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FISCAL IMPACT REPORT

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| SPONSOR <u>Abeyta/Martinez, J./Hochman-Vigil</u> | LAST UPDATED _____ |
| | ORIGINAL DATE <u>2/18/2025</u> |
| | BILL |
| SHORT TITLE <u>Office of the Child Advocate</u> | NUMBER <u>House Bill 5</u> |
| | ANALYST <u>Garcia</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|------------------------------|------------------|------------------------|------------------|------------------------|---------------------------|---------------|
| Office of the Child Advocate | No fiscal impact | At least \$650.0 | At least \$650.0 | At least \$1,300.0 | Recurring | General Fund |
| CYFD | No fiscal impact | Up to \$300.0 | Up to \$300.0 | Up to \$600.0 | Recurring | General Fund |
| Office of Child Advocate | No fiscal impact | \$750.0 to \$2,000.0 | No fiscal impact | \$750.0 to \$2,000.0 | Nonrecurring | General Fund |
| Total | No fiscal impact | \$1,700.0 to \$2,950.0 | At least \$950.0 | \$2,650.0 to \$2,900.0 | Recurring | General Fund |

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

Conflicts with House Bill 391 and Senate Bills 307 and 84
Relates to House Bill 205 and Senate Bill 363

Sources of Information

LFC Files
National Conference of State Legislatures

Agency Analysis Received From
Health Care Authority (HCA)
Office of Family Representation and Advocacy (OFRA)
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Children, Youth and Families Department (CYFD)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 5

House Bill 5 (HB5) creates an Office of the Child Advocate, which shall be administratively attached to the New Mexico Attorney General and perform its functions with autonomy.

The bill establishes a State Child Advocate who shall be appointed for a six-year term, beginning July 1, 2025. The Child Advocate would be appointed by a committee of nine members, which include appointments from leadership of the New Mexico House of Representatives and Senate; a member who has expertise in the federal Indian Child Welfare Act and New Mexico Indian Family Protection Act with lived experience in the foster care of juvenile justice system appointed by the governor; and members appointed by the Attorney General and Chief Justice of the Supreme Court. The bill outlines specific procedures related to the nomination of the State Child Advocate and outlines specific professional qualifications for the State Child Advocate. The bill would allow the Governor to remove the State Child Advocate only for malfeasance, misfeasance or abuse of office.

The powers and duties of the Office of the Child Advocate would include:

- Reviewing the Children, Youth and Families Department’s (CYFD) provision of services to children and families or of any entity that provides services to children and families through funds received from CYFD;
- Investigating and receiving complaints made on behalf of children receiving services from CYFD;
- Determining the extent to which CYFD’s policies enhance the department’s policies and procedures to protect and enhance children’s personal dignity, right to privacy, appropriate health care, and education in accordance with state and federal law;
- Operating a toll-free hotline and electronic communication portal to receive complaints;
- Analyzing and monitoring the development and implementation of federal, state and local laws, regulations, and policies related to child and family welfare and recommend changes where appropriate;
- Issuing subpoenas for witnesses to provide testimony in cases of fatalities or near fatalities;
- Referring any instances of violation of constitutional rights or reckless disregard for the health and safety of a child or repeated instances of violating laws related to child and family welfare to the Attorney General;
- Providing children and families with information about their rights, as they relate to the department;
- Providing information about child and family welfare to the governor, state agencies and legislators;
- Issue an annual report, with specific information related to child welfare and juvenile justice detailed in the bill, released to the LFC, CYFD, the Governor, and the Supreme Court.

The bill would allow the Office of the Child Advocate to promulgate rules related to operations of the office and prohibits employees of the office from conflicts of interest, which are defined in the bill and include receiving funding from CYFD.

The bill would require CYFD provide the Office of the Child Advocate with a copy of reports related to physical injury of a child in their custody and notify the office within 72 hours in the event of a fatality, near fatality, or restraint or seclusion of a child in CYFD custody and outlines how the Office shall maintain the confidentiality of records and information received by the department. The bill amends Sections 32A-2-32 and Sections 32A-4-33 NSMA 1978 to include the Attorney General and Office of the Child Advocate, including its employees and contractors,

as entities that may have access to confidential records and can be accountable for releasing these records.

The bill requires CYFD to notify all children in their custody about the purpose and functions of the Office.

The bill allows the Attorney General to bring a civil cause of action for declaratory or injunctive relief against CYFD or a CYFD employee based on a finding by the office of a violation of federal or state constitutional rights, reckless disregard of the health and safety of a child, or pattern of repeated instances of violation of law or policy.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The bill does not contain an appropriation.

The Administrative Office of the Courts (AOC) notes minimal administrative costs for statewide update, distribution, and documentation of statutory changes and the potential for any new laws or amendments to existing laws to result in potential increased caseloads in the courts.

The Health Care Authority (HCA) notes House Bill 5 would have no direct fiscal impact on HCA. However, “if the Office of the Child Advocate identifies systemic issues requiring remediation, there could be downstream financial impacts on CYFD and potentially other state agencies, including HCA.”

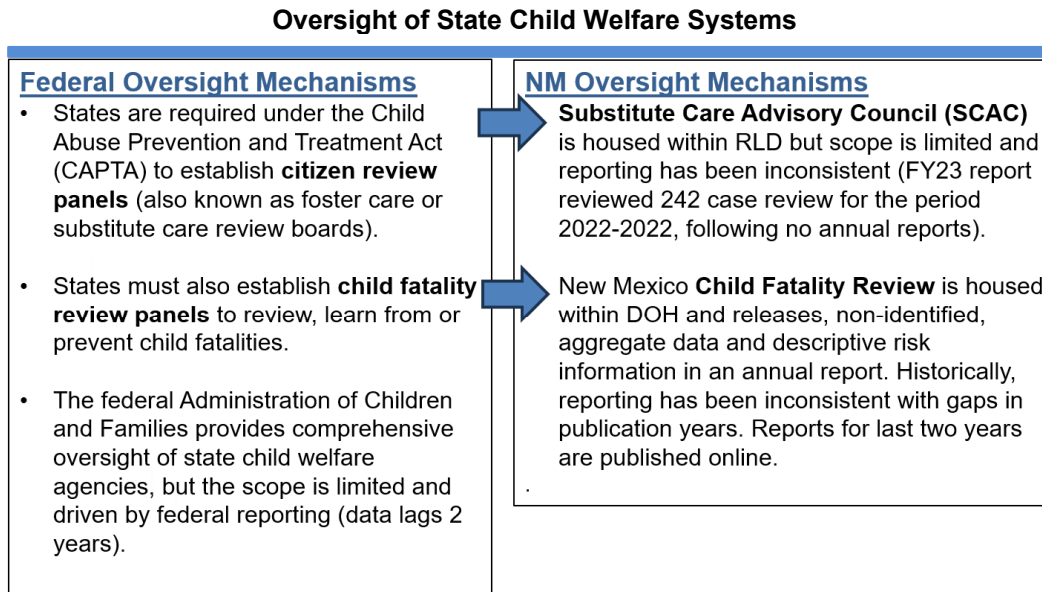
CYFD noted the bill would require significant collaboration and action by CYFD to provide information, data, and records for the Office of the Child Advocate and noted a lack of appropriation would require CYFD to absorb these costs in their existing budget. CYFD did not provide a specific estimate of fiscal impact.

LFC analysis in prior years estimated the cost to establish an entity similar to the Office of the Child Advocate to be at least \$650 thousand annually, allowing an office to hire roughly 5 FTE. In addition, case management IT systems built at other agencies in recent years, such as the Taxation and Revenue Department and the Workforce Solutions Department, have project budgets ranging between \$750 thousand and \$2 million. Finally, in prior years, LFC estimated CYFD might need to hire up to 3 FTE to provide statutorily-required information to an office, roughly \$300 thousand annually.

SIGNIFICANT ISSUES

A variety of federally-mandated and state created external mechanisms exist in New Mexico to provide oversight of the child welfare system and CYFD. For example, the federal government establishes several requirements for child welfare agencies, which are overseen by the federal Administration of Children and Families (ACF). These include citizen review panels, which are required by the federal Child Abuse Prevention and Treatment Act (CAPTA), child fatality review panels, and comprehensive reviews conducted by ACF. Within New Mexico, LFC reports and a variety of other entities, including the Senate Memorial 5 Taskforce report, have

noted gaps and limitations with existing oversight mechanisms in New Mexico, as noted in the graphic below.



Source: LFC Files

Additionally, while New Mexico has a variety of internal oversight mechanisms within CYFD, these entities present with inherent limitations and conflicts of interests with respect to public accountability, and system oversight and improvement. For example, as noted in LFC publications, the CYFD Inspector General does not publish a work plan or public report, and its location within the agency it is intended to provide oversight for demonstrates a clear conflict of interests. Similarly, although CYFD’s Office of Children’s Rights (OCR), now called the Office of Child Advocacy, is focused on complaints about violations of foster children and youth’s rights, it was unstaffed for several years and its results are unclear. CYFD’s Constituent Services position performs its duties ad hoc with no public reporting, and its Office of Constituent Affairs is limited to addressing complaints of harassment, discrimination, or retaliation committed by a CYFD employee and grievances filed by biological and resource parents with no public reports produced.

According to data from the National Conference of State Legislatures (NCSL), New Mexico is one of only nine states that do not have an additional external oversight beyond the federally-required citizen review panels and child fatality reviews. The majority of states have established an additional oversight mechanism, typically in the form of an oversight or governance child welfare commission. NCSL reports 40 states have created offices or ombuds related to child welfare with a range of duties and powers including investigation of complaints, access to confidential records, issuing subpoenas, releasing periodic reports, and recommending systemic improvements to legislatures and other stakeholders (e.g., Colorado’s Child Protection Ombudsman).

The office would be analogous in form and function to an ombud. The United States Ombudsman Association defines public sector ombudsman as, “independent, impartial public officials with authority and responsibility to receive, investigate, or informally address complaints about government actions and, when appropriate, make recommendations and

publish reports.” Ombud offices are generally focused on independently investigating and responding to individual grievances within child welfare systems; they may also serve a system improvement function by making publicly-available recommendations for system improvement. While these offices aim to improve child welfare system outcomes, rigorous national research about the extent to which these functions translate to improved system outcomes is limited.

According to NCSL data, at least two states place an ombud function in the judicial branch, while other states house similar offices in a variety of locations across the three branches of government:

- Colorado’s Office of the Child Ombudsman is established within the judicial department as an independent and autonomous agency (Section 19-3.3-102 2023 CRS);
- Montana houses the office within the state’s Department of Justice;
- Delaware placed the office in a non-judicial Agency of the Courts, similar to the Administrative Office of the Courts in New Mexico. However, the office also provides legal representation on behalf of children involved in the child welfare system;
- The Connecticut Office of the Child Advocate is located within the Office of Governmental Accountability;
- Indiana and Iowa house their ombudsman offices within the legislative branch; and
- A variety of states house the function within a health and human services executive agencies.

The Administrative Office of the Courts (AOC) notes:

House Bill 5 appears to be an attempt to create a formalized forum for children and caregivers involved in either the child welfare system or the juvenile justice system to provide complaints that can be investigated by the Office of the Child Advocate...but does not indicate what types of remedies the office can pursue or what steps it can take to address and attempt to resolve complaints.

AOC noted the bill does not require the Office of the Child Advocate notify the court if there is a complaint about a child under the court’s jurisdiction in either an abuse or neglect case or a juvenile delinquency case.

HCA notes that, while the Office of the Child Advocate’s oversight and investigation activities are exclusive to CYFD, HCA could be implicated in cases where a child is subject to a complaint and is receiving services from an HCA program. HCA also notes, “the requirement for an annual report to multiple government entities may increase transparency but should clarify whether these reports will be made public.” The bill does not explicitly note the annual report shall be publicly available.

CYFD reports the *Kevin S.* settlement required CYFD to establish a grievance process, and CYFD did so within the agency. The Office of Family Representation and Advocacy (OFRA) notes the creation of the Office of the Child Advocate could create duplication of effort and confusion with the office located within CYFD.

PERFORMANCE IMPLICATIONS

AOC notes a variety of performance measures may be impacted by House Bill 5, including the number of cases filed and disposed.

HCA notes the agency may need to establish internal procedures to facilitate information-sharing with the Office of the Child Advocate in cases where children receiving CYFD services are also enrolled in Medicaid or other HCA programs.

CYFD asserts the bill could require the agency to divert resources away from performance actions related to the safety and well-being of children.

ADMINISTRATIVE IMPLICATIONS

The Attorney General notes the adoption of House Bill 5 may require review and update of New Mexico's state plans under the Child Abuse Prevention and Treatment Act and Adoption Reform Act.

CYFD reports "there are currently administrative processes and 40 FTE in place at CYFD similar to what is described in this bill."

OFRA notes some of the functions created in this bill may duplicate the functions of the Substitute Care Advisory Council and the Office of the Inspector General within CYFD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 391 and Senate Bill 307, which would create a similar office located within the Administrative Office of the Courts. In addition, House Bill 5 includes an enforcement mechanism that does not have a parallel in House Bill 391 or Senate Bill 307.

Relates to Senate Bill 363, which creates a Child Protection Authority within the Regulation and Licensing Department. The Child Protection Authority has a different leadership selection process and establishes a complaint system and reporting process but contains no enforcement mechanism.

Relates to House Bill 205, which moves the Substitute Care Advisory Council to AOC.

Relates to Senate Bill 84, which would significantly amend Section 32A-4-33 and confidentiality provisions related to child abuse and neglect cases (covered by Section 17 of House Bill 5). Senate Bill 84 does not allow the New Mexico Attorney General to receive confidential information, as House Bill 5 does, and provides a different process for the release of confidential records.

TECHNICAL ISSUES

AOC notes the Office of the Child Advocate shall "update the complainant on the progress of the investigation within thirty days" but does not state when the thirty-day time period begins.

OTHER SUBSTANTIVE ISSUES

CYFD notes:

House Bill 5 establishes the Office of the Child Advocate in accordance with Section 9-1-7 NMSA 1978. However, the act clearly states the purpose of the Executive Reorganization Act is to enable more efficient management of the executive branch by creating an executive cabinet composed of department secretaries. Therefore, under this provision, the Office of the Child Advocate cannot be administratively attached to the Attorney General...furthermore the [bill] specifies the Office shall maintain autonomy over its budget and decisions. This dual structure could lead to conflicts regarding oversight and control. The balance between administrative attachment and operational autonomy may require clearer delineation to prevent jurisdictional disputes and or potential conflicts of interest.

CYFD also notes concerns with the interpretation of the grounds for the selection and removal of the State Child Advocate and notes:

This bill is essentially disguising a shift of power to the legislative branch. This potentially improperly delegates an executive function to the legislature, a potential violation of the nondelegation doctrine.

CYFD also expressed concerns about complaints of personnel misconduct, noting State Personnel guidelines for investigation and due process must be followed and noted the bill would allow the Attorney General to bring a lawsuit against CYFD, potentially placing the Attorney General in a conflicted role.

OFRA notes complaints to the Office of the Child Advocate may lead to confusion related to prior reports made to the Statewide Central Intake.

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