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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/25/2025

SPONSOR Padilla

BILL
NUMBER Senate Bill 363

SHORT TITLE Child Protection Authority Act

ANALYST Garcia/Greenham

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CPA (RLD)	No fiscal impact	At least \$650.0	At least \$650.0	At least \$1,300.0	Recurring	General Fund
CPA (RLD)	No fiscal impact	\$750.0 to \$2,000.0	No fiscal impact	No fiscal impact	Nonrecurring	General Fund
CYFD	No fiscal impact	Up to \$300	Up to \$300	Up to \$600	Recurring	General Fund
AOC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
OFRA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
OSA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	\$1,700.0 to \$2,950.0	At least \$950	\$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 5, House Bill 391, and Senate Bill 307
Relates to Senate Bill 307, House Bill 391, and House Bill 5

Sources of Information

LFC Files
National Conference of State Legislatures
Child Welfare Information Gateway

Agency Analysis Received From
Office of Family Representation and Advocacy (OFRA)
Administrative Office of the Courts (AOC)
Children, Youth and Families Department (CYFD)

Agency Analysis was Solicited but Not Received From
Regulation and Licensing Department (RLD)
New Mexico Attorney General (NMAG)
Office of the State Auditor (OSA)
Health Care Authority (HCA)

SUMMARY

Synopsis of Senate Bill 363

Senate Bill 363 (SB363) creates an independent Child Protection Authority (CPA) administratively attached to the Regulation and Licensing Department (RLD).

The bill proposes CPA oversee and investigate child welfare complaints, monitor compliance with child welfare laws, and provide policy recommendations. CPA would be governed by a nine-member board, including five members appointed by the governor, subject to Senate confirmation, and four members appointed by leadership within the Legislature, who shall serve four-year terms. CPA would be led by a director appointed by the members who could be removed for cause by a member vote of two-thirds. The director shall serve a six-year term.

Key responsibilities of CPA would include:

- Receiving and investigating complaints regarding child abuse, neglect, and foster care cases involving the Children, Youth and Families Department (CYFD) and other child welfare agencies;
- Monitoring and evaluating CYFD's policies and practices for compliance with state and federal laws;
- Making recommendations to the governor, Legislature, and CYFD to improve child welfare services;
- Issuing public reports on complaints, systemic issues, and recommendations for policy reforms;
- Providing education and outreach on child welfare rights and responsibilities;
- Operating a toll-free hotline and electronic communication portal for complaints;
- Accessing records and data, including case files, court records, and law enforcement reports, subject to confidentiality safeguards.

CPA would establish a complaint resolution process for individuals, who may remain anonymous, to report concerns about CYFD and related agencies. CPA would be required to maintain communication with complainants and report findings to CYFD and the complainant within 10 days of resolution. SB363 also amends Section 32A-2-32 NMSA 1978 to permit CPA access to confidential child welfare records and requires CYFD to notify children and families under its supervision about the existence and purpose of CPA.

Senate Bill 363 would allow the director to hire staff, which include investigators, attorneys, and policy analysts, and would require CPA to submit an annual report to CYFD, the governor, and the Legislature and to hold quarterly public meetings.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Neither the Regulation and Licensing Department nor CYFD provided fiscal analysis for this bill. However, the functions of the proposed CPA are similar to those proposed in other bills, which would establish ombudsman functions related to child welfare, and the LFC analysis below proposes similar cost estimates.

LFC estimates the cost to establish an entity similar to the Child Protection Authority 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 analysis for bills requiring similar functions, LFC estimates CYFD might need to hire up to 3 FTE to provide statutorily required information to an office, roughly \$300 thousand annually.

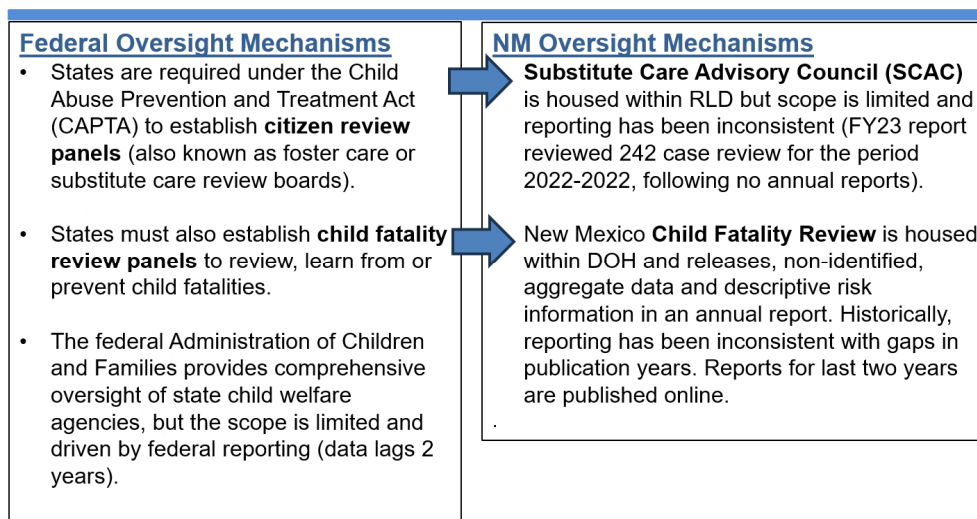
AOC notes potential administrative costs associated with updating, distributing, and documenting any statutory changes in the state, as well as potential impacts to caseloads. In addition, AOC notes Senate Bill 363 could result in additional court costs arising from the complaints and investigations authorized under this law. AOC did not provide a specific cost estimate.

The Office of the State Auditor did not provide fiscal analysis for this bill may also incur fiscal implications if the governor or LFC requests an audit as provided in the bill. LFC estimates the fiscal impact to be indeterminate but minimal.

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 overseen by the federal Administration of Children and Families (ACF). These include citizen review panels, 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.

Oversight of State Child Welfare Systems



Source: LFC Files

Additionally, while New Mexico has a variety of internal oversight mechanisms within CYFD, these entities are inherently limited and have conflicts of interests with public accountability, 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 interest. 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 function beyond the federally required citizen review panels and child fatality reviews. Most states have now established an additional oversight mechanism, often in the form of an oversight or governance child welfare commission or an ombudsman. NCSL reports 40 states have created offices or ombudsmen 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 agency proposed in SB363 proposes a function that provides oversight without a change in governance, analogous to some examples of child welfare commissions in other states, and proposes grievance functions similar to an ombudsman function. Senate Bill 363 would place the grievance function within the executive branch, while other bills introduced would place the grievance function in a different branch of government.

According to LFC analysis of the oversight functions in other states, child welfare commissions are typically long-term bodies with appointed members who work to address broad child welfare issues while providing stability and leadership across changing executive administrations. Alternatively, some states have created child welfare commissions for short-term oversight and governance functions with identified sunset dates. Child welfare commissions may be tasked with permanent and direct oversight of the state child welfare agency's leadership, such as Oklahoma's model, or they may have limited functions, such as a focused investigation into a specific issue of concern. Additionally, commissions can include representation from the child protective agency while maintaining an external oversight status (e.g., New York's 2021 Blue Ribbon Commission on Forensic Custody Evaluations) while other commission models provide direct governance of the state child welfare agency.

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." Ombudsman 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.

Regarding the agency proposed in SB363, The Administrative Office of the Courts (AOC) and the Office of Family Representation and Advocacy (OFRA) raise several concerns regarding SB 363.

Both agencies noted a lack of enforcement mechanisms provided to CPA. While CPA is tasked with investigating complaints about child abuse, neglect, and foster care cases, SB363 does not provide clear directives on how it would ensure CYFD's or other child welfare agencies' compliance in the investigation process, and no penalties are specified for noncompliance.

Additionally, CPA is denied subpoena power, which limits its ability to compel the compliance needed to conduct thorough investigations, and AOC notes:

There is no reference in the CPA to enforcement or even agreement or cooperation between the CPA and the department and agencies, and their employees ... there are no provisions providing for agencies and individuals to comply with any directives that emanate from the CPA.

In addition, SB363 does not define what constitutes a resolution of a complaint, creating uncertainty about CPA investigation outcomes. Moreover, there are no time limits for completing investigations and it is unclear if CYFD is obligated to act on CPA recommendations.

OFRA also reports concerns about permitting anonymous complaints because those might be used for harassment or false allegations and could hinder CPA's ability to maintain the required ongoing communication with complainants.

Additionally, SB363 broadly allows CPA to access records and data from CYFD and other agencies, which could create an administrative burden for those entities, and the judiciary may also be affected by processing additional case records requests while ensuring compliance with confidentiality laws. AOC and OFRA also indicate that SB363's establishment of an independent agency requires significant resources, but there is no appropriation to support CPA operations in either the bill or the HAFC-introduced version of the General Appropriation Act.

Another significant concern raised by AOC and OFRA is the potential overlap between CPA and other proposed child welfare oversight agencies, like the Office of Child Ombud (SB307, HB391) and the Office of Child Advocate (HB5). OFRA indicates the multiple pending child welfare reform bills could lead to a fragmented and uncoordinated oversight system, potentially complicating the process for families working with CYFD. OFRA notes, without coordination, these overlapping initiatives may increase bureaucracy without necessarily improving child welfare outcomes.

CYFD reports:

The state of New Mexico is responsible for ensuring the safety, permanency, and well-being of children involved in the child welfare system. CYFD is tasked with the protection of children from abuse and neglect. Independent oversight as outlined in this legislation would be a beneficial addition to the existing system to improve accountability, transparency, and public trust as it will provide an additional avenue for those who may not be comfortable bringing their complaints to the department.

While CYFD has raised concerns the creation of ombudsman functions proposed in other bills would create redundancy with internal CYFD grievances processes, CYFD did not note this assertion in analysis submitted for Senate Bill 363. Instead CYFD notes:

If this legislation is passed, CYFD’s Office of Advocacy and CPA will work together by regularly staffing and sharing information about complaints received, the outcomes of each respective office’s investigations, and data and patterns to avoid duplication of the efforts and potential confusion for youth and constituents ... [T]he Office of Advocacy and CPA will collaborate to identify trends and gaps and design systemic solutions.

PERFORMANCE IMPLICATIONS

AOC notes potential performance implications related to cases filed and disposed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB363 conflicts with and relates to HB5, HB391, HJR5, SB307. These bills all propose new oversight mechanisms for child welfare services but take different approaches.

SB363 conflicts with HB5, which establishes an Office of the Child Advocate within the Attorney General’s Office to investigate, monitor, and resolve complaints about CYFD. The two bills also differ in their approach to handling complaints—HB5 grants the Child Advocate subpoena power to compel cooperation from agencies, while SB363 does not. This creates a conflict where two agencies could be investigating the same child welfare complaints under different levels of authority.

SB363 conflicts with HB391 and SB307, which both establish an Office of Child Ombud within the Administrative Office of the Courts that would have similar responsibilities to SB363’s CPA for reviewing CYFD’s handling of child abuse, neglect, and foster care cases, receiving complaints, and issuing public reports. However, OCO would be attached to the Administrative Office of the Courts, rather than the Regulation and Licensing Department. OCO would also be granted subpoena power, which CPA lacks, giving OCO broader investigative authority.

SB363 conflicts with House Joint Resolution 5, which also creates an oversight commission to oversee the Children, Youth and Families Department and would change governance of the agency, removing CYFD from the governor’s cabinet.

TECHNICAL ISSUES

OFRA notes the bill mentions “other child welfare agencies” but does not clarify which agencies would be subject to investigations of these “other child welfare agencies.”

OTHER SUBSTANTIVE ISSUES

OFRA notes the bill does not provide for minimum qualifications for the authority director and notes the bill implies that all staff, including presumably administrative staff, must have expertise in child welfare, juvenile law, or social services.

OFRA also notes state agencies already undergo an annual audit and are subject to additional auditing. The provision of the bill that would allow the governor or Legislative Finance Committee to direct an additional audit by the State Auditor “may create significant administrative burdens.”

AOC recommends considering amendments to detail how the proposed complaint, investigation, referral, and resolution processes would proceed.

RMG/MG/hj/hg