child.

The bill requires CYFD to follow federal law in the maintenance of information obtained during an investigation into allegations of abuse or neglect and that the release of such information shall be construed as openly as possible under both state and federal laws. Information released by the department shall be redacted to protect the personal identifying information of the child and their family. When information *has been* shared publicly through media, court, or other avenues, the department may respond publicly with factual and complete information *about the actions the department has taken*, to provide clarity. An exception for the release is included, allowing redacted information to be released to a bona fide researcher or investigator, which should report findings back to the department.

The enumerated list of recipients to the unredacted information that the department may share is expanded to include the state medical investigator. It also expands the information provided to school personnel to include information regarding a student’s medical needs. S3(E) also amends the statute to replace “records” with “information” in each instance; removes “or entity” from the

identification of those attending a meeting arranged by the department regarding a child; and removes “or entity” from the “any other person” subsection.

Section 3(F) allows a party to a relevant court proceeding to speak publicly on the condition they do not share personal identifier information that remains confidential.

Section 3(H) states that the department would not be required to disclose department information if the district attorney successfully petitions the court based on potential material harm to a criminal investigation or prosecution.

Subsections (3(I)-(K)) authorize the release of pertinent information to prospective adoptive or foster parents and guardians; allow a person to authorize the release of their information; and require the department to provide a summary of the investigation within twenty (20) days of the closure to the person who reported the suspected abuse.

Section 3(M) permits, but does not require, the department to promulgate records in accordance with that section.

Section 3(N) states that nothing in the section would limit one’s rights to seek documents or information through other provisions of law.

Section 3(O) states that the section does not apply to the Indian Family Protection Act or information concerning Indian children, parents, or guardians.

**Section 4** seeks to amend Section 32A-4-33.1 to include the release of certain information of “near fatalit[ies]” and to delineate which information should be released in the instance of fatality, and which information in the instance of a near fatality.

Section 4(A) is added to define near fatality.

Section 4(B) defines which information shall be released and in which instance. For both fatalities and near fatalities, the department shall also release the age and gender of the child. For a fatality, additional information for release includes name of child, date and location of fatality, and cause of death if known. For a near fatality, the additional information includes the type and extent of injuries. For both fatalities and near fatalities, the department shall release information about whether, in the last five years, the child or their family has been in custody or under investigation, respectively; the child’s specific living arrangements; any law enforcement investigations; a synopsis of prior reports involving the child or their siblings; and any actions taken by the department to ensure the safety of siblings, if applicable; and any other publicly known information.

Section 4(C) is amended to include “abandonment” in the type of investigation discussed, to include “near fatality” as the type of relevant outcome, and to clarify that the medical investigator’s report is to be released in the case of fatality.

Section 4(D) clarifies that information that would cause specific material harm to a criminal investigation, versus only jeopardizing that investigation, shall be redacted.

Section 4(H) extends the existing protection from civil or criminal proceedings for individuals complying with the law to those disclosing abandonment.

Section 4(I) is added to state that the department shall provide timely allowable information

about the investigation to the public and a summary report including actions or recommendations by the department to change policies, practices, and procedures to address issues raised in the investigation, as well as the information described in Subsections (J) and (K).

Section 4(J) is added to state that, if a child involved in a fatality or near fatality was living in the child's home, the report shall include the history of the prior five years of the services and/or investigations pursuant to the Act, any investigation the last contact given by the person providing services. The report shall also include whether the child or a member of their household, or the person arrested for abandonment, abuse or neglect prior to the fatality or near fatality was the subject of a department report. The department shall also report any services and/or investigations pursuant to the Act since the date of the incident involving the fatality or near fatality.

Section 4 (K) is added to state that, if the child was placed in a facility, the report shall include the name of the agency the licensee was licensed by, their licensing history, the period of licensing, and a summary of all violations or other actions that constitute substantial failure to protect the health, safety, and welfare of a child.

Section 4 (L) is added to state that nothing in the section applies to the Indian Family Protection Act or Indian children, parents, or guardians.

**Section 5** seeks to add a new section to the Abuse and Neglect Act to require the department to establish and maintain (including publishing on its website) a publicly available, searchable dashboard, updated quarterly, which shall include data to be reported to the Governor and Legislature by February 1 of each year. The data shall include information on fatalities or near fatalities, numbers of children in custody, children removed from their households and returned, complaints and investigations and an aggregate of complaints not resulting in investigation, the number of adoptions, and referrals to jurisdictions of Indian nations, number of runaways by children in custody, etc. The bill notes that the data shall be disaggregated by age, race, ethnicity, gender, disability status, and geographic location.

Other non-substantive edits are made throughout to clean up language.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Section 2's right to an immediate appeal to the Court of Appeals by an aggrieved party of the media will likely impact court proceedings, yet there are unknowns. Most pressing would be the impact on the health, safety, and welfare of the child if the court stays proceedings pending appeal. For instance, Rule 10-101(B) NMRA, Children's Court Rules and Forms, states that the rules "shall be construed to secure simplicity in procedure, fairness in administration, elimination of unjustifiable expense and delay, and to assure the recognition and enforcement of constitutional and other rights." A delay in the proceedings based on an appeal filed by aggrieved media may conflict with these rules.

The language added as Section 3(F) may cause confusion about what can be shared publicly by a party. Not all parties to this type of court proceeding will be versed in confidential and/or private personal identifier information, thus increasing the potential for inadvertent disclosure of information.

Section 3(I) requires the department to “provide pertinent department information upon request to a prospective adoptive parent...” The term “pertinent” is not defined, which may result in inconsistent interpretations of what should be provided. In addition, a person may authorize the release of *their* information under Section 3(J), but if the information potentially impacts another person whose information is supposed to remain protected, there is potential for inadvertent disclosure of confidential information. This would be most notable in an instance where a child’s information is to remain confidential, but the intended release of information regarding someone other than the child may necessarily relate to the child. Assuming the information remains protected as it appears to be intended under the language in bill, the effect of Section 3(J) on a person seeking the release of their own information may be minimal.

The reporting requirements following the conclusion of an investigation into abandonment, abuse, or neglect causing a fatality or near fatality under Section 4(C) largely remain the same; however, under subsection (D), upon consultation with the district attorney regarding the redaction of certain information, the burden has increased from information that would “jeopardize” an investigation to information causing “specific material harm” to a criminal investigation. This may have an impact on criminal proceedings.

In Section 4, “near fatality” is not clearly defined and instead relies on certification by a physician of an act that placed the child in a serious or critical medical condition. This may provide for a subjective evaluation or create the potential for inconsistent application of the law.

Because the term “timely” in Section 4(I) is not clear, the requirement for the department to provide timely allowable information is somewhat vague. The avenue for delivery of this information is also not determined. The report that shall be provided must include actions taken by the department including policy and procedural changes. More specifically, where the report involves a child living in their own home in contrast to a child in out-of-home placement, the reporting requirements diverge.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

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

This bill, in relevant part, appears to resolve a potential existing conflict between Section 32A-4-33(D) and the Tenth Circuit Court of Appeals case, *Peck v. McCann*, 43 F.4th 1116 (10th Cir. 2022), as discussed by this office in *Atencio v. Bregman*, 1:23-cv-00331 (D.N.M.) (Doc. 22 - Notice of State of New Mexico and New Mexico Attorney General’s Position of Constitutionality of Statute, filed Jul. 10, 2023).

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

N/A