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FISCAL IMPACT REPORT

SPONSOR Duhigg/Berghmans/Brantley/Stewart/
Cervantes **LAST UPDATED** _____
ORIGINAL DATE 2/17/2025

SHORT TITLE Child Ombud Act **BILL** _____
NUMBER Senate Bill 307

ANALYST Garcia/Greenham

APPROPRIATION* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$1,000.0	Recurring	General Fund

Parenteses () 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

Parenteses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 305 and House Joint Resolution 5

Conflicts with Senate Bill 363 and House Bill 5

Sources of Information

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

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

Health Care Authority (HCA)
New Mexico Attorney General (NMAG)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 307

Senate Bill 307 (SB307) 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 regards 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 receive and investigate 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);

- Ensuring all CYFD office staff receive specialized training in child welfare laws, trauma-informed care, and investigation techniques; and
- Adopting and promulgating rules to carryout 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 contactors, to have access to confidential records.

SB307 includes an appropriation of \$1 million from the general fund to AOC for the establishment of OCO in FY26.

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

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund.

AOC notes the creation of the office will likely require the hiring of multiple staff and “substantial expenses for the procurement of a toll-free hotline, staff at the support hotline, and procurement of a portal for complaint submission, investigators, and case management.” AOC did not provide an estimate of these specific costs.

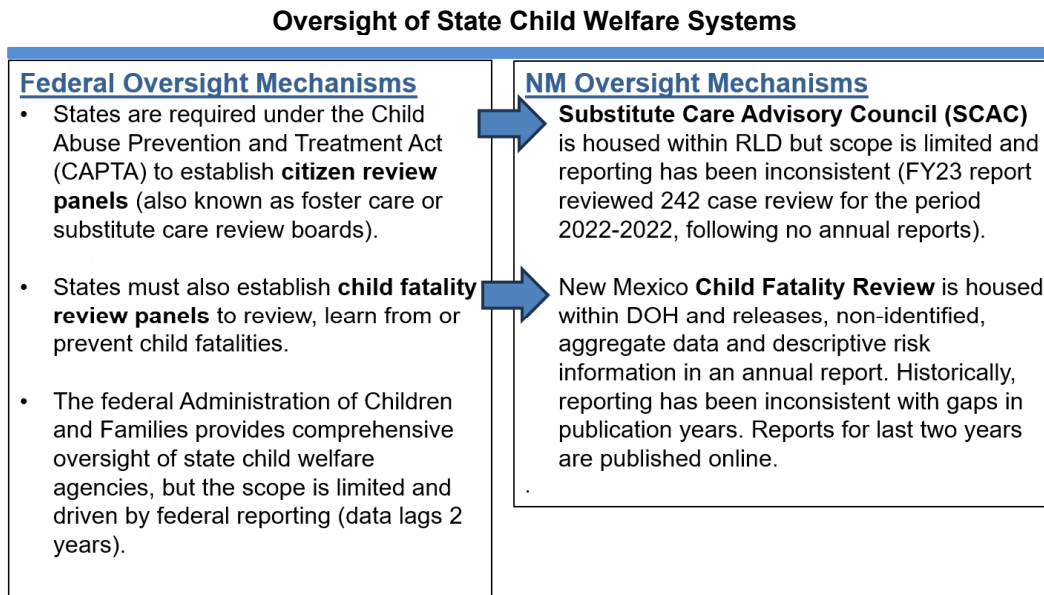
CYFD noted SB307 will likely generate records requests to which CYFD must respond. Agency analysis suggests CYFD may incur additional costs but did not provide detailed cost estimates.

LFC analysis in prior years estimated the cost to establish an ombuds 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. SB307 seeks to rectify this by establishing a permanent, independent, and nonpartisan Office of 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.

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 notes concern with administratively-attaching the proposed OCO to AOC, citing the Executive Reorganization Act (Section 9-1-7 NMSA 1978) which does not provide a judicial equivalent to “administratively attaching” an agency to an executive agency. AOC also notes potential duplication of functions existing within the Substitute Care Advisory Council, which is currently administratively attached to the Regulation and Licensing Department. As such, AOC asserts that “AOC is not the proper entity to house the Office of the Child Ombud.”

The Office of Family Representation and Advocacy (OFRA) and CYFD also note concerns about administratively attaching the function to AOC, noting a conflict of interest if the process for review was not kept completely sequestered from the judicial process and a concern about the appearance of impropriety for the courts. OFRA noted to avoid these concerns, the Legislature could establish an adjunct agency.

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 the additional reporting requirements of the OCO are unnecessary because the *Kevin S.* settlement requires the state report data to the settlement co-neutrals:

Kevin S. compliance is a priority for the department and creating parallel reporting agents is likely to complicate the department’s successful fulfillment of this obligation.

The reporting requirements cited, however, are not statutory requirement; they are the result of a settlement the state reached with plaintiffs in the *Kevin S. v. Blalock et al.* lawsuit. CYFD reports the agency has already established an Office of Child Advocacy in response to the *Kevin S.* settlement. The office is located within CYFD and includes “a warm line for parties to file grievances and complaints.”

PERFORMANCE IMPLICATIONS

AOC notes significant time, and coordination would be required to coordinate the selection committee and onboard the child ombud.

CYFD similarly notes the creation of the Office would likely result in additional requests for information to which the agency would need to respond.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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.

SB307 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 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.

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. CYFD notes:

The data the office is required to create is already collected by CYFD but, due to the outdated data systems, it is difficult to collect and verify. The ombuds office will add another layer of data production on an agency that is already in the process of upgrading to a federally-approved child welfare data system and should take this into consideration.

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.

OFRA notes a concern with the definition of “near fatality,” noting the definition is vague and could be interpreted inconsistently, and reported allowing the governor or the Supreme Court to remove the ombud could “create an untenable situation for the ombud if the Governor or Supreme Court defined ‘malfeasance, misfeasance or abuse of office’ differently.”

OFRA also notes the section of the statute which would allow the OCO to “make appropriate referrals” could be problematic because:

- 1) Some services are not payable by CYFD if the referral does not come from CYFD; and
- 2) A family’s case plan must be adopted by the Children’s Court, and allowing OCO to make referrals could “circumvent court oversight and potentially overburden families with extra referrals.”

Both OFRA and CYFD also report a variety of concerns and instances in which the language in SB307 may be vague and note OCO “has some overlap with the Substitute Care Advisory Council...although the proposed work of the OCO is broader than that of the council insofar as it includes children in state custody through the delinquency system, there is overlap in other aspects of the two entities work.”

CYFD reports:

While SB307 requires the Child Ombud to be informed regarding the Indian Child Welfare Act/ the Indian Family Protection Act, it does not require the Ombud to consult with nations, tribes and pueblos prior to engaging in investigations or demands for confidential information.

ALTERNATIVES

AOC reports New Mexico would be the first state to attach the Office of the Child Ombudsman to the Judiciary and alternatively proposes attaching the office to a different, neutral entity to ensure “no actual or perceived conflicts arise as the ombudsman executes their full investigatory function.”

OFRA proposes the following amendments:

1. Deleting “serious” from the definition of near fatality;
2. Amending the bill to establish the office as an adjunct agency in the executive branch;
3. In Section 6, Paragraph (A)(6) to replace “continuing” with “discontinuing” to avoid confusion; and
4. Amend Section 7, Paragraph (A)(5) to say “the number of children removed from a household due to abuse or neglect after being returned to the household from which they were removed.”