

LFC Requester:

Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 03/03/2025

Check all that apply:

Bill Number: HB 5 a

Original Correction
Amendment Substitute

Sponsor: Rep. Michelle Paulene Abeyta
Rep. (Speaker) Javier Martinez
Rep. Dayan Hochman-Vigil

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: Office of Child Advocate Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Original Synopsis: HB 5 would enact the Office of the Child Advocate Act (“Act”), consisting of 18 mostly new sections to the New Mexico Children’s Code, NMSA 1978, Sections 32A-1-1 to -22 (1978, as amended through 2023) (“Code”), and would create a new Office of the Child Advocate (“Office”).

Sections 1-2. Provide the title of the Act and the definitions used therein.

Section 3. Creates the Office and administratively attaches it to the New Mexico Department of Justice (“NMDOJ”) while ensuring that the Office maintains its autonomy.

Section 4. Establishes the appointment process for the head of the Office—the “state child advocate”—which, except for the very first advocate’s term upon the Office’s creation, shall be a six-year appointment. The very first term state child advocate shall be appointed only from July 1, 2025 to December 31, 2025. This Section further establishes the credentials for the advocate. Further, there would be an ability to serve innumerable successive terms, assuming the selection committee continued to appoint the same advocate.

Section 5. Sets forth the parameters and qualifications of the selection committee which consists of eight (8) committee members appointed by various political positions within New Mexico. The only appointer who has restrictions placed upon their appointment choice is the governor who must appoint someone who has specialized knowledge as defined by the Act. This section goes on to set forth how and when the committee would meet to select names for a vacant state child advocate position. The selection committee would also be administratively attached to the NMDOJ.

Section 6. Sets forth the powers and duties of the Office which include: review of Children, Youth, and Families Department (“CYFD”) services; the ability to receive complaints about CYFD; referral power to children and families in need of assistance; the duty to determine the extent to which CYFD’s policies and procedures protect and enhance children; the ability to adopt and promulgate rules; the duty to operate of a toll-free hotline and online portal to receive complaints; the duty to investigate and attempt to resolve complaints, refer complaints to other agencies, and keep complainants informed; monitor implementation of state and federal laws and regulations concerning children and families; provide information

to children, families, and political oversight entities, access and review records necessary for any investigation—including the ability to subpoena witnesses. The Office is to refer violations of federal or state constitutional rights to the NMDOJ.

The Office can hire and contract professional, technical, and support staff—noting that such hires shall be without regard to party affiliation, shall be based on competence, and the Act places employees under the Personnel Act.

Section 7. Establishes the parameters and required content for the Office’s annual report on its operations.

Section 8. Sets forth the training and certification requirements for Office staff.

Section 9. Details the requirements to avoid conflicts of interest.

Section 10. Addresses the duty of the Office to supervise and report upon any incidents, fatalities, or near fatalities of a child in CYFD custody and control.

Section 11. Gives the Office access to all law enforcement reports involving a child in CYFD custody, supervision, or under CYFD referral or investigation.

Section 12. Provides for confidential treatment of all information (including, but not limited to, case records, third-party records, and court records) gathered by the Office except in certain circumstances such as a court order allowing disclosure.

Sections 13-14. Discuss how the Act does not limit legal remedies of those pursuing remedy under the Act and that the Office shall ensure children in CYFD custody know about the Office’s services.

Section 15. Sets forth that the Attorney General may bring a civil cause of action for declaratory or injunctive relief against CYFD or a CYFD employee based on constitutional violations, reckless disregard for health and safety of a child, or a pattern of conduct or repeated incidents of the violation of law.

Sections 16. Details amendment to the existing section, NMSA 1978, Section 32A-2-32 (1993, as amended through 2023) clarifying the confidentiality provisions addressed to records pertaining to children and exempts said records from disclosure except to a list of entities, including the Attorney General, which then are obligated to also ensure the records are not released without consent or as provided by law.

Section 17. Provides amendments to the existing section, NMSA 1978, Section 32A-4-33 (1993, as amended through 2023) which governs penalties including for intentional release of records would result in the violator being guilty of a petty misdemeanor.

Section 18. Provides the enactment date of July 1, 2025.

Amendment

The amendment to HB 5 would strike the language relating to the term length and initial term of the child advocate in Section 4. The amendment to HB 5 would add language requiring the nominating committee to meet by September 1, 2025 to appoint the first child advocate.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Original: N/A

Amendment: The amendment strikes the six-year term of the child advocate, leaving his or her term length unclear. This creates ambiguity with the remaining language in the section, which refers to the term of the advocate.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

HB 5 would administratively attach the Office and the appointment committee to the NMDOJ.

Adoption of HB 5 may require the reviewing and updating of state plans required under federal laws, such as the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. 5106a and the Federal Payments for Foster Care, Prevention, and Permanency Act under the Social Security Act, 42 U.S.C. 671(a)(8).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Original: SB 307 and HB 391 are duplicates of each other and are related to HB 5 in that they seek to create a similar type of office as the one described in HB 5. They do not appear to be companions to HB 5 and would conflict with HB 5. Under SB 307 and HB 391, the office would be called the Office of Child Ombud and would be attached to the Administrative Office of the Courts. Unlike HB 5, which provides NMDOJ with explicit enforcement power to ensure the well-being of children, SB 307 and HB 391 do not appear to create any enforcement mechanism. The lack of enforcement in SB 307 and HB 391 may be due to attaching the office to the Administrative Office of the Courts, because civil and criminal cases are ultimately brought before the courts for adjudication.

SB 363, the Child Protection Authority Act is not a duplication or companion bill of HB 5. It would create an “authority” and would administratively attach it to the Regulation and Licensing Department. There is a different selection process for the authority than either HB 5 or SB 307/HB 391. SB 363 establishes a complaint system and reporting process, but does not have enforcement mechanisms.

SB 84 would significantly amend Section 32A-4-33 and its confidentiality provisions (currently contained within Section 17 of HB 5) to provide additional ability to obtain confidential information in the context of a CYFD investigation into abuse or neglect, but importantly does not provide a carve out for the NMDOJ to receive access to confidential information as does Section 17 of HB 5. Further SB 84 details an alternative process for the release of records in an instance of a fatality or near fatality, amending Section 32A-4-33.1, but again differs from HB 5 as the NMDOJ is not listed among those which would be granted access to confidential information.

Amendment: SB 84 has a substitute bill, SB 84-s, but the substitute bill contains the same conflicts identified above in the original version of SB 84.

It is also possible that other proposed changes to the Children's Code, or to CYFD itself, could result in relationship to HB 5 although there is no present or apparent conflict, duplication, companionship or other direct relationship to HB 5. Among these other bills are HJR 5 (proposing a constitutional amendment to move place CYFD under commission management; **Amendment: HJR 5 has passed committee and is now on the temporary calendar**); HB 173 (requiring CYFD to investigate failures to plans of care); or HB 205 (creating a nominating committee for the Secretary of CYFD, authorizing rule-making for placement of children under the Code, and otherwise making substantial changes to the Code. **Amendment: HB 173 has been substituted with HB 173-s. The same potential impact to HB 5 exists in the committee substitute of HB 173-s.**

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.