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HOUSE BILL 197

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Rebecca Dow

AN ACT

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT;
REPLACING THE SECRETARY OF CHILDREN, YOUTH AND FAMILIES WITH A
GOVERNING BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-2A-3 NMSA 1978 (being Laws 1992,
Chapter 57, Section 3) is amended to read:

"9-2A-3. DEFINITIONS.--As used in the Children, Youth and
Families Department Act:

A. "board" means the governing board appointed
pursuant to Section 9-2A-6 NMSA 1978; and

~~[A.]~~ B. "department" means the children, youth and
families department ~~[and~~

~~B. "secretary" means the secretary of children,
youth and families]."~~

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1 SECTION 2. Section 9-2A-4 NMSA 1978 (being Laws 1992,
2 Chapter 57, Section 4, as amended) is amended to read:

3 "9-2A-4. DEPARTMENT CREATED--DIVISIONS.--

4 A. The "children, youth and families department" is
5 created. The department is a cabinet department and consists
6 of, but is not limited to, six divisions as follows:

- 7 (1) the protective services division;
- 8 (2) the juvenile justice division;
- 9 (3) the prevention and intervention division;
- 10 (4) the financial services division;
- 11 (5) the employee support division; and
- 12 (6) the information technology division.

13 B. The [~~secretary~~] board is empowered to organize
14 the department and the divisions specified in Subsection A of
15 this section and may transfer or merge functions between
16 divisions in the interest of efficiency and economy.

17 [~~C. The governor is empowered to merge divisions
18 and to abolish or create divisions of the department by
19 executive order in the interest of efficiency and economy.]"~~

20 SECTION 3. Section 9-2A-6 NMSA 1978 (being Laws 1992,
21 Chapter 57, Section 6) is repealed and a new Section 9-2A-6
22 NMSA 1978 is enacted to read:

23 "9-2A-6. [NEW MATERIAL] GOVERNING BOARD.--

24 A. The administration of the department shall be
25 the responsibility of the board appointed pursuant to this

1 section. The board shall be responsible for directing the
2 activities of the department.

3 B. The board shall have three members appointed as
4 follows:

5 (1) one member appointed by the governor with
6 the consent of the senate; provided that this member shall
7 serve at the pleasure of the governor;

8 (2) one member appointed by a two-thirds' vote
9 of the senate; and

10 (3) one member appointed by a two-thirds' vote
11 of the house of representatives.

12 C. Members of the board shall serve four-year
13 terms.

14 D. A vacancy in the term of a board member
15 appointed pursuant to Paragraph (1) of Subsection B of this
16 section shall be filled by the governor.

17 E. A member of the board appointed by the governor
18 shall serve and have all the duties, responsibilities and
19 authority of that office during the period of time prior to
20 final action by the senate confirming or rejecting the board
21 member's appointment.

22 F. A vacancy in the term of a board member
23 appointed pursuant to Paragraph (2) or (3) of Subsection B of
24 this section shall be filled by a two-thirds' vote of the New
25 Mexico legislative council for the remainder of the original

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1 term.

2 G. The board shall elect a chair who shall serve in
3 the executive cabinet."

4 SECTION 4. Section 9-2A-7 NMSA 1978 (being Laws 1992,
5 Chapter 57, Section 7, as amended) is amended to read:

6 "9-2A-7. [SECRETARY] BOARD--DUTIES AND GENERAL POWERS.--

7 A. The [~~secretary~~] board is responsible [~~to the~~
8 ~~governor~~] for the operation of the department. It is the
9 [~~secretary's~~] board's duty to manage all operations of the
10 department and to administer and enforce the laws with which
11 [~~he~~] the board or the department is charged.

12 B. To perform [~~his~~] the board's duties, the
13 [~~secretary~~] board has every power expressly enumerated in the
14 law, whether granted to the [~~secretary~~] board, the department
15 or any division of the department, except when any division is
16 explicitly exempted from the [~~secretary's~~] board's power by
17 statute. In accordance with these provisions, the [~~secretary~~]
18 board shall:

19 (1) except as otherwise provided in the
20 Children, Youth and Families Department Act, exercise general
21 supervisory and appointing power over all department employees,
22 subject to applicable personnel laws and regulations;

23 (2) delegate power to subordinates as [~~he~~] the
24 board deems necessary and appropriate, clearly delineating such
25 delegated power and the limitations to that power;

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1 (3) organize the department into
2 organizational units as necessary to enable it to function most
3 efficiently, subject to any provisions of law requiring or
4 establishing specific organizational units;

5 (4) within the limitations of available
6 appropriations and applicable laws, employ and fix the
7 compensation of those persons necessary to discharge [~~his~~] the
8 board's duties;

9 (5) take administrative action by issuing
10 orders and instructions, not inconsistent with law, to assure
11 implementation of and compliance with the provisions of law for
12 which administration or execution [~~he~~] the board is responsible
13 and to enforce those orders and instructions by appropriate
14 administrative action in the courts;

15 (6) conduct research and studies that will
16 improve the operation of the department and the provision of
17 services to the citizens of the state;

18 (7) provide courses of instruction and
19 practical training for employees of the department and other
20 persons involved in the administration of programs with the
21 objectives of improving the operations and efficiency of
22 administration and of promoting comprehensive, coordinated,
23 culturally sensitive services that address the whole child;

24 (8) prepare an annual budget for the
25 department;

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1 (9) provide cooperation, at the request of
2 administratively attached agencies and adjunct agencies, in
3 order to:

4 (a) minimize or eliminate duplication of
5 services and jurisdictional conflicts;

6 (b) coordinate activities and resolve
7 problems of mutual concern; and

8 (c) resolve by agreement the manner and
9 extent to which the department shall provide budgeting,
10 recordkeeping and related clerical assistance to
11 administratively attached agencies; and

12 (10) provide for surety bond coverage for all
13 employees of the department as provided in the Surety Bond Act.
14 The department shall pay the costs of [~~such~~] the bonds.

15 C. The [~~secretary~~] board may apply for and receive,
16 with the governor's approval, in the name of the department,
17 any public or private funds, including United States government
18 funds, available to the department to carry out its programs,
19 duties or services.

20 D. The [~~secretary~~] board may make and adopt such
21 reasonable and procedural rules and regulations as may be
22 necessary to carry out the duties of the department and its
23 divisions. No rule or regulation promulgated by the director
24 of any division in carrying out the functions and duties of the
25 division shall be effective until approved by the [~~secretary~~]

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1 board. Unless otherwise provided by statute, no regulation
2 affecting any person or agency outside the department shall be
3 adopted, amended or repealed without a public hearing on the
4 proposed action before the [~~secretary~~] board or a hearing
5 officer designated by the [~~secretary~~] board. The public
6 hearing shall be held in Santa Fe unless otherwise permitted by
7 statute. Notice of the subject matter of the regulation, the
8 action proposed to be taken, the time and place of the hearing,
9 the manner in which interested persons may present their views
10 and the method by which copies of the proposed regulation or
11 proposed amendment or repeal of an existing regulation may be
12 obtained shall be published once at least thirty days prior to
13 the hearing date in a newspaper of general circulation and
14 mailed at least thirty days prior to the hearing date to all
15 persons who have made a written request for advance notice of
16 hearing. All rules and regulations shall be filed in
17 accordance with the State Rules Act.

18 E. If the [~~secretary~~] board certifies to the
19 secretary of finance and administration and gives
20 contemporaneous notice of such certification through the human
21 services register that the department has insufficient state
22 funds to operate any of the programs it administers and that
23 reductions in services or benefit levels are necessary, the
24 [~~secretary~~] board may engage in interim rulemaking.

25 Notwithstanding any provision to the contrary in the State

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1 Rules Act, interim rulemaking shall be conducted pursuant to
2 Subsection D of this section, except:

3 (1) the period of notice of public hearing
4 shall be fifteen days;

5 (2) the department shall send individual
6 notices of the interim rulemaking and of the public hearing to
7 affected providers and beneficiaries;

8 (3) rules and regulations promulgated ~~[under]~~
9 pursuant to the provisions of this subsection shall be in
10 effect not less than five days after the public hearing;

11 (4) rules and regulations promulgated under
12 this subsection shall not be in effect for more than ninety
13 days; and

14 (5) if final rules and regulations are
15 necessary to replace the interim rules and regulations, the
16 department shall give notice of intent to promulgate final
17 rules and regulations at the time of notice herein. The final
18 rules and regulations shall be promulgated not more than forty-
19 five days after the public hearing and filed in accordance with
20 the State Rules Act.

21 F. Except when the former position of secretary of
22 children, youth and families has responsibilities pursuant to
23 statutes or rules acting in an ex-officio capacity, all
24 references to the secretary of children, youth and families
25 shall be deemed to be references to the board. When the former

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1 position of secretary of children, youth and families has
2 responsibilities pursuant to statutes or rules acting in an ex-
3 officio capacity, all references to the secretary of children,
4 youth and families shall be deemed to be references to the
5 member of the board appointed by the governor."

6 SECTION 5. Section 9-2A-9 NMSA 1978 (being Laws 1992,
7 Chapter 57, Section 9) is amended to read:

8 "9-2A-9. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS
9 AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

10 A. Those organizational units of the department and
11 the officers of those units specified by law shall have all of
12 the powers and duties enumerated in the specific laws involved.
13 However, the carrying out of those powers and duties shall be
14 subject to the direction and supervision of the ~~[secretary]~~
15 board, who shall retain the final decision-making authority and
16 responsibility for the administration of any such laws as
17 provided in Subsection B of Section ~~[7 of the Children, Youth~~
18 ~~and Families Department Act]~~ 9-2A-7 NMSA 1978.

19 B. The department shall have access to all records,
20 data and information of other state departments that are not
21 specifically held confidential by law."

22 SECTION 6. Section 9-2A-10 NMSA 1978 (being Laws 1992,
23 Chapter 57, Section 10) is amended to read:

24 "9-2A-10. DIVISION DIRECTORS.--The ~~[secretary]~~ board may
25 appoint ~~[with the approval of the governor]~~ "directors" of such

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1 divisions as are established within the department. Directors
2 are exempt from the Personnel Act."

3 SECTION 7. Section 9-2A-11 NMSA 1978 (being Laws 1992,
4 Chapter 57, Section 11) is amended to read:

5 "9-2A-11. BUREAUS--CHIEFS.--The [~~secretary~~] board may
6 establish within each division such "bureaus" as [~~he~~] the board
7 deems necessary to carry out the provisions of the Children,
8 Youth and Families Department Act. [~~He~~] The board shall
9 [~~appoint~~] employ a "chief" to be the administrative head of any
10 such bureau. The chief and all subsidiary employees of the
11 department shall be covered by the provisions of the Personnel
12 Act."

13 SECTION 8. Section 9-2A-14.1 NMSA 1978 (being Laws 2007,
14 Chapter 351, Section 1) is amended to read:

15 "9-2A-14.1. JUVENILE CONTINUUM GRANT FUND--CREATED--
16 PURPOSE--ADMINISTRATION--GRANT APPLICATIONS.--

17 A. The "juvenile continuum grant fund" is created
18 as a nonreverting fund in the state treasury. The fund shall
19 be administered by the children, youth and families department
20 and shall consist of appropriations, gifts, grants, donations
21 and bequests made to the fund.

22 B. Money in the juvenile continuum grant fund is
23 subject to appropriation by the legislature to the children,
24 youth and families department for awarding grants to juvenile
25 justice continuums for the provision of cost-effective services

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1 and temporary, nonsecure alternatives to detention for
2 juveniles arrested or referred to juvenile probation and parole
3 or at a risk of such referral.

4 C. A local or tribal government may apply for a
5 grant from the juvenile continuum grant fund for a juvenile
6 justice continuum within its jurisdiction. The amount of the
7 grant application shall not exceed sixty percent of the annual
8 cost of the continuum. A local match of forty percent may
9 consist of money, land, equipment or in-kind services.

10 D. The children, youth and families department
11 shall adopt rules on qualifications for grants and specify the
12 format, procedure and deadlines for grant applications. The
13 juvenile justice advisory committee shall review all grant
14 applications and submit those applications recommended for
15 final approval to the [~~secretary of children, youth and~~
16 ~~families~~] board.

17 E. Disbursements from the juvenile continuum grant
18 fund shall be made upon vouchers issued and signed by the
19 [~~secretary of children, youth and families~~] board or the
20 [~~secretary's~~] board's designee upon warrants drawn by the
21 secretary of finance and administration.

22 F. As used in this section, a "juvenile justice
23 continuum" is a system of services and sanctions for juveniles
24 arrested or referred to juvenile probation and parole or at
25 risk of such referral and consists of a formal partnership

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1 among one or more units of local or tribal governments, the
2 children's court, the district attorney, the public defender,
3 local law enforcement agencies, the public schools and other
4 entities such as private nonprofit organizations, the business
5 community and religious organizations. A juvenile justice
6 continuum shall be established through a memorandum of
7 understanding and a continuum board."

8 SECTION 9. Section 9-2A-22 NMSA 1978 (being Laws 2003,
9 Chapter 324, Section 4, as amended) is amended to read:

10 "9-2A-22. YOUTH ALLIANCE COORDINATOR--POSITION CREATED--
11 DUTIES.--

12 A. The position of "youth alliance coordinator" is
13 created in the office of the [~~secretary of children, youth and~~
14 ~~families~~] board to organize, administer and coordinate youth
15 alliance activities.

16 B. The coordinator shall:

17 (1) oversee the recruitment and selection of
18 alliance members;

19 (2) organize alliance meetings, at least four
20 of which shall include the lieutenant governor and the
21 children's cabinet and at least two of which shall include the
22 governor;

23 (3) assist the alliance in preparing an annual
24 report on its activities and findings; and

25 (4) act as a liaison between the alliance and

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1 the children's cabinet, the legislature and other government
2 officials to ensure their involvement in activities related to
3 children and youth."

4 SECTION 10. Section 9-2A-24 NMSA 1978 (being Laws 2010,
5 Chapter 86, Section 1) is amended to read:

6 "9-2A-24. NEW MEXICO DOMESTIC VIOLENCE LEADERSHIP
7 COMMISSION--MEMBERSHIP--DUTIES.--

8 A. The "New Mexico domestic violence leadership
9 commission" is created and is administratively attached to the
10 children, youth and families department.

11 B. The New Mexico domestic violence leadership
12 commission shall consist of twenty-six members appointed by the
13 governor, unless otherwise specified, including:

14 (1) a representative from the office of the
15 governor;

16 (2) the attorney general or the attorney
17 general's designee;

18 (3) a state senator appointed by the senate
19 president pro tempore;

20 (4) a state representative appointed by the
21 speaker of the house of representatives;

22 (5) a representative from the department of
23 public safety;

24 (6) the ~~[secretary of children, youth and~~
25 ~~families]~~ board or the ~~[secretary's]~~ board's designee;

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- 1 (7) a representative from the judiciary;
- 2 (8) the president of the New Mexico district
3 attorney's association or the president's designee;
- 4 (9) the chief public defender or the chief
5 public defender's designee;
- 6 (10) a representative from the corrections
7 department;
- 8 (11) a representative from a law enforcement
9 agency;
- 10 (12) a representative from New Mexico legal
11 aid;
- 12 (13) a representative from the department of
13 health;
- 14 (14) a representative from the New Mexico
15 coalition against domestic violence or an equivalent
16 organization;
- 17 (15) a representative from the southwest
18 women's law center or an equivalent organization;
- 19 (16) a representative from the coalition to
20 stop violence against native women or an equivalent
21 organization;
- 22 (17) a representative from the crime victims
23 reparation commission;
- 24 (18) the director of the New Mexico
25 interpersonal violence data central repository;

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- 1 (19) a representative from the New Mexico
2 intimate partner violence death review team;
- 3 (20) a representative from the aging and long-
4 term services department;
- 5 (21) a community representative;
- 6 (22) two rural domestic violence service
7 providers;
- 8 (23) a domestic violence survivor nominated by
9 the New Mexico coalition against domestic violence;
- 10 (24) a representative from a children's
11 advocacy organization; and
- 12 (25) a representative from a gay and lesbian
13 organization.

14 C. The appointed members of the New Mexico domestic
15 violence leadership commission shall serve at the pleasure of
16 the governor, and the members' appointments shall be reviewed
17 at the commencement of each gubernatorial term. The governor
18 shall designate one member as the chair, and the position of
19 the chair shall be limited by a term of two years.

20 D. The New Mexico domestic violence leadership
21 commission shall meet, pursuant to the Open Meetings Act, at
22 the call of the chair at least six times annually. For the
23 purposes of conducting business, a majority of the members of
24 the commission constitutes a quorum.

25 E. Members of the New Mexico domestic violence

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1 leadership commission shall not be paid, but shall receive per
2 diem and mileage as provided in the Per Diem and Mileage Act.

3 F. The New Mexico domestic violence leadership
4 commission shall:

5 (1) identify domestic violence services that
6 are lacking or in need of improvement and provide
7 recommendations to the [~~secretary of children, youth and~~
8 ~~families~~] board and the governor to enhance the quality and
9 efficiency of services statewide;

10 (2) develop strategies for addressing issues
11 of domestic violence and raising public awareness;

12 (3) study possible inequities in the treatment
13 and disposition of males involved in domestic violence;

14 (4) review laws, regulations and policies
15 related to domestic violence to assess their effectiveness and
16 recommend changes; and

17 (5) report annually before October 1 to an
18 appropriate legislative interim committee and the governor on
19 domestic violence policy issues."

20 SECTION 11. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is January 1, 2023.