

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

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 February 1, 2024
Bill No: SB258

Sponsor: Katy Duhigg
Short Title: SHARING OF CERTAIN CYFD INFO

Agency Name and Code AOC 218
Number: _____
Person Writing Alison Pauk
Phone: 505-470-6558 **Email** aocabp@nmcourts.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		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 175 (Companion)
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 258 amends the Children’s Code to allow for the release of information held by CYFD in certain circumstances including providing information about child fatalities or near fatalities and how personal identifier information is protected. SB 258 also requires the courts to produce a written order when excluding the media from a courtroom in an abuse and neglect proceeding while making this decision appealable. Finally, the bill includes a new section requiring reports on CYFD’s website.

Specifically, SB 258 amends the following statutes:

- **Section 32A-4-2 NMSA 1978:** adds the term “personal identifier information” to the definition section of the Abuse and Neglect Act.
- **Section 32A-4-20 NMSA 1978:**
 - Subsection A: makes the court docket number a public record.
 - Subsection D: requires a judge submit a written order explaining the reasons for excluding the media when the media is excluded from a child welfare hearing.
 - Subsection I: allows for the filing of an immediate appeal when a judge excludes media from a hearing.
- **Section 32A-4-33 NMSA 1978:** in the title, changes the word “Records” to “Information” and adds or amends the following :
 - Personal identifier information of the child or the child’s parents cannot be disclosed by the department unless in the cases of: death; near death; when a child is missing, abducted, or may be in danger of serious injury or death; or the persons listed in Subsection E of this statute.
 - CYFD must maintain information obtained during the course of an abuse or neglect investigation in accordance with federal law and guidelines.
 - Allows for the redaction of certain information and provides CYFD with the ability to respond publicly with factual and complete information in cases where the child or child’s family have been publicly identified through press reports, a lawsuit, or other means.
 - Allows for the release of redacted information to a person conducting bona fide research with the results being shared with CYFD to help the department develop policy and practice.
 - Allows for a party to a court proceeding related to a CYFD investigation of allegations of abuse or neglect to comment publicly as long as personal identifier information remains confidential.
 - Provides for the ability for CYFD to refuse disclosure of information if a district

- attorney determines disclosure would harm a criminal investigation or prosecution.
- Requires CYFD to provide “pertinent department information” upon request to prospective adoptive parents, foster parents, or guardians upon request.
- Requires CYFD to provide a summary of the investigation outcome to the party who reported the suspected abuse.
- Denotes the section does not apply to the Indian Family Protection Act or records or information pertaining to Indian children and families.
- **Section 32A-4-33.1 NMSA 1978:** in the title, adds “Fatalities – Near Fatalities” and removes the term “When a Child Dies.”
 - Defines near fatality.
 - Clarifies the information released by CYFD in the event of a fatality or near fatality.
 - Requires CYFD to provide a summary report on fatality and near fatalities.
 - Denotes the section does not apply to the Indian Family Protection Act or records or information pertaining to Indian children and families.

SB 258 creates a new section of the Abuse and Neglect Act entitled “Creation and Maintenance of Dashboard on Department Website – Annual Report,” requiring CYFD to create and maintain a public dashboard on their website, updated quarterly. It also requires the department submit a yearly report to the governor and legislature containing information laid out in the section.

There is no appropriation listed in the bill.

There is no effective date of this bill. It is assumed that the effective date is May 15, 2024, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The proposed amendment to Section 32A-4-20, Subsection I, 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.

The proposed amendment to Section 32A-4-20, Subsection D, requiring a judge to enter a written order explaining why the media was excluded will take additional time of the judge and judicial resources.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions, as well commenced civil actions and appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

SB 258 encroaches on judicial discretion and judicial autonomy over court proceedings in abuse and neglect cases: The amendment to Subsection I of Section 32A-4-20 NMSA 1978,

found in SB 258's Section 2, 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 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.

Inherent judicial power is the power necessary to exercise the authority of the court. It exists so that a court may perform its functions. *State ex rel. N.M. State Highway & Transp. Dep't v. Baca*, 120 N.M. 1, 4, 896 P.2d 1148, 1151 (1995). Thus, even though specific judicial authority is not delineated by statute, or stated in a rule of court, a court may exercise authority that is essential to the court's fulfilling its judicial functions. This authority embraces the ability of a court to control its docket and the proceedings before it. *In re. Jade G.*, 2001-NMCA-058.

The ability SB 258 provides to immediately appeal 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.

Finally, as one cannot go back in time to attend a hearing, it is unclear what the remedy will be if the appeal is granted in favor of an appellant requesting admittance.

PERFORMANCE IMPLICATIONS

Any provision allowing for immediate appeal, as in SB 258's amendments to Section 32A-4-20, Subsection I, will increase in the number of cases in front of appellate courts. The courts participate in performance-based budgeting, and an increase in cases impact performance measures as they relate to judicial budgeting.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to HB 175.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Senate Bill 258's amendments to Sections 32A-4-33 and 32A-4-33.1 both contain a final provisions stating that the sections to not apply to "the Indian Family Protection Act, information or records concerning Indian children or Indian parents, guardians or custodians, as those terms are defined in the Indian Family Protection Act, or investigations or proceedings pursuant to the Indian Family Protection Act." 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 point in time in a 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.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS