

<b>LFC Requester:</b>	<b>Rachel Mercer-Garcia</b>
-----------------------	-----------------------------

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)  
*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/15/2025 *Check all that apply:*  
**Bill Number:** HB 5 Original  Correction   
 Amendment  Substitute

**Sponsor:** Michelle Paulene Abeyta, Javier Martinez, and Dayan Hochman-Vigil **Agency Name and Code** AOC 218  
**Short Title:** OFFICE OF CHILD ADVOCATE ACT **Person Writing** Alison B. Pauk  
**Title:** ADVOCATE ACT **Phone:** 505-470-6558 **Email** [aocabp@nmcourts.gov](mailto:aocabp@nmcourts.gov)

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	None	

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	Unknown	Unknown	N/A	

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	Unknown	Unknown	Unknown	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SB 363: Companion

SB 307 and HB 391: Duplication in part

HB 205: Also places the Substitute Care Advisory Council at the AOC.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: House Bill 5 creates a new section of the Children’s Code called the Office of Child Advocate Act which establishes the Office of Child Advocate administratively attached to the State Department of Justice. HB 5 creates fifteen (15) new sections that include:

- 1) Section 1: establishes the Office of Child Advocacy Act.
- 2) Section 2: defines the following terms: child in custody, committee, department, near fatality, and office.
- 3) Section 3: states that the office of child advocate is “administratively attached to the state department of justice pursuant to Section 9-1-7 NMSA 1978,” and that the office shall maintain autonomy over its budget and decisions.
- 4) Section 4: the office is lead by “state child advocate,” who is appointed for a term of six years, except for the initial term that runs from July 1, 2025 through December 31, 2025. The governor may “remove the ombud only for malfeasance, misfeasance or abuse of office.”
- 5) The state child advocate is selected by a committee of nine whose membership is defined in this bill and includes members selected by the governor, legislature, attorney general, and supreme court.
- 6) Section 6: powers and duties.
  - a) The office shall:
    1. Review CYFD’s provision of services, receive complaints concerning CYFD or any entity funded by CYFD;
    2. Review CYFD’s policies and procedures in relation to the current systems;
    3. Adopt and promulgate rules;
    4. Operate a toll-free hotline and electronic communication portal to receive complaints;
    5. Investigate and attempt to resolve complaints made by or on behalf of children;
    6. Determine whether or not to investigate a complaint or refer to another agency;
    7. Notify complainant of the decision of whether or not the office will investigate or if the matter is closed;
    8. Update complainant of the progress of the investigation and any outcome within 30 days;
    9. Work in collaboration with relevant parties to strengthen CYFD’s services;
    10. Monitor the development and implementation of federal, state, and local laws, regulations, and policies relating to child and family welfare;
    11. Provide information about a recipient’s rights and responsibilities related to CYFD services;
    12. Provide comprehensive information concerning child welfare to the governor, state agencies and the legislature;
    13. Compile an annual report;

14. Subpoena witnesses when there is a child fatality or near fatality when a child is in CYFD's custody;
  15. Access information necessary for carrying out duties;
  16. Access and review records and information, adopt rules allowing this, and communicate with children in CYFD custody.
- b) The office may:
1. Adopt and promulgate rules; hire and contract for technical and support staff;
  2. Meet with or communicate with any child in CYFD custody or whose parent is under investigation;
- 7) Section 7:
- a) the office shall submit a yearly report to the LFC, CYFD, and the governor addressing services provided by CYFD including:
    1. Quality of services;
    2. Conditions of placements;
    3. Number of children removed from a residence;
    4. Number of children returned to a household from which they were removed;
    5. Number of children placed in a juvenile justice facility;
    6. Number of children who run from placements;
    7. Number of families subject to court-ordered treatment plans or voluntary placement agreements who have subsequently absconded with the children;
    8. Review of systemic issues;
    9. Findings and recommendations related to IFPA/ICWA;
    10. Recommendations for improving services;
    11. Data;
    12. Training and certification process for the state child advocate and office staff.
  - b) The office shall use a methodology consistent with the system used by federal government agencies for calculating and reporting data required for the annual report.
  - c) The office is also required to create and maintain a web page where the annual report is to be posted.
  - d) The annual report is to be posted to the webpage.
- 8) Section 8: requires office staff to be trained in matters of child welfare, including the development of procedures for training and certification of appropriate staff.
- 9) Section 9: discusses conflicts of interest with office employees or contractors.
- 10) Section 10: for fatalities, near fatalities, or restraints or seclusions, CYFD is required to automatically provide certain reports in an allocated period of time.
- 11) Section 11: law enforcement agencies are required to share reports involving children placed in CYFD custody or who are receiving services, subject to a referral, or under investigation.
- 12) Section 12: requires the office to maintain confidentiality of case records, third-party records, and information gathered in the course of investigation.
- 13) Section 13: states that someone who pursues remedies under this act are not precluded from pursuing other legal or equitable remedies.
- 14) Section 14: requires CYFD to notify children and families of the existence, purpose, and functions of the office including the toll-free hotline or electronic communication portal.
- 15) Section 15: allows the attorney general to bring a civil cause of action for declaratory or injunctive relief against CYFD or a CYFD employee based on a finding by the office of family advocate.

HB 5 also amends Sections 32A-2-32 and 32A-4-33 NMSA 1978 to include the attorney general and the office of child advocate, including its employees and contractors, as entities that may

have access to confidential records and can be held accountable for releasing these records.

There is no appropriation.

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

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions, as well commenced civil actions and appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

House Bill 5 creates the Office of Child Advocate, which is the same as a child ombudsman office. “Children’s ombudsman offices, also known in some jurisdictions as an office of the child advocate, have been established at the state level to assist with oversight of children’s services,” National Conference of State Legislators, *Children’s Ombudsman Offices: Office of the Child Advocate*, updated January 8, 2025,

<https://www.ncsl.org/human-services/childrens-ombudsman-offices-office-of-the-child-advocate#:~:text=Children's%20ombudsman%20offices%2C%20also%20known,with%20oversight%20of%20children's%20services.>

There is a national trend to develop child welfare ombudsman offices. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) stated, “This national trend is directly related to public concern regarding the inadequacy of child welfare systems to protect and care for vulnerable children who are victims of physical abuse, sexual abuse, and neglect.” See [ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/walls/appen-e.html](http://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/walls/appen-e.html).

House Bill 5 appears to be an attempt to create a formalized forum for children and caregivers involved with either the child welfare system or the juvenile justice system to provide complaints that can be investigated by the office of child advocate. In Section 5, Subsection A(5), the bill provides that the office of child advocate can “investigate and attempt to resolve complaints...” However, this bill does not indicate what type of remedies the office can pursue or what steps it can take to address and attempt to resolve the complaints it investigates outside of the ability to “make appropriate referrals,” (p. 6, ln. 24).

There is no requirement that the ombudsman notify the court if there is a complaint about a child under the court’s jurisdiction in either an abuse or neglect or juvenile delinquency case. Given that the court has some oversight responsibility in these cases, it might be helpful to require that the court be notified about complaints.

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed

- Percent change in case filings by case type

## **ADMINISTRATIVE IMPLICATIONS**

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 363: Companion

SB 307 and HB 391: Duplication in part

HB 205: Also places the Substitute Care Advisory Council at the AOC.

### **TECHNICAL ISSUES**

Section 6, Subsection A(8) states that the office of child advocate shall, “update the complainant on the progress of the investigation within thirty days...” It does not state when the thirty-day time period begins.

### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES:**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**