

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/11/2025

SPONSOR Jones/Armstrong

BILL
NUMBER House Bill 391

SHORT TITLE Office of Child Ombud Act

ANALYST Garcia/Greenham

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$1,000.00	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Office of the Child Ombud	No fiscal impact	At least \$650.0	At least \$650.0	At least \$1,300.0	Recurring	General Fund
CYFD	No fiscal impact	Up to \$300.0	Up to \$300.0	Up to \$600.0	Recurring	General Fund
Office of Child Ombud	No fiscal impact	\$750.0 to \$2,000.0	No fiscal impact	\$750.0 to \$2,000.0	Nonrecurring	General Fund
Total	No fiscal impact	\$1,700.0 to \$2,950.0	At least \$950.0	\$2,650.0 to \$2,900.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Companion to Senate Bill 307
 Conflicts with House Bill 5
 Conflicts with House Bill 305 and Senate Bill 363
 Relates to House Bill 205 and House Joint Resolution 5
 Conflicts with Senate Bill 84

Sources of Information

LFC Files
 Child Welfare Information Gateway
 National Conference of State Legislatures
 United States Ombudsman Association

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Health Care Authority (HCA)
 Office of Family Representation and Advocacy (OFRA)
 Children, Youth and Families Department (CYFD)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 391

House Bill 391 (HB391) proposes the establishment of an Office of Child Ombud (OCO) to oversee and advocate for the welfare of children in New Mexico. The bill aims to improve accountability and transparency in child protection services by creating an independent office that investigates complaints, reviews systemic issues, and provides recommendations for reform. The office would be administratively attached to the Administrative Office of the Courts (AOC), while functioning independently with regard to budgeting and decision-making.

OCO would be led by a State Child Ombud, appointed for six-year terms with the possibility of reappointment, and removal permitted only for malfeasance, misfeasance, or abuse of office. A nine-member State Child Ombud Selection Committee, comprised of representatives from the Legislature, the governor's office, and child welfare experts would be responsible for nominating candidates and selecting the State Child Ombud. All OCO employees and contractors would be prohibited from having financial ties to the Children, Youth and Families Department (CYFD) or other child welfare service providers.

CYFD would be required to notify OCO within 72 hours of any child fatality, near fatality, or use of restraint/seclusion involving children in state custody. Law enforcement would be required to share reports involving children in state custody or under investigation. OCO would also be required to maintain strict confidentiality of case records and investigative findings unless disclosure was ordered by a court or necessary to prevent imminent harm.

OCO's powers and responsibilities would include:

- Reviewing CYFD's provision of services to children and families and receiving and investigating complaints about CYFD or other entities that receive state funds for child welfare;
- Reviewing CYFD policies and procedures to ensure children's rights to dignity, privacy, health care, and education are protected, in accordance with state and federal law;
- Operating a toll-free hotline and an electronic communication portal for complaints;
- Investigating and attempting to resolve complaints made by or on behalf of children placed in the custody of receiving services under the supervision of the department;
- Providing information about recipients' rights and responsibilities related to departmental services;
- Providing annual reports with recommendations on child welfare improvements, including data on placements, removals, and systemic concerns, as well as providing information concerning child welfare to the governor, state agencies and legislators;
- Issuing subpoenas for cases involving child fatalities or near-fatalities in state custody;
- Reviewing compliance with the Indian Child Welfare Act (ICWA) and the Indian Family Protection Act (IFPA);
- Issuing an annual report which shall include specific information outlined in the bill; and
- Adopting and promulgating rules to carry out provisions of the act.

The bill would require the office to submit an annual report to the LFC, governor, and CYFD addressing services provided by CYFD as well as performance measures, including numbers of children in foster care in different placements and numbers of children in juvenile justice

facilities. The report must include recommendations for improving services.

The bill also amends sections of the Children’s Code (Section 32A-2-32 and 32-A-4-33 1978 NMSA) to allow OCO, including employees and contractors, to have access to confidential records.

The Office of Child Ombud Act appropriates \$1 million from the general fund to the Administrative Office of the Courts for the purpose of establishing the OCO.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund. This appropriation is not contained within the HAFC substitute for the General Appropriations Act.

AOC notes that the creation of the office may require additional administrative support and operational resources, but it did not provide an estimate of these specific costs.

CYFD notes that HB391 will likely generate records requests, which will require responses from CYFD program staff and legal counsel. However, CYFD did not provide a detailed estimate of the associated costs.

HCA notes that while the bill does not create direct fiscal implications for the agency, future fiscal impacts could arise if the ombudsman recommends changes to HCA-funded services, such as Medicaid-funded behavioral health services or safety-net programs. If additional reporting or oversight mechanisms are required for HCA-administered programs, resource allocation may need to be reassessed.

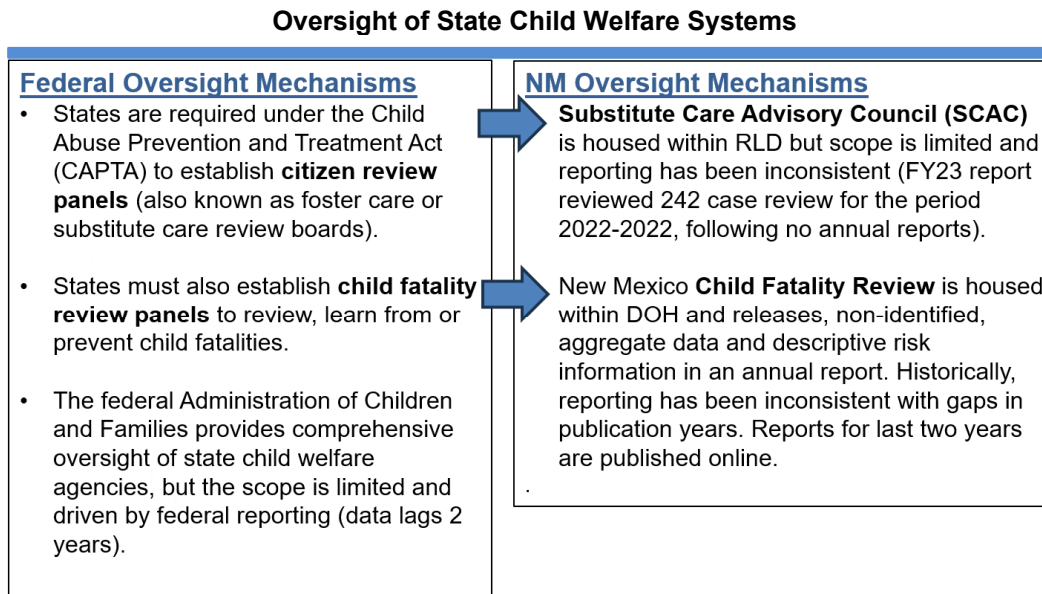
Both CYFD and HCA indicate that additional reporting and oversight functions could create long-term fiscal pressure, particularly if the ombudsman’s recommendations require adjustments to existing service models, reimbursement policies, or compliance structures.

LFC analysis in prior years estimated the cost to establish an ombudsman office could cost at least \$650 thousand annually, allowing OCO 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 prior years, LFC estimated CYFD might need to hire up to 3 FTE to provide statutorily required information, roughly \$300 thousand annually.

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

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.



Source: LFC Files

Additionally, while New Mexico has a variety of internal oversight mechanisms within CYFD, these entities present with inherent limitations and conflicts of interests with respect to public accountability, and system oversight and improvement. As noted in LFC publications, the CYFD Inspector General, for example, 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 interests. 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. HB391 (and its companion, Senate Bill 307) seeks to rectify this by establishing a permanent, independent, and nonpartisan Office of the Child Ombud (OCO) to provide child welfare services oversight for investigations, reporting, and policy reform recommendations.

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 beyond the federally required citizen review panels and child fatality reviews. The majority of states have established an additional oversight mechanism, typically in the form of an oversight or governance child welfare commission or an ombudsman office.

NCSL reports 40 states have created ombudsman offices 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 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.

AOC raises concerns with administratively attaching the proposed OCO to AOC, noting that the Executive Reorganization Act (Section 9-1-7 NMSA 1978) does not provide a judicial equivalent to “administratively attaching” an agency to an executive agency. AOC also notes that the proposed work of the OCO may overlap with the functions of the Substitute Care Advisory Council (SCAC), which is administratively attached to the Regulation and Licensing Department.

HCA notes that the establishment of the Office of the Child Ombud may introduce new oversight functions for child welfare services, some of which overlap with HCA-administered benefits and services, including Medicaid-funded behavioral health and safety-net programs. Future programmatic impacts could arise if the ombudsman recommends changes to service delivery, reimbursement policies, or provider networks. HCA notes that HB391 does not clarify the extent of the ombudsman’s authority over Medicaid-funded services. Without clarification, HCA may face compliance challenges and uncertainty regarding the scope of oversight.

The Office of Family Representation and Advocacy (OFRA) and CYFD raise concerns about administratively attaching the Office of the Child Ombud to AOC, noting that it could create a conflict of interest if the review process is not fully separated from the judicial process. OFRA recommends that the Legislature consider establishing the office as an adjunct agency in the executive branch to avoid these issues.

According to NCSL data, at least two states place an ombudsman function in the judicial branch, while other states house similar offices in a variety of locations across the three branches of government:

- Colorado’s Office of the Child Ombudsman is established within the judicial department as an independent and autonomous agency (Section 19-3.3-102 2023 CRS);
- Montana houses the office within the Department of Justice;
- Delaware placed the office in a non-judicial agency of the Courts, similar to the Administrative Office of the Courts in New Mexico. However, the office also provides legal representation on behalf of children involved in the child welfare system;
- The Connecticut Office of the Child Advocate is located within the Office of Governmental Accountability;
- Indiana and Iowa house their ombudsman offices within the legislative branch; and
- A variety of states house the function within a Health and Human Services executive agencies.

CYFD’s analysis notes that the additional reporting requirements for the OCO could create complications with the department’s ability to comply with the Kevin S. settlement, which already requires CYFD to report certain data to the settlement co-neutrals. CYFD states that it has already established an Office of Child Advocacy in response to the *Kevin S.* settlement, which includes a “warm line” for parties to file grievances and complaints.

PERFORMANCE IMPLICATIONS

AOC notes that establishing the office would require significant time and coordination to support the selection committee and administrative setup.

HCA states that if the ombudsman requires the agency to respond to inquiries, provide data, or participate in case reviews, this could have future administrative and compliance implications. If integrated reporting mechanisms are contemplated, future modifications to existing IT systems may be needed to ensure compliance with new reporting or oversight requirements. Additional staff time and resources may be necessary to meet these requirements.

CYFD reports that the creation of the Office would likely generate additional records requests and require responses from CYFD program staff and legal counsel.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB391 is a companion to Senate Bill 307 (SB307), reflecting substantively identical language.

Relates to House Bill 305 (HB305) and House Joint Resolution 5 (HJR5), both different proposals to enhance oversight and accountability of the state’s child welfare system. HB305 would move the Substitute Care Advisory Council from the Regulation and Licensing Department to the Administrative Office of the Courts and increase annual case reviews. HJR5 would change CYFD’s governance structure, removing the agency from the Governor’s cabinet.

HB391 conflicts with Senate Bill 363 (SB363), which would create a Child Protection Authority and House Bill 5 (HB5), which would create a similar Office of the Child Advocate, administratively attaching the function to the New Mexico Attorney General, and perform similar functions to those proposed in HB391 and its companion, SB307. Meanwhile, SB363 creates a Child Protective Authority, which would be administratively attached to the Regulation and Licensing Department and receive and address grievances related to CYFD.

HB391 conflicts with Senate Bill 84, which makes broader changes to the confidentiality clause.

OTHER SUBSTANTIVE ISSUES

The bill would require OCO to produce an annual report that includes information that is similar to information CYFD reports either to the federal Administration of Children and Families, the agency’s Accountability in Government Act performance report, or other statutorily required reporting. The bill does not specify specific methodologies for calculating this information, such as the number of children placed in foster care, that could result in inconsistencies across reports. The bill could resolve this issue by clarifying the office shall use the same methodology as that which is required by CYFD, for example, in annual reporting to the federal Adoption and Foster

Care Analysis and Reporting System.

In analysis for a duplicate bill, CYFD notes that some of the data required by the Office of the Child Ombud is already collected by CYFD, but the agency's outdated data systems make it difficult to collect and verify. CYFD states that adding another layer of data production could create additional burdens as the agency is in the process of upgrading to a federally-approved child welfare data system.

As written, the bill would likely apply to virtually every child receiving a service from CYFD, including foster care, juvenile justice, and behavioral health. Within the reporting section of the bill, however, it is unclear whether the annual reporting applies only to children in foster care who may be placed in a juvenile justice facility or if the reporting applies to all children receiving services from CYFD, for example all juveniles served by juvenile justice services either in a community setting or a secure facility.

CYFD also reported the complaint resolution process is not defined or clearly established in the bill and highlighted concerns regarding the amendments to the Confidentiality Clause, which includes contractors in the list of individuals who may access abuse neglect records maintained by CYFD.

OFRA raises concerns about the definition of “near fatality,” noting that the term “serious condition” is vague and could be interpreted inconsistently. OFRA recommends deleting “serious” from the definition to improve clarity. OFRA also expresses concern that allowing the governor or the Supreme Court to remove the ombudsman could create an untenable situation if the Governor and Supreme Court interpret “malfeasance, misfeasance, or abuse of office” differently.

OFRA also raises concerns about the section allowing the OCO to make direct referrals for services, noting that:

1. Some services are not payable by CYFD unless the referral originates from CYFD.
2. A family's case plan must be adopted by the Children's Court, and allowing the OCO to make referrals could circumvent court oversight and potentially overburden families with additional services.

Both OFRA and CYFD note that some language in HB391 may be vague and that the proposed work of the OCO overlaps with the functions of the Substitute Care Advisory Council (SCAC). OFRA states that although the OCO's scope is broader than that of the SCAC—because it includes children in state custody through the delinquency system—there is overlap in other areas that could lead to duplication of effort. OFRA notes this could create inconsistent findings and confusion about the respective roles of the SCAC and the ombudsman's office.

CYFD also highlighted concerns with the scope of the ombudsman's authority:

The ombudsman should not have unilateral authority to review CYFD's systems without specific complaints. Instead, recommendations on department policies should be based on patterns identified through investigated complaints, ensuring informed and relevant policy solutions....it is unclear how and when the ombudsman would initiate reviews of “systemic issues” if they were not prompted by a complaint. The office's role should be limited to evaluating concerns raised by the community regarding child protection policies.

In analysis for a duplicate bill, CYFD also reported that while the bill requires the State Child Ombud to be informed about the Indian Child Welfare Act (ICWA) and the Indian Family Protection Act (IFPA), it does not require the ombudsman to consult with nations, tribes, and pueblos before conducting investigations or requesting confidential information. CYFD recommends clarifying this consultation process to prevent conflicts.

The Office of the Attorney General (NMAG) reports the act raises concerns regarding confidentiality and sensitive information, even though the act provides that records should remain confidential. For example, HB391 requires an annual report, posted online, that includes information about the “conditions of placements.” NMAG notes,

To the extent placements are understood to include private residences, 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 to 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 the Child Ombud.

NMAG also states the nature of the Child Ombudsman investigations into and attempts to resolve complaints could be subject to First Amendment challenges based on vagueness.

NMAG also notes the directive that the Office of the Child Ombud to meet or communicate with any child in the custody of CYFD might require involvement of the child’s guardian ad litem or attorney, and NMAG highlights concerns that the bill imposes duties of the Child Ombud, which could result in a mandamus petition for any alleged failure to comply with statutory obligations.

ALTERNATIVES

AOC notes that administratively attaching the Office of the Child Ombud to the judiciary raises separation of powers concerns and suggests that the office could instead be attached to a different, neutral entity to avoid potential conflicts.

HCA raises concerns that the AOC would have some oversight or budgetary input over the OCO, which functions as an executive agency. HCA asserts that this arrangement may raise constitutional issues related to separation of powers.

OFRA proposes the following amendments:

1. Deleting “serious” from the definition of near fatality to improve clarity and consistency.
2. Amending the bill to establish the office as an adjunct agency in the executive branch to avoid separation of powers issues.
3. In Section 6, Paragraph (A)(6), replacing “continuing” with “discontinuing” to clarify the office’s authority to terminate an investigation.
4. Amending Section 7, Paragraph (A)(5), to state “the number of children removed from a household due to abuse or neglect after being returned to the household from which they were removed.”

CYFD recommends clarifying the ombudsman’s obligation to consult with nations, tribes, and pueblos before conducting investigations or requesting confidential information. Without clear guidance, the OCO’s mandate could lead to intergovernmental disputes and compliance issues.

CYFD also proposed adding additional committee members with lived experience and expertise

in child welfare to the committee.

TECHNICAL ISSUES

CYFD analysis reported the term “complaints” is undefined and should be “limited to ensure the ombudsman acts within its intended scope.”

NMAG reports a section of the bill directs the office to “maintain autonomy over the office’s budget and any decisions the office may take.” It is not clear as to whether “the office” refers to the Office of the Child Ombud or the Administrative Office of the Courts, given the preceding language refers to both of these offices. Also, NMAG notes there is no provision about how to proceed if a tie results when selecting the chair of the committee.

OFRA highlights a variety of technical concerns and potential alternatives.

RMG/MG/hj/SL2