

LFC Requester:	Rachel Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(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 391 Original Correction
 Amendment Substitute

Sponsor: Jenifer Jones and Gail Armstrong **Agency Name and Code** AOC 218
Short Title: OFFICE OF CHILD OMBUD ACT **Number:** _____
Person Writing Alison B. Pauk
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	\$1,000,000	Nonrecurring	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

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

(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	None	Unknown	Unknown	Unknown	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SB 307 – Companion

HB 5 - Duplicates

HB205 – CYFD Nominating Commission – which also moves the Substitute Care Advisory Council to AOC.

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 391 establishes a new act in the Children’s Code called the “Office of Child Ombud Act” that creates the “office of child ombud,” administratively attached to the Administrative Office of the Courts. HB 391 creates thirteen new sections that include:

- 1) Section 1: establishes the Office of Child Ombud Act.
- 2) Section 2: defines the following terms: committee, which is the state child ombud selection committee; near fatality; office, for the office of child ombud; and ombud, who is the individual who heads the office.
- 3) Section 3: creates the “office of child ombud” that is administratively attached to AOC, yet, the “office shall maintain autonomy over the office’s budget and any decision the office may take.”
- 4) Section 4: the office is headed by the “state child ombud” who is appointed for a term of six years and may be appointed for successive terms. The governor or supreme court may “remove the ombud only for malfeasance, misfeasance or abuse of office.”
- 5) Section 5: creates the “state child ombud selection committee” consisting of nine members whose membership is defined in this bill and includes sections by the governor and legislature. –
 1. The committee must be chaired by a person with extensive knowledge of child welfare and the Children’s Code.
 2. The committee’s sole purpose is to provide nominees for the position of ombud to the governor to make an appointment.
 3. The committee is administratively attached to the AOC.
 4. The committee members may receive per diem and mileage, but no other compensation.
- 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. Notify complainant of the decision of whether or not the office will investigate or if the matter is closed;
 7. Update complainant of the progress of the investigation and any outcome within

- 90 days of the final outcome;
 - 8. Provide information about recipients' rights and responsibilities related to CYFD's services;
 - 9. Provide information concerning child and family welfare to the governor, state agencies, and legislators;
 - 10. Compile an annual report;
 - 11. Subpoena witnesses when there is a child fatality or near fatality when a child is in CYFD's custody;
 - 12. Access information necessary for carrying out duties;
 - 13. Access and review records and information, adopt rules allowing this, and communicate with children in CYFD custody.
- b) The office may:
- 1. 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;
 - 3. Decide to investigate a complaint or refer to another agency.
- 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 removed from a household after being returned;
 - 6. Number of children placed in a juvenile justice facility;
 - 7. Number of children who run from placements;
 - 8. Number of families subject to court-ordered treatment plans or voluntary placement agreements who have subsequently absconded with the children;
 - 9. Review of systemic issues;
 - 10. Findings and recommendations related to IFPA/ICWA;
 - 11. Recommendations for improving services;
 - 12. Data;
 - 13. Training and certification process for the state child advocate and office staff.
- b) The office is also required to create and maintain a web page where the annual report is to be posted.
- 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: 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.

HB 391 also amends Sections 32A-2-32 and 32A-4-33 NMSA 1978 to include the office of the child ombud, including its employees and contractors, as an entity that may have access to

confidential records and can be held accountable for releasing these records.

Appropriation: One million dollars from the general fund to AOC for fiscal year 2026 for establishing the office of child ombud.

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

FISCAL IMPLICATIONS

HB 391 appropriates one million (\$1,000,000.00) to AOC for fiscal year 2026 for the establishment of the office of the child ombud, yet this office is only to be administratively attached to the AOC.

AOC estimates that creation of this new office will require multiple high paying staff members, in addition to the selected “State Child Ombud.” Costs will include staff, personnel and benefits costs. AOC also projects substantial expenses for the procurement of toll-free hotline, staff to support the hotline, procurement of a portal for complaint submission, investigators, and any other case management, complaint tracking technology.

Regarding other changes proposed in the bill, 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. 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 391 creates the office of child ombud and administratively attaches it to the Administrative Office of the Courts. Additionally, the “state child ombud selection committee” is also created and administratively attached to the AOC.

1. The duties of the office of child ombud include reviewing services, policies, and procedures, and also taking and investigating complaints against CYFD, an agency of the Executive Branch. The ombud can also subpoena witnesses to provide testimony for fatalities or near-fatalities for children in CYFD custody, while also requiring CYFD to provide notice and reports in a stated time frame (see Section 10).
 - a. As an arm of the Supreme Court, the AOC directly represents and assists the Supreme Court and other New Mexico courts. Therefore, it is contrary to the separation of powers that an entity attached to the AOC or the Supreme Court be responsible for budgetary and other work another branch of government as required by the office of child ombud that HB 391 seeks to create.
 - b. Additionally, the Office of Child Ombud would be investigating cases in real-time, all of which have the potential to go in front of the courts, creating a potential conflict.
2. The bill provides language stating, “The office shall maintain autonomy over the office’s budget and any decisions the office may take,” (page 2, lines 19 -21). Yet, Section 16

provides an appropriate to AOC stating, “for expenditure in fiscal year 2026 for expenses to be incurred in establishing the office of child ombud,” (page 22, lines 21-23).

3. The statutes that provide for administrative attachment fall under the Executive Reorganization Act, specifically, Section 9-1-7 NMSA 1978, which governs how an agency is “administratively attached” to another executive agency. The Judiciary does not have an equivalent.
 - a. The Judiciary has several quasi-independent entities, however, all of the entities are ultimately governed by the New Mexico Supreme Court and relate back to the Judiciary’s purpose in the administration of justice. The Supreme Court issues rules governing their purpose and operation. For example:
 - [Rule Set 24: Rules Governing the New Mexico Bar](#)
 - [Rule Set 28: Rules Governing Judicial Performance Evaluation Commission](#)
 - [Rule Set JSC: Judicial Standards Commission Rules](#)
4. There may be some duplication of responsibilities with the existing Substitute Care Advisory Council.

For the aforementioned reasons, the AOC is not the proper entity to house the Office of Child Ombud.

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

The AOC would anticipate significant staff time coordinating the selection committee, onboarding of the state child ombuds, assisting in administrative start-up (which would include procurement processes to obtain staffing and or contractors, data and case management systems, call system/intake line, internal process and procedure, etc.)

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 307: Companion

HB 5: Duplication in parts.

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

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES: Placement of an office of child ombuds differs in each state, with the majority housed in the executive or legislative branches.¹ An alternative is to consider attaching the new office to another neutral entity to ensure no actual or perceived conflicts arise as the ombudsman executes their full investigatory functions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

¹ See National Council of State Legislatures at <https://www.ncsl.org/human-services/childrens-ombudsman-offices-office-of-the-child-advocate>