

HOUSE BILL 5

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO FAMILIES; ENACTING THE OFFICE OF CHILD ADVOCATE ACT; PROVIDING FOR THE STATE CHILD ADVOCATE; CREATING THE OFFICE OF CHILD ADVOCATE AND ESTABLISHING THE POWERS AND DUTIES OF THAT OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE STATE CHILD ADVOCATE SELECTION COMMITTEE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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SECTION 1. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Office of Child Advocate Act"."

SECTION 2. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Office of Child Advocate Act:

A. "child in custody" means a minor who is placed by the department in custodial or residential care, including foster care, kinship care or care within a group home, a residential treatment center, a juvenile justice facility, a semi-independent living program or an emergency shelter, pursuant to a court order or otherwise sanctioned by the court and does not live with either of the child's birth parents;

B. "committee" means the state child advocate selection committee;

C. "department" means the children, youth and families department;

D. "near fatality" means an injury or condition caused by abuse or neglect that results in a child:

(1) being placed in serious or critical condition, as certified by a licensed physician; and

(2) receiving critical care for at least twenty-four hours following the child's admission to a critical care unit; and

E. "office" means the office of child advocate."

SECTION 3. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--CREATED.--The "office of child advocate" is created and is administratively attached to the state department of justice pursuant to Section 9-1-7 NMSA 1978. The office shall maintain autonomy over the office's budget and any decisions the office may take."

SECTION 4. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] STATE CHILD ADVOCATE--APPOINTMENT-- DUTIES.--The head of the office is the "state child advocate" HJC→, ~~who shall be appointed for a term of six years, except that the initial term shall begin on July 1, 2025 and shall end on December 31, 2025~~←HJC . At the time of appointment, the

state child advocate shall have, at a minimum, five years of documented professional experience working in child protective or juvenile justice services and be licensed in good standing as an attorney, a psychologist, a social worker or a marriage and family therapist. The state child advocate may be reappointed to successive terms. An appointed state child advocate shall serve and have all of the duties, responsibilities and authority of that office during the period of time in which the state child advocate is appointed. The governor may remove the state child advocate only for malfeasance, misfeasance or abuse of office. The state child

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advocate shall oversee the office and assign and distribute the work of the state child advocate."

SECTION 5. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] STATE CHILD ADVOCATE SELECTION COMMITTEE--
DUTIES.--

A. The "state child advocate selection committee" is created and consists of nine members, including:

(1) one member who shall be selected by the president pro tempore of the senate;

(2) one member who shall be selected by the minority floor leader of the senate;

(3) one member who shall be selected by the speaker of the house of representatives;

(4) one member who shall be selected by the minority floor leader of the house of representatives;

(5) one member who shall be selected by the governor, who shall have specialized expertise in the federal Indian Child Welfare Act of 1978 and the Indian Family Protection Act and who shall have lived experience in the foster care or juvenile justice system;

(6) one member who shall be selected by the attorney general;

(7) two members who shall be selected by the chief justice of the supreme court; and

(8) a committee chair, whom a majority of the

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other eight members select and who is:

(a) not a candidate for the position of state child advocate; and

(b) a person with extensive knowledge of child protective or juvenile justice services.

B. The committee shall meet HJC→by September 1, 2025←HJC exclusively for the purpose of nominating persons to fill HJC→a current or impending vacancy in←HJC the position of state child advocate. The committee shall actively solicit, accept and evaluate applications for the position of state child advocate and may require applicants to submit any information that the committee deems relevant to the consideration of applications. Within ninety days before the date on which the term of a state child advocate ends or no later than thirty days after the occurrence of a vacancy in the state child advocate position, the committee shall convene and, within thirty days after convening, submit to the governor and the attorney general the names of persons who are recommended for appointment to the position by a majority of the committee members.

C. Immediately after receiving nominations for the state child advocate, the governor or the attorney general may make one request of the committee for submission of additional names. The committee shall promptly submit those additional names if a majority of the committee members find that additional persons would be qualified and recommends those

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persons for appointment as state child advocate. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of state child advocate within thirty days after receiving final nominations from the committee by appointing one of the persons nominated by the committee.

D. The committee is administratively attached to the state department of justice pursuant to the provisions of Section 9-1-7 NMSA 1978.

E. After the initial meeting of the committee, the governor or a majority of the committee members may call subsequent meetings of the committee to nominate persons to fill a current or impending vacancy in the position of state child advocate.

F. The members of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

SECTION 6. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--POWERS--
DUTIES.--The office:

A. shall:

(1) review the department's provision of services to children and families, receive complaints concerning the actions of the department or of any entity or

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person that provides services to children and families through funds provided by the department and make appropriate referrals when the state child advocate determines that a child or family may be in need of assistance;

(2) determine the extent to which the department's policies and procedures protect and enhance children's personal dignity, right to privacy, appropriate health care and education in accordance with state and federal law;

(3) adopt and promulgate rules in accordance with the State Rules Act as are deemed necessary to carry out the provisions of the Office of Child Advocate Act;

(4) operate a toll-free hotline and electronic communication portal to receive complaints pursuant to this section;

(5) investigate and attempt to resolve complaints made by or on behalf of a child in custody, receiving services under the supervision of the department, subject to a referral to the department or whose parent, guardian or custodian is under investigation by the department;

(6) decide, in its discretion, whether to investigate a complaint or refer complaints to another agency for investigation;

(7) upon rendering a decision to investigate a complaint, notify the complainant of the intention to investigate and, if the office declines to investigate a

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complaint or continue an investigation, notify the complainant that no further action will be taken by the office;

(8) update the complainant on the progress of the investigation within thirty days;

(9) work in collaboration with relevant parties to strengthen the department's services for children and families;

(10) analyze and monitor the development and implementation of federal, state and local laws, regulations and policies relating to child and family welfare and recommend changes when appropriate;

(11) support children and families by providing information about the children's and families' rights and responsibilities related to departmental services;

(12) upon request, provide comprehensive information concerning child and family welfare to the governor, state agencies and legislators;

(13) compile an annual report pursuant to Section 7 of the Office of Child Advocate Act;

(14) subpoena witnesses to provide testimony in cases in which a fatality or near fatality of a child in custody has occurred;

(15) access information or records that are necessary for carrying out the provisions of the Office of Child Advocate Act;

(16) in the course of investigating a

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complaint, have authority to request, access and review information, records or documents, including records of third parties, that the office deems necessary to conduct a thorough and independent review of a complaint so long as the department would be entitled to access or receive such information, records or documents;

(17) in the course of investigating a complaint, determine whether the department or a department employee has violated a child's federal or state constitutional rights, acted with reckless disregard to a child's health and safety or engaged in a pattern of conduct or repeated incidents of violating laws and rules relating to child and family welfare; and

(18) refer any finding of a violation of federal or state constitutional rights, reckless disregard for 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 to the attorney general; and

B. may:

(1) adopt and promulgate rules pertaining to the administration of the office and, subject to appropriation, hire and contract for such professional, technical and support staff as needed to carry out the functions of the office; provided that such hiring and contracting shall be without regard to party affiliation and solely on the grounds of competence and fitness to perform the duties of the position.

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Employees of the office, except the state child advocate, are subject to the provisions of the Personnel Act; and

(2) meet or communicate with any child in custody, receiving services under the supervision of the department, subject to a referral to the department or under investigation by the department."

SECTION 7. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] ANNUAL REPORT--REPORT CONTENTS--CREATION AND MAINTENANCE OF WEBSITE CONTAINING REPORT INFORMATION.--

A. Each year, the office shall submit to the legislative finance committee, the department, the supreme court and the governor on or before September 1 a report addressing services provided by the department, including:

- (1) the quality of services provided to children and families;
- (2) the conditions of placements for New Mexico's children, the number of out-of-state placements and an assessment of each active congregate care and juvenile justice facility in which children in custody are placed;
- (3) the number of children removed from the household of a parent, foster parent or guardian;
- (4) the number of children returned to a household from which they were removed;
- (5) the number of children placed in a juvenile justice facility;

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(6) the number of children in custody who have run away from a department placement, the number of children in custody who have been found after running away and the number of children in custody who are currently missing;

(7) the number of cases in which families subject to court-ordered treatment plans or voluntary placement agreements have absconded with children in custody;

(8) a review of systemic issues related to services for assistance to children and families within the child protection and juvenile justice systems;

(9) findings and recommendations related to the implementation of the federal Indian Child Welfare Act of 1978 and the Indian Family Protection Act;

(10) recommendations related to improving department services for children and families;

(11) data disaggregated by race, ethnicity, gender, geographic location, sexual identity, disability status and any other categories that the office deems necessary; and

(12) an outline of the training and certification process for the state child advocate and office staff.

B. To the extent possible, the office shall use methodology that is consistent with the system used by federal government agencies for calculating and reporting the data required for the office's annual report.

C. The office shall create and maintain a web page

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on which the data contained in Subsection A shall be provided in an accessible manner and updated quarterly.

D. Each year, the annual report shall be posted to the web page created pursuant to Subsection C of this section."

SECTION 8. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] TRAINING AND CERTIFICATION.--

A. The state child advocate shall ensure that office staff are trained in:

(1) federal, state, local and tribal laws, regulations and policies with respect to child protection and juvenile justice services in the state;

(2) investigative techniques, including trauma-informed care and questioning;

(3) the federal Indian Child Welfare Act of 1978, the Indian Family Protection Act, tribal culture, tribal relations and sovereign nation status;

(4) department policies and procedures, including policies and procedures related to abuse and neglect, out-of-home placement and safety and risk assessments; and

(5) such other matters as the office deems appropriate.

B. The state child advocate shall develop procedures for the training and certification of appropriate staff.

C. An officer, employee or other representative of

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the office shall not investigate any complaint filed with the office unless that person is certified by the office."

SECTION 9. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are employees of the office or who have contracts with the office shall not have a conflict of interest with the department or with an entity that provides services to children and families through funds provided by the department relating to the performance of their responsibilities pursuant to the Children's Code. For the purposes of this section, a conflict of interest exists whenever the state child advocate, an employee of the office or a person having a contract with the office:

- A. has direct involvement in the licensing, certification or accreditation of a provider or facility delivering services to children and families;
- B. has a direct ownership interest in a provider or facility delivering services to children and families;
- C. is employed by or participates in the management of a provider or facility delivering services to children and families; or
- D. receives or has the right to receive, directly or indirectly, remuneration pursuant to a compensation arrangement with a provider or facility delivering services to children and families."

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SECTION 10. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INCIDENTS, FATALITIES AND NEAR FATALITIES.--

A. The department shall provide the office with a copy of all reports related to actual physical injury to a child in custody or at a significant risk of such an injury.

B. The department shall provide the office with a written notification within seventy-two hours of:

(1) a fatality or near fatality of a child in custody or referred or receiving services under the supervision of the department; and

(2) the restraint or seclusion of a child in custody."

SECTION 11. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by the office, law enforcement agencies shall share with the office all law enforcement reports involving a child in custody, receiving services under the supervision of the department, subject to a referral to the department or under investigation by the department."

SECTION 12. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

A. The office shall maintain the confidentiality of

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all case records, third-party records and court records, as well as any information gathered in the course of investigations and system monitoring duties. These records are exempt from public inspection and copying pursuant to the Inspection of Public Records Act and shall be kept confidential unless disclosure is:

- (1) ordered by the court;
- (2) necessary to prevent imminent harm and the imminent harm is communicated directly to the state child advocate or staff of the office;
- (3) necessary to the department in order for the department to determine the appropriateness of initiating an investigation regarding potential abuse or neglect or other emergency circumstances; or
- (4) necessary to the department in order for the department to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure or certification or both.

B. Notwithstanding Subsection A of this section, the office may publicly report any patterns of conduct or repeated incidents identified by the office in carrying out the provisions of the Office of Child Advocate Act; provided that the office shall not publicly disclose either of the following:

- (1) individually identifiable information about a child unless the information is already known to the public; and

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(2) investigation findings when there is a pending law enforcement investigation or prosecution."

SECTION 13. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] OTHER REMEDIES.--An individual who pursues remedies pursuant to the Office of Child Advocate Act is not precluded from pursuing other legal or equitable remedies."

SECTION 14. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] NOTIFICATION OF OFFICE OF CHILD ADVOCATE.--The department shall notify all children in custody, receiving services under the supervision of the department, subject to a referral to the department or under investigation by the department and their parents, guardians, foster parents and fictive kin of the existence of the office, its purpose and function and its toll-free hotline and electronic communication portal with instructions for access."

SECTION 15. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] ACTION BY THE ATTORNEY GENERAL.--

A. The attorney general may bring a civil cause of action for declaratory or injunctive relief against the department or a department 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

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and rules relating to child and family welfare.

B. The authority provided in this section is in addition to the other powers and duties of the attorney general and does not prevent prosecution for a violation of the Criminal Code."

SECTION 16. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61, as amended) is amended to read:

"32A-2-32. CONFIDENTIALITY--RECORDS.--

A. All records pertaining to the child, including all related social records, behavioral health screenings, diagnostic evaluations, psychiatric reports, medical reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pre-parole or supervised release reports and supervision histories obtained by the juvenile probation office, parole officers and the juvenile public safety advisory board or in possession of the department, are confidential and shall not be disclosed directly or indirectly to the public.

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act.

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to any of the following, provided that the agency, person or institution receiving

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information shall not re-release the information without proper consent or as otherwise provided by law:

- (1) court personnel;
- (2) the child's court appointed special advocates;
- (3) the child's attorney or guardian ad litem representing the child in any matter;
- (4) department personnel;
- (5) corrections department personnel;
- (6) law enforcement officials when the request is related to the investigation of a crime;
- (7) district attorneys or children's court attorneys;
- (8) a state government social services agency in any state;
- (9) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978, the Indian Family Protection Act or any regulations promulgated under ~~[that act]~~ those acts;
- (10) tribal juvenile justice system and social service representatives;
- (11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent, when the disclosure of the information is necessary for the

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child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;

(12) school personnel involved with the child if the records concern the child's educational needs, but shall only include that information necessary to provide for the child's educational planning and needs;

(13) a health care or mental health professional involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;

(14) representatives of the protection and advocacy system;

(15) the child's parent, guardian or legal custodian when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for the treatment or care of the child;

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court who agrees not to otherwise release the records; [and]

(17) the child, if fourteen years of age or older; and

(18) the attorney general and the office of child advocate and its employees and contractors, pursuant to

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the requirements of the Office of Child Advocate Act, if the records are needed for the purpose of implementing that act.

D. If disclosure of otherwise confidential records is made to the child or any other person or entity pursuant to a valid release of information signed by the child, all victim or witness identifying information shall be redacted or otherwise deleted.

E. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor.

F. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

SECTION 17. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be

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confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and:

(1) court personnel and persons or entities authorized by contract with the court to review, inspect or otherwise have access to records or information in the court's possession;

(2) court-appointed special advocates appointed to the neglect or abuse proceeding;

(3) the child's guardian ad litem;

(4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;

(5) department personnel and persons or entities authorized by contract with the department to review, inspect or otherwise have access to records or information in the department's possession;

(6) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(9) any state government or tribal government social services agency in any state or when, in the opinion of

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the department, it is in the best interest of the child, a governmental social services agency of another country;

(10) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

(11) school personnel involved with the child if the records concern the child's social or educational needs;

(12) a grandparent, parent of a sibling, relative or fictive kin, if the records or information pertain to a child being considered for placement with that grandparent, parent of a sibling, relative or fictive kin and the records or information concern the social, medical, psychological or educational needs of the child;

(13) health care or mental health professionals involved in the evaluation or treatment of the child or of the child's parents, guardian, custodian or other family members;

(14) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(15) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department;

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(16) representatives of the federal government or their contractors authorized by federal statute or regulation to review, inspect, audit or otherwise have access to records and information pertaining to neglect or abuse proceedings;

(17) any person or entity attending a meeting arranged by the department to discuss the safety, well-being and permanency of a child, when the parent or child, or parent or legal custodian on behalf of a child younger than fourteen years of age, has consented to the disclosure; ~~and~~

(18) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court; and

(19) the attorney general and the office of child advocate and its employees and contractors, pursuant to the requirements of the Office of Child Advocate Act, if the records are needed for the purpose of implementing that act.

C. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation

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and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

SECTION 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.