

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/15/2025

Check all that apply:

Bill Number: HB391

Original Correction
 Amendment Substitute

Sponsor: Rep. Jenifer Jones, Rep. Gail Armstrong

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Office of Child Ombud Act

Person Writing Analysis: Seth C. McMillan

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	1,000,000	Nonrecurring	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SB 307 (2025) duplicates this bill word-for-word;
SB 84 (2025) may conflict;
SB 363 (2025) relates to and may conflict;
HB 5 (2025) relates to may conflict;
HB 173 (2025) does not appear to conflict;
HB 205 (2025) and SB 458 (2025) may conflict;
HJR 5 (2025) may conflict or compete

(For all noted, detail in Conflicts section below).

Duplicates/Relates to: Appropriation in the General Appropriation Act: none noted

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB 391 provides for extensive amendments to the Children's Code, enacting a new statutory scheme known as the Office of Child Ombud Act (**Section 1**, short title), which would provide a level of oversight to the Child, Youth and Families Department (CYFD) and create a process for individuals to file complaints with the Office of Child Ombud.

Section 2 contains statutory definitions.

Section 3 creates the Office of Child Ombud, which is to be administratively attached to the Administrative Office of the Courts.

Section 4 provides that the head of the Office of Child Ombud is the "State Child Ombud," who shall be appointed for a six-year term.

Section 5 provides for a State Child Ombud Selection Committee, consisting of nine members, eight of whom are appointed by legislators with leadership roles and the Governor. The ninth member is the chair of the Committee, who is selected by a majority of the other eight Committee members. This Section also details the process of selecting the State Child Ombud, which involves the Committee engaging in an application process and providing names to the Governor of persons who are recommended for appointment.

Section 6 sets forth the powers and duties of the Office of Child Ombud, including mandatory duties to:

- Review CYFD's provision of services to children and families and receive complaints concerning the actions of CYFD;
- Review CYFD systems to determine the extent to which policies and procedures protect and enhance children's personal dignity, right to privacy, and appropriate health care and education;
- Adopt rules to carry out the provisions of the Act;
- Operate a hotline and electronic portal to receive complaints;
- Investigate and attempt to resolve complaints made by or on behalf of children placed in the custody of CYFD, receiving services under the supervision of CYFD, referred to CYFD, or whose parent, guardian, or custodian is under investigation by CYFD;
- Provide updates and notice to complainants about the status of their complaints;

- Compile annual reports;
- Subpoena witnesses to provide testimony in cases in which a fatality or near fatality of a child has occurred while the child was in the custody of CYFD; and
- Access information or records as needed for carrying out the Act.

This Section also permits the Office to hire and contract for staff as needed, meet or communicate with any child placed in the custody of CYFD, and decide whether to investigate complaints or refer a complaint to another agency for investigation.

Section 7 provides that the Office shall submit an annual report to the legislative finance committee, CYFD, and the Governor. The reports shall contain information about CYFD services, including the quality of such services, the conditions of placements, and quantitative information about child placements and removals. The reports must also contain recommendations related to improving CYFD services. The reports are required to be posted online, available to the public.

Section 8 contains training and certification requirements for Office of Child Ombud staff.

Section 9 requires that Office of Child Ombud staff or contractors shall not have a conflict of interest with CYFD or with an entity that provides services to children and families through funds provided by CYFD.

Section 10 requires CYFD to provide the Office of Child Ombud with: a copy of all reports related to actual physical injury to children in the custody of CYFD within thirty days of receiving the report, whether substantiated or unsubstantiated; and written notification within seventy-two hours of: (1) a fatality or near fatality of a child in CYFD custody or referred or receiving services under the supervision of CYFD, and (2) the restraint or seclusion of a child in CYFD custody.

Section 11 requires law enforcement agencies to share with the Office of Child Ombud reports involving children identified by the agencies as having been placed in the custody of CYFD, receiving services under the supervision of CYFD, referred to CYFD, or whose parent, guardian, or custodian is under investigation by CYFD.

Section 12 requires the Office of Child Ombud to maintain the confidentiality of all case records, third-party records, and court records, as well as any information gathered in the course of investigations and system monitoring duties. This Section also exempts such records from IPRA and instructs that they are confidential except under limited circumstances such as court-ordered disclosure or preventing imminent harm.

Section 13 mandates that CYFD must notify children in its custody or receiving CYFD services of the existence, function, and purpose of the Office of Child Ombud.

Section 14 amends existing law, NMSA 1978, § 32A-2-32 (2009), a portion of the Delinquency Act that addresses the confidentiality of records pertaining to children. The amendment would add a provision that permits disclosure of the records to the Office of Child Ombud and its employees and contractors “if the records are needed for the purpose of implementing the Office of Child Ombud Act.”

Section 15 amends existing law, NMSA 1978, § 32A-4-33 (2022), a portion of the Abuse and Neglect Act that addresses the confidentiality of records or information concerning a

party to a neglect or abuse proceeding. The amendment would add a provision that permits disclosure of the records to the Office of Child Ombud and its employees and contractors “if the records are needed for the purpose of implementing the Office of Child Ombud Act.”

Section 16 provides for a one-time appropriation of \$1,000,000 from the general fund to the Administrative Office of the Courts for expenditure in fiscal year 2026 for expenses incurred in establishing the Office of Child Ombud.

Section 17 provides that the effective date of this law is July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Although the Act provides that records must be kept confidential, some provisions of the law may raise concerns regarding confidential and sensitive information. For instance, Section 7 of the Act requires that annual reports, which are required to be posted online, include information about “the conditions of placements for New Mexico’s children.” To the extent “placements” are understood to include a private residence, the reports should not contain any confidential information about these placements. In addition, records held by law enforcement agencies, as well as those that are the subject of ongoing court proceedings, may not be subject to release due to their confidential nature, even though this Act directs that they be provided to the Office of Child Ombud.

Depending on the nature of the Office of Child Ombud’s investigations and attempts to resolve complaints, *see* Section 6, the Act could be subject to First Amendment challenges based on vagueness. *See, e.g., United States v. Lesh*, 107 F.4th 1239, 1247 (10th Cir. 2024) (“The void for vagueness doctrine addresses two concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” (text only)).

Any changes to the governance of CYFD might require amendments to the state’s Title IV-E plan to ensure continued eligibility for federal funding. Title IV-E refers to a part of the Social Security Act that provides federal funding to states for the administration of foster care, adoption assistance, and kinship care programs. This funding is meant to help ensure that children in the child welfare system are placed in safe, stable, and permanent homes. Each state is required to submit a Title IV-E State Plan to the U.S. Department of Health and Human Services. Any significant modifications to CYFD’s structure and governance would likely necessitate revisions to the state plan, subject to federal approval, to maintain compliance with child safety, permanency, and well-being standards.

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 307 (2025) duplicates this bill word-for-word.

SB 84 (2025), which specifies and restricts to whom and under what circumstances CYFD information pertaining child abuse and neglect proceedings may be shared, could conflict with the record sharing provisions in this Act.

SB 363 (2025) creates a “Child Protection Authority” separate and distinct from CYFD (administratively attached to RLD), as a nine-member oversight body responsible for receiving and investigating complaints regarding the handling of child abuse, neglect, and foster care cases by CYFD and other child welfare agencies; monitoring and evaluating CYFD’s policies and practices to ensure compliance with federal and state child welfare laws; making recommendations to the Governor, the Legislature and CYFD to improve child welfare practices and address systemic issues, issuing public reports on the authority’s findings, including annual reports on trends in child welfare complaints and recommendations for policy reforms; access records and data, including the department’s case files, court records and law enforcement reports, subject to confidentiality safeguards; provide education and outreach to families, children and mandated reporters regarding child welfare rights and responsibilities; and operate a toll-free hotline and electronic communication portal to receive complaints. This bill is related to—and may be in conflict with—HB 391, as each creates an independent oversight body over CYFD. It’s not clear that multiple oversight bodies with similar or identical authority over CYFD are necessary, so these bills seem to be in competition.

HB 5 (2025) creates an “office of child advocate,” to be administratively attached to NMDNJ. It authorizes the AG 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 a pattern of conduct or repeated incidents of violating laws and rules relating to child and family welfare. This bill, like SB 363 above, is related to—and may be in conflict with—HB 391, as all of these bills create an independent oversight body over CYFD. Again, it’s not clear that multiple oversight bodies with similar or identical authority over CYFD are necessary, so these bills seem to be in competition.

HB 173 (2025) amends the Children’s Code to make mandatory, rather than discretionary, that CYFD conduct assessments, provide services and conduct an investigation upon a failure to comply with a plan of care. Because this bill only amends existing provisions of the Children’s Code, and HB 391 contemplates a brand new section of the Children’s Code, there does not appear to be any conflict between this bill and HB 391. Likewise, the subject matter of HB 391, i.e., CYFD oversight, does not appear to conflict with that of this bill.

HB 205 (2025) and SB 458 (2025) propose to impose various requirements upon CYFD. Those lengthy bills create, *inter alia*, several oversight functions both within CYFD and without. As such, they very likely conflict with or compete with the purpose and provisions of HB 391. Similarly, HB 205 and SB 458 may conflict with HJR 5 (below) in that both seek to create a commission overseeing CYFD; this bill by statute, HJR 5 by constitutional amendment.

HJR 5 (2025) proposes a constitutional amendment to change CYFD’s governance structure by creating a commission to assume management and operations of CYFD. Because this bill contemplates commission oversight over CYFD, it likely conflicts or at least competes with all of the CYFD oversight bills described above, as well as HB 391.

TECHNICAL ISSUES

Section 3's directive that "[t]he office shall maintain autonomy over the office's budget and any decisions the office may take" is not clear as to whether "the office" refers to the Office of Child Ombud or the Administrative Office of the Courts, given that the preceding language refers to both of those offices.

Section 5 proposes that the chair of the committee will be selected by a majority of the other eight members, but there is no provision for how to proceed in the event of a tie.

OTHER SUBSTANTIVE ISSUES

Section 6 of the Act imposes mandatory duties upon the Office of Child Ombud, which could result in a mandamus petition for any alleged failure to comply with statutory obligations. *See, e.g., Mimbres Valley Irrigation Co. v. Salopek*, 2006-NMCA-093, ¶ 11, 140 N.M. 168 ("Mandamus lies only to compel a public officer to perform an affirmative act where, on a given state of facts, the public officer has a clear legal duty to perform the act and there is no other plain, speedy, and adequate remedy in the ordinary course of the law.").

Section 6's directive that the Office of Child Ombud may meet or communicate with any child placed in the custody of CYFD might require the involvement of a child's guardian ad litem or attorney. *See* NMSA 1978, § 32A-4-10 (2005) (outlining the rights of a child subject to the provisions of the Children's Code).

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A