

FIFTY-SEVENTH LEGISLATURE
FIRST SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

March 12, 2025

Mr. Chair:

I propose to the SENATE JUDICIARY COMMITTEE the following amendments to

HOUSE BILL 5, as amended

1. On page 1, line 15, after the semicolon, insert:

"PROVIDING FOR THE PROVISION OF ADMINISTRATIVE SERVICES BY THE OFFICE OF CHILD ADVOCATE TO THE SUBSTITUTE CARE ADVISORY COUNCIL; CHANGING COUNCIL MEMBERSHIP, PROCESSES AND PROCEDURES; ESTABLISHING PROFESSIONAL STAFF QUALIFICATIONS AND TRAINING; PROVIDING FOR THE APPOINTMENT OF LOCAL BOARDS; PROVIDING POWERS AND DUTIES; SPECIFYING CHILD WELFARE CONFIDENTIALITY; PROVIDING FOR CIVIL ACTION BY THE ATTORNEY GENERAL; PROVIDING PRIVATE REMEDIES;"

2. On page 25, between lines 4 and 5, insert:

"SECTION 18. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Citizen Substitute Care Review Act:

A. "board" means a substitute care review board of volunteer members facilitated by council staff convened for the purpose of reviews of designated cases or other related activities deemed appropriate by the council;

B. "case" means an abuse or neglect case referred to the

department;

C. "council" means the substitute care advisory council;

D. "identified adult" means an adult participating in the fostering connections program or that program's successor;

E. "identified child" means a child who is:

(1) the subject of a referral of abuse and neglect made to the department;

(2) receiving services from the department; or

(3) in the custody of the department due to abuse and neglect proceedings;

F. "office" means the office of child advocate;

G. "public member" means an individual who has been appointed by the governor;

H. "substitute care" means custodial or residential care for an identified child that is ordered or otherwise sanctioned by the court and in which the child does not live with either of the child's birth parents. "Substitute care" includes foster care, kinship care or care within a group home, residential treatment center, juvenile justice facility, semi-independent living program or emergency shelter; and

I. "volunteer member" means an individual who has met eligibility requirements to perform volunteer services for the council."

SECTION 19. Section 32A-8-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 206, as amended) is amended to read:

"32A-8-4. SUBSTITUTE CARE ADVISORY COUNCIL--MEMBERS--
COMPENSATION--RESPONSIBILITIES--ADVISORY COMMITTEE.--

A. The "substitute care advisory council" is created.
~~[and, in accordance with the provisions of Section 9-1-7 NMSA 1978,~~

~~is administratively attached to the regulation and licensing department. The general purpose of the council is to oversee substitute care review boards in their monitoring of children placed in the custody of the children, youth and families department to identify systemic policy issues regarding substitute care]~~ The office shall provide necessary administrative services to the council. The council shall be composed of ~~[nine persons]~~ eleven voting members, including:

(1) the secretary of public education ~~[or the secretary's designee]~~;

(2) the secretary of ~~[human services or the secretary's designee]~~ health care authority;

(3) the ~~[secretary of finance and administration or the secretary's designee]~~ state child advocate;

(4) the attorney general;

~~[(4)]~~ (5) the secretary of health; ~~[or the secretary's designee]~~;

~~(5) two public members, appointed by the governor, who:~~

~~(a) are at least eighteen and no more than thirty years of age at the time of appointment; and~~

~~(b) were previously placed in substitute care;~~

~~(6) two public members, appointed by the governor, who have expertise in the area of child welfare; and]~~

(6) the secretary of early childhood education and care;

(7) one children's court judge, appointed by the governor; and

(8) four public members appointed by the governor, two of whom have expertise in the area of child welfare and two of whom have had experience in abuse and neglect proceedings, including

former foster youth, biological parents, foster parents and adoptive parents. At least one of the public members shall have expertise in the Indian Family Protection Act and the federal Indian Child Welfare Act of 1978.

~~B. [The council may hire staff and contract for services to carry out the purposes of the Citizen Substitute Care Review Act.]~~ The secretary of children, youth and families shall serve as a nonvoting member.

C. Except as provided pursuant to Paragraph (7) of Subsection A and Subsection B of this section, a person or a relative of a person employed by the department or a district court shall not serve on the council.

~~[C.]~~ D. Terms of office of public members of the council shall be three years. Public members shall be eligible for reappointment. In the event that a vacancy occurs among the members of the council, the governor shall appoint another person to serve the unexpired portion of the term.

E. A member of the council shall be entitled to receive per diem and mileage as provided for nonsalaried public officers pursuant to the Per Diem and Mileage Act; provided that, if a different provision of that act applies to a member, that member shall be paid pursuant to that provision. A member of the council shall receive no other compensation, perquisite or allowance.

~~[D.]~~ F. The council shall select a chairperson, a vice chairperson and other officers as it deems necessary.

~~[E.]~~ G. The council shall meet no less than [twice annually] quarterly and more frequently upon the call of the chairperson.

H. The council shall, on or before October 1 of each year, designate cases for review that involve children in substitute care who:

(1) are under the age of five; or

(2) have remained in substitute care for longer than

six months.

I. The council may establish work groups and enter into contracts, memoranda of understanding and joint powers agreements to carry out the provisions of the Citizen Substitute Care Review Act.

~~[F.] J. The council shall adopt [reasonable] rules relating to the functions and procedures of [the substitute care review boards and] the council [in accordance with the duties of the boards as provided in the Citizen Substitute Care Review Act]. These rules shall establish:~~

~~(1) establish training requirements for substitute care review board members;~~

~~(2) establish criteria for council designation of cases for substitute care review board review;~~

~~(3) establish procedures for substitute care review board review of designated cases;~~

~~(4) establish criteria for membership and tenure on and operating procedures for substitute care review boards;~~

~~(5) specify the information needed for designated cases to be monitored by substitute care review boards; and~~

~~(6) specify case information to be tracked and reported to the council.~~

~~G. When adopting rules establishing criteria for designation of cases for substitute care review board review, the council shall weigh the importance of the following factors, including:~~

~~(1) sibling placements;~~

~~(2) the frequency and severity of neglect or abuse;~~

~~(3) the behavioral health status of household members;~~

~~(4) the placement of children in households where there are no relatives of the children;~~

~~(5) data related to demographics; and~~

~~(6) relevant trend data]~~

(1) procedures to ensure compliance with the Open Meetings Act;

(2) initial and annual training requirements for council staff;

(3) requirements for public participation, including participation on work groups and boards;

(4) procedures for the council's review of designated cases;

(5) procedures to provide for public outreach and public comment to assess the impact of current child protection procedures and practices on children and families in the community; and

(6) other procedures to provide for compliance with the Citizen Substitute Care Review Act and the federal Child Abuse Prevention and Treatment Act as it relates to citizen review panels.

[H.] K. The council shall [review and coordinate the activities of the substitute care review boards and make a report with its recommendations to the department, the courts and the appropriate legislative interim committees] provide periodic reports on the work of the council, including an annual written report to the governor, the office, the appropriate legislative interim committee studying courts, corrections and justice, the legislative finance committee, the legislative health and human services committee, the department, the administrative office of the courts and other persons, organizations or agencies deemed appropriate. The annual report shall be distributed electronically on or before November 1 of each year [regarding statutes, rules, policies and procedures relating to substitute care]. This report shall include [recommendations for any changes to substitute care review boards.

~~I. Council members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act; provided that, if a different provision of that act applies to a specific member, that member shall be paid pursuant to that applicable provision. Members shall receive no other compensation, perquisite or allowance.~~

~~J. The council shall appoint by October 1 of each year a six-member advisory committee from a list of substitute care review board members that the substitute care review boards shall nominate. The advisory council shall meet with the council at least once per year to advise the council on matters relating to substitute care review. Advisory committee members shall serve terms of one year and may be reappointed] a summary of the activities of the council and recommendations to improve child protective services at the state and local levels. Other reports regarding trends or topics deemed necessary by the council may be provided to the governor, the legislature, the department and the administrative office of the courts."~~

SECTION 20. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] COUNCIL ADMINISTRATION--STAFFING.--

A. The state child advocate shall hire a director for the council who shall:

(1) oversee, manage and direct processing of cases filed or reviewed pursuant to the Citizen Substitute Care Review Act, provide administrative support to the council and conduct any other activities as deemed necessary by the council to support its functions;

(2) act impartially in a nonpartisan manner; and

(3) promote public awareness of the purpose and services of the council and the methods for submitting requests for case review.

B. The state child advocate:

(1) shall employ and fix the compensation of council staff;

(2) shall prepare a budgetary request to be submitted through the state department of justice; and

(3) may apply for and accept grants, gifts, donations and bequests from public or private sources.

C. The director shall possess the following qualifications:

(1) a master's degree in social work and possession of a license issued pursuant to the Social Work Practice Act; or

(2) an active license to practice law issued pursuant to rules promulgated by the supreme court; and

(3) at least five years' experience in child welfare, with an emphasis on child abuse and neglect prevention or abatement.

D. Council staff providing professional services shall possess:

(1) a bachelor's degree in social work, psychology, guidance and counseling, education, sociology, criminal justice, criminology or family studies and at least two years' experience in child welfare administration with an emphasis on child abuse and neglect prevention or abatement; or

(2) at least four years of experience combined from:

(a) study at an accredited college or university in a field related to child welfare; or

(b) professional experience working in the field of child welfare.

E. Council staff shall be required to complete annual training directly relating to enhancing staff proficiency, meeting job requirements and conducting case reviews required pursuant to the Citizen Substitute Care Review Act."

SECTION 21. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] ATTORNEY GENERAL REPRESENTATION AND CONSULTATION.--The attorney general shall advise and consult with the council, acting pursuant to the Citizen Substitute Care Review Act, and render legal services upon request of the council."

SECTION 22. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] VOLUNTEER MEMBER PARTICIPATION--RULES.--

A. The council shall promulgate rules relating to volunteer member participation, which shall include provisions for:

(1) efforts to recruit and retain volunteer members who are broadly representative of the communities in which they serve and to include volunteer members with expertise in the prevention and treatment of child abuse and neglect and adult former victims of child abuse or neglect;

(2) a membership process that includes background checks and orientation training;

(3) ongoing training requirements;

(4) procedures to address actual, perceived or possible conflicts of interest;

(5) a code of conduct; and

(6) procedures to maintain confidentiality of information required to be kept confidential as required by law.

B. Each volunteer member who meets the requirements established by council rules shall participate at least once quarterly in case reviews and other activities deemed appropriate by council staff.

C. Volunteer members may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage

Act; provided that if a different provision of that act applies to a specific member, that member shall be paid pursuant to that applicable provision. Members shall receive no other compensation, perquisite or allowance."

SECTION 23. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] SUBSTITUTE CARE REVIEW BOARD ESTABLISHMENT--
CASE REVIEW.--

A. The council shall establish boards composed entirely of volunteer members to review cases designated in accordance with council rules.

B. When a case has been designated for review pursuant to Subsection H of Section 32A-8-4 NMSA 1978, the staff of the council shall convene a board to review the case.

C. If a case reviewed by a board is a children's court case, the staff of the council shall give the parties to the case notice of the review and afford the parties to the case an opportunity to provide input relevant to the review. If the case involves an Indian child, notice shall additionally be provided to persons afforded notice pursuant to the Indian Family Protection Act.

D. After a board's review of a children's court case, council staff shall submit a report of the board's findings and recommendations to the children's court, the department and the parties to the case. If the case involves an Indian child, the report shall additionally be provided to persons afforded notice pursuant to the Indian Family Protection Act.

E. The department shall:

(1) acknowledge receipt of the report within ten business days; and

(2) within thirty days of receipt, provide a response to the board's findings and recommendations, including plans for adopting the recommendations or taking alternative action.

F. Council staff and the department shall meet quarterly, or as needed to work toward mutually agreed-upon outcomes."

SECTION 24. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] ACCESS TO RECORDS.--

A. Subject to state or federal law to the contrary, council staff shall have access to, including the right to inspect and copy, any records necessary to carry out council responsibilities, including access to the following:

(1) social records, diagnostic evaluations, psychiatric or psychological reports, video footage, transcripts and audio records of a child's statement of abuse or medical reports incident to an abuse or neglect proceeding;

(2) a record of an agency, a hospital, an organization, a school, a person or an office, including the clerk of the court, the department, a court-appointed special advocate program, a public or private health care facility, a medical or mental health care professional, a law enforcement agency or other agency that provides services to children and families;

(3) a record of an administrative hearing conducted by the department and any findings or conclusions resulting from such hearing; and

(4) a record of a private meeting with a child in protective custody or with an individual with knowledge of the case or grievance.

B. The department shall establish procedures to provide the requested records in a timely manner.

C. The department shall:

(1) establish procedures to provide the requested records in a timely manner and to ensure staff availability to provide input for case reviews; and

(2) ensure that its agents and contractors provide requested records in a timely manner and ensure staff availability to provide input for case reviews.

D. The department or its agent or contractor shall not discharge, discriminate against in any manner or retaliate against an employee, a volunteer or a contractor who, in good faith, communicates with the council about a case review or provision of records pursuant to this section."

SECTION 25. A new section of the Citizen Substitute Care Review Act is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

A. Information obtained or generated by a member of the council, a staff member of the council or a member of a board for the purpose of performing duties in compliance with the Citizen Substitute Care Review Act is not subject to the provisions of the Inspection of Public Records Act.

B. The name, address or other personally identifiable information of a person whose records are released to council staff are confidential.

C. A member of the council, a staff member of the council or a member of a board with knowledge of a case that was obtained pursuant to the Citizen Substitute Care Review Act shall maintain that information as confidential unless:

(1) the identified child or identified adult who is the subject of the case consents in writing to disclosure of that information to another person;

(2) the identified child or identified adult who is the subject of the case provides oral consent for disclosure to another person that is immediately documented in writing by council staff; or

(3) disclosure is ordered by a court."".

3. Renumber the succeeding section accordingly.

Respectfully submitted,
