

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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SECTION I: GENERAL INFORMATION

Check all that apply:

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

Date Prepared: 2024-01-30

Bill No: SB258

Sponsor(s) Katy M. Duhigg
:

Agency Name CYFD 69000
and Code
Number:

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Analysis:

Short SHARING OF CERTAIN
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$0	\$0		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
\$0	\$0	\$0		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	\$506.0	\$506.0	\$1012.0	Recurring	General

Duplicates/Conflicts with/Companion to/Relates to: HB 175

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

This bill amends existing statute as follows:

- * Inserts a definition into 32A-4-2(H) NMSA 1978 which defines “personal identifier information” as:
- * A person’s name, contact information, including home or business address, email address or phone number.
- * Amends 32A-4-20(A) NMSA 1978 to
- * Make the court docket number of abuse and neglect hearings public record.
- * Amends 32A-4-20(D) NMSA 1978 to
- * Mandate that judges submit written orders explaining the reasons for excluding the media from abuse and neglect hearings.
- * Amends 32A-4-20(I) NMSA 1978 to
- * Expand the right to appeal in abuse and neglect proceedings to a party “aggrieved” by an order entered pursuant to 32A-4-20(D) NMSA 1978.
- * Amends 32A-4-33 NMSA 1978 to
- * Set a list of circumstances in which CYFD has the discretion to release or not release otherwise confidential or personal identifier information.
- * Set specific justifications by which CYFD, in consultation with the district attorney, may withhold certain information.
- * Instruct CYFD to construe as openly as possible the release of information under federal and state law.
- * Allow CYFD to provide a “summary” of an investigation to the person who reported the suspected child abuse or neglect.
- * Mandate that CYFD adopt rules to facilitate the accessibility of department information.
- * Mandate a prohibition against secondary disclosures by persons who receive CYFD information.
- * Subject anyone in violation of a provision of this bill to being guilty of a misdemeanor.
- * Disallow redaction of any information released under the exceptions listed in 32A-4-33(E)(1-19) NMSA 1978.

- * Create a new exception for the Office of the State Medical Investigator under 32A-4-33(D)(18) NMSA 1978.
- * Allows party to a court proceeding relating to an abuse and neglect investigation to comment publicly as long as said party does not disclose the personal identifier information that is still confidential for the child or the child's parents.
- * Authorize the release of "pertinent department information."
- * Exclude the Indian Family Protection Act from any of the other provisions of HB 175.
- * Amends 32A-4-33.1 to include cases that are ruled a "near fatality" as certified by a physician, including the child's treating physician, placed a child in serious or critical medical condition.
- * Amends 32A-4-33.1 to distinguish information allowed to be released in "near fatality" cases as opposed to fatality cases.
- * Amends 32A-4-33.1 to exponentially increase the amount of information that can be released in both "near fatality" and "fatality" cases.
- * Creates a new Section 5 of the Abuse and Neglect act which mandates the creation and maintenance of a "dashboard" on the department website.
- * Mandates the information which must be made available on the "dashboard"

FISCAL IMPLICATIONS

The dashboard would cost approximately \$60.0 each year. Additionally, two FTE (\$200.0) would be required to compile the data and maintain and update the dashboard. Finally, 2 additional FTE (\$96.0) will be necessary to respond appropriately to increased requests for information and 1 attorneys (\$150.0) to ensure that disclosure of information complies with the law.

SIGNIFICANT ISSUES

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.

For example, the "near death" or "near fatality" of a child has not yet been statutorily defined or defined in the New Mexico Administrative Code and the new definition set forth in this bill is overly broad, encompassing serious illness or injury which may not be life threatening.

Further, "bona fide research" is not defined in this bill according to who is conducting this research and for what purpose. All disclosures pertaining to this exception should be subject to a data-sharing agreement or memorandum of understanding in order to ensure that the use of case-specific data is used in a limited way and for a specific purpose, including the safeguarding and retention of records.

Policy determinations must also be made regarding when records may be disclosed to a grandparent, parent of a sibling, relative, or fictive kin. For example, if placement is imminent or required in order to determine the appropriateness of the placement.

Also, there is no specificity as to what a "summary of the outcome of a department investigation"

entails when providing this information to a person who reported the suspected child abuse or neglect. As written, this could be broadly interpreted and depending on the interpretation, compromise the safety, security, and right to privacy of a family if the reporter acted in bad faith by making the report.

Finally, providing “a detailed synopsis of prior reports of abuse or neglect involving the child, siblings, or other children in the home” after a fatality may lead to sensitive information being disclosed about living siblings—likely still children—who could be easily identified by those who know them in the community. This could cause significant emotional distress for these children already dealing with the death of a sibling and possibly adversely affect a foster care placement.

PERFORMANCE IMPLICATIONS

Granting CYFD the authority to provide clarifying information to the community as long as it does not negatively impact the safety and wellbeing of child victims may allow for a more transparent collaboration in situations where the community may be receiving incorrect information and will help promote accountability for inaccurate reporting. However, CYFD cannot comply with the disclosure requirements of the bill without additional FTE.

ADMINISTRATIVE IMPLICATIONS

CYFD would have to draft new policies and procedures to ensure compliance with the disclosure requirements of this bill because the bill represents a marked departure from the current confidentiality provision of the Children's Code.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Nearly identical to HB175.

TECHNICAL ISSUES

Due to the complexity of child welfare data, much of the data described in the dashboard will need to be presented in summary or aggregate form, such as through the use of median times in foster care or in a type of placement; or by use of “point-in-time” circumstances. Data for specific smaller counties may need to be rolled up with other smaller counties due to standard data suppression practices intended to avoid compromising an individual’s right to privacy. The same considerations would need to apply to how data are disaggregated according to age, race, ethnicity, gender, disability status, and geographic location (e.g., using all of those disaggregation tools at once would allow the dashboard user to potentially identify a specific child). It would be preferable to allow the user to disaggregate by only one demographic/geographic variable at a time.

The quality of data pertaining to certain variables would be questionable using the state’s current system. One implementation consideration should be to use a phased in approach to ensure accurate data, with full compliance expected within 6 months of the state adopting a CCWIS.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.