

| | |
|-----------------------|-----------------------------|
| LFC Requester: | Rachel Mercer-Garcia |
|-----------------------|-----------------------------|

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{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}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1-20-24
Bill No: HB 175

Sponsor: M. Mathews, T. Jaramillo, et al **Agency Name and Code** Office of Family Representation and Advocacy, 680
Short Title: Changes to information sharing provisions of the children's code **Number:** _____
Person Writing Beth Gillia
Phone: 505-231-9864 **Email** Beth.gillia@ofra.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY24 | FY25 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY24 | FY25 | FY26 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(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: Modifies the Voluntary Placement and Family Services Act to require the Children, Youth and Families Department (CYFD) to conduct a family assessment if CYFD is notified that the parents, relatives, guardians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of care fail to comply with that plan.

1. Defines “personal identifier information” to include a person’s name and contact information;
2. Clarifies that the court docket number in child abuse and neglect cases is a public record;
3. Changes “any child” to “the” child in §32A-4-20(D);
4. Requires the judge to enter a written order explaining reasons for excluding media from an abuse or neglect hearing and creates a right to immediate appeal if the court excludes the media from attending an otherwise closed abuse or neglect hearing;
5. Modifies the confidentiality statute, §32A-4-33, to:
 - a. Cover information, not just records;
 - b. Clarify that CYFD shall not disclose personal identifier information about the children and parents [DOES NOT ADDRESS OTHER ADULTS WHO ARE SUBJECT TO ARTICLE 4 OF THE CC (GUARDIANS OR CUSTODIANS)] involved in CYFD investigations and proceedings alleging abuse or neglect except:
 - i. In cases of death or near death of a child;
 - ii. In cases of missing or abducted children, or where a child is or may be in danger of serious injury or death and immediate action is necessary, or other exigent circumstances. Under these circumstances, personal identifier information may be released to law enforcement and the national clearinghouse for missing and exploited children as necessary to identify the child, possible abductor, or suspect in an abuse or neglect case, or to protect evidence of a crime against the child; and
 - iii. When a child or parents have been publicly identified by a person outside CYFD;
 - c. Modify §32A-4-33 by defining who CYFD may disclose personal identifier information to in investigations and child abuse or neglect proceedings as “the persons enumerated in Subsection F of this section.” Those persons are actually enumerated in Subsection E (not F), which adds the office of the state medical investigator to an otherwise un-amended list of individuals permitted to receive this information.

- d. Clarify that CYFD shall maintain information gathered during investigations in accordance with federal law and directs CYFD to construe federal and state law to allow public release of “department information” as openly as possible;
 - e. Require CYFD to redact personal identifier information when releasing information that has not already been publicly released by anyone outside CYFD;
 - f. Allow, but not require, CYFD to respond publicly with factual and complete information about actions it has taken in a case where the identity of the child or child’s “family” has already been revealed to the public by others (through the media, lawsuit, or otherwise);
 - g. Clarify that CYFD is not required to release department information if, after consulting with the district attorney, the district attorney determines that disclosure would cause “specific, material harm to a criminal investigation or prosecution”;
 - h. Allow CYFD to release redacted information about parties to persons conducting research, the results of which should assist CYFD in developing policy and practice;
 - i. Clarify that parties to “a court proceeding relating to a department investigation into allegations of abuse or neglect” may comment publicly about the case but shall not disclose personal identifier information that remains confidential for the child or the parents;
 - j. Require CYFD to provide a summary of its investigation to the person who reported suspected abuse or neglect “in a timely manner, not later than twenty days after the deadline for closure of the investigation.”
 - k. Allow (instead of require) CYFD to promulgate rules related to disclosure of information.
 - l. Clarify that nothing in Sections 32A-4-33 and 32A-4-33.1 limits people’s right to seek documents of information through other provisions of law.
 - m. Clarify that nothing in Section 32A-4-33 applies to the Indian Family Protection Act.
6. Defines “near fatality”;
 7. Requires CYFD to release certain information (if in the department’s possession) within 5 days of learning that a child fatality or near fatality has occurred and determining that there is reasonable suspicion that the fatality or near fatality was caused by abandonment, abuse, or neglect;
 8. Requires CYFD to release certain documents when requested when a child’s fatality or near fatality is determined to have been caused by abandonment, abuse, or neglect. Before releasing these documents, the bill would require CYFD to consult with the district attorney, and to redact certain specified information;
 9. Allows CYFD to comment on a case if documents are released in the event of a fatality or near fatality;
 10. Creates a continuing duty for CYFD to disclose allowable information to the public about investigations into fatalities and near fatalities, and specifies the contents of a summary report;
 11. Clarifies that nothing in Section 32A-4-33.1 applies to the Indian Family Protection Act; and
 12. Creates a new section requiring CYFD:
 - a. to create and maintain a public, easily accessible and searchable dashboard on its website, with timeframes for updating data;
 - b. report to the governor and legislature annually with specified data; and
 - c. post the annual report on its website.

FISCAL IMPLICATIONS

Mandated data collection and reporting, and mandated public disclosures, will increase workload for CYFD's Performance and Accountability unit, as well as for its Public Information Officer and IT staff, possibly creating the need for additional staff and an increased budget for these positions.

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.

SIGNIFICANT ISSUES

Page 9, lines 18-20: The media's right to an immediate appeal when excluded from a hearing should not delay proceedings in the children's court nor deprive the children's court of jurisdiction during the pendency of the appeal. It is in the best interests of children for the case to continue and delay would jeopardize the state's ability to meet federal (Adoption and Safe Families Act) timelines. Language could be added like that in Section 32A-4-18(I) to clarify this point: "While an appeal pursuant to this section is pending, the court shall have jurisdiction to take further action in the case pursuant to Subsection B of Section 32A-1-17 NMSA 1978."

Page 10, line 15 through Page 11, line 9: As written, Section 3 of the bill would allow disclosure of personal identifier information, including addresses, for children and parents under certain specific circumstances. These would include death or near death of a child; missing or abducted children, or where a child is or may be in danger of serious injury or death and immediate action is necessary; other exigent circumstances; or a child or parent has already been publicly identified by a person other than CYFD.

While disclosure of names and contact information to certain entities may be appropriate for the child's safety, law enforcement, or other purposes under the enumerated circumstances, broad public disclosure of the child's or parent's contact information (defined as home or business address, email address, or phone number) is unnecessary and could expose children and parents to harassment or harm.

Page 10, line 17 and throughout: The bill refers to personal identifier information of the child and/or the "the child's parent's, but does not include guardians or custodians, who may also be respondent parties in children's court proceedings alleging abuse or neglect. These guardians and custodians should be entitled to the same protections as the parents.

Page 19, line 8: Children and youth should not be defined by their actions. This language could be changed from "was a runaway" to "had run away from their home or placement."

Page 19, lines 18-19: Requiring the department to summarize and release "any other

information that is publicly known” already creates an unnecessary burden for the department. This information could be provided in the department’s discretion, but its re-disclosure by the department should not be made mandatory.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Page 11, line 8 refers to Subsection F but should refer to Subsection E.

Page 18, line 1; page 19, lines 20 and 22; Page 21, line 5: adding abandonment is unnecessary because it is included in “neglect.” See Section 32A-4-2(G) (definition of “neglected child” includes a child who has been abandoned by the child’s parent, guardian, or custodian).

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The confidentiality provisions of the Abuse and Neglect Act will remain the same and the Act’s prohibitions against disclosure of non-identifying information are likely an unconstitutional restriction of free speech, in violation of the First Amendment of the U.S. Constitution. See Peck v. McCann, 43 F.4th 1116 (10th Cir. Aug. 9, 2022).

AMENDMENTS