

<b>LFC Requester:</b>	<b>Rachel Mercer-Garcia</b>
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**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:** 2-17-25 *Check all that apply:*  
**Bill Number:** HB 391 Original  Correction   
 Amendment  Substitute

**Sponsor:** J. Jones, G. Armstrong **Agency Name and Code** Office of Family Representation and Advocacy, 6800  
**Short Title:** Child Ombud Act **Number:** \_\_\_\_\_  
**Title:** \_\_\_\_\_ **Person Writing** Beth Gillia  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	\$1,000	Non-recurring	

(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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: This bill is identical to **SB 307**.  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

This bill would create the Office of the Child Ombud (the Office), an independent agency administratively attached to the Administrative Office of the Courts (AOC), which would respond to complaints and monitor, report on, and make recommendations concerning the work of the Children, Youth and Families Department (CYFD).

#### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

#### **SIGNIFICANT ISSUES**

##### **Section 2.**

The definition of “near fatality” in Section 2 (B) is unnecessarily vague and could be interpreted inconsistently across the state. It defines “near fatality” as an injury or condition caused by abuse or neglect that results in a child: (1) being placed in *serious or* critical condition, as certified by a licensed physician; and (2) receiving critical care for at least twenty-four hours following the child's admission to a critical care unit.” Critical condition is a term that is familiar and regularly used in medicine; by contrast, serious condition has no shared or commonly understood definition. We recommend deleting “serious or” from the definition.

##### **Section 3.**

Administratively attaching the Office to the AOC raises at least 3 problems:

- (1) violation of separation of powers (the judiciary should not have an executive branch agency attached to it);
- (2) conflict of interest if the process for review was not kept completely sequestered from the judicial process; and
- (3) an appearance of impropriety for the courts.

To avoid these problems, we recommend establishing the office as an adjunct agency in the executive branch pursuant to Section 9-1-6.

##### **Section 4.**

Allowing either the Governor or the Supreme Court to remove the Ombud could create an untenable situation for the Ombud if the Governor or Supreme Court define “malfeasance, misfeasance or abuse of office” differently.

##### **Section 6.**

Paragraph (A)(1) allows the Office to “make appropriate referrals when the ombud determine

that a child or family may be in need of assistance from the office.” (Page 6, lines 5-7). At least two problems could arise from the Office making direct referrals for services: (1) some services are not payable by CYFD when the referral does not come from CYFD; and (2) a family’s case plan must be adopted by the Children’s Court. Allowing the Office to make referrals would circumvent court oversight and could potentially overburden families with extra referrals for services.

Paragraph (A)(2)’s directive that the Office “review current systems” is overly vague and should be clarified to determine the systems that the Office should review.

In Paragraph (A)(5) it is unclear what children “referred to the department” means.

Paragraph (A)(6) contemplates the Office declining or “continuing” investigation of a complaint, but provides no reasons for taking such actions. Also, “continuing” in this context is confusing; perhaps “discontinuing” would be a better word choice (to indicate that an investigation will not be pursued after it had begun).

Paragraph (A)(8): to whom should this information be provided?

Paragraph (A)(9): what “information concerning child and family welfare” should be provided? For what purpose is the information being shared?

Paragraph (A)(11): The bill does not establish a process for reviewing fatalities or near fatalities, but contemplates subpoenas and testimony. More detail should be provided about the nature of the investigation to be conducted by the Office. Additionally, the relationship between the investigation conducted by the Office and the review conducted by the Child Fatality Review Board should be clarified.

## **Section 7.**

Paragraph (A) generally: this section would benefit from distinguishing between children in state custody due to abuse or neglect and those in state custody because of juvenile justice involvement.

Paragraph (A)(5): clarify whether the subsequent removal is due to abuse or neglect (e.g., “the number of children removed from a household *due to abuse or neglect* after being returned to a household from which they were removed.” (Also suggest changing “subsequent to” to “after” for simplicity.)

Paragraph (A)(8) should refer to a case plan, not a treatment plan.

Paragraphs (A)(13) and Section 8, Paragraphs (B) and (C) mention “certification” of the ombud and Office staff, but none of these provisions describes the purpose of certification or defines what the ombud or Office staff are being certified to do. This should be clarified.

## **Section 8.**

Paragraph A(1) requires the ombud to “ensure that office staff are trained in . . . federal, state, local and tribal laws, regulations and policies with respect to child protection and juvenile justice services in the state.” It is unrealistic to expect ombud staff to be trained in the relevant tribal laws, regulations and policies of the 23 federally recognized Tribes, Nations, and Pueblos in NM alone, let alone the 574 federally recognized Tribes nationally.

Paragraph (A)(3): “tribal culture” should be changed to “tribal cultures” since each Nation, Pueblo and Tribe has a unique culture.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

The work proposed for the Ombud’s office has some overlap with the Substitute Care Advisory Council (SCAC), which is an independent agency administratively attached to the Regulation and Licensing Department. According to Section 32A-8-4, “the general purpose of the [SCAC] is to oversee substitute care review boards in their monitoring of children placed in the custody of the children, youth and families department to identify systemic policy issues regarding substitute care.” According to the SCAC itself, it is a “system for independent and objective monitoring of children placed in the custody of . . . CYFD by examining the policies, procedures and practices of CYFD, and where appropriate, specific cases to evaluate the extent to which CYFD is effectively discharging its child protection responsibilities.”

<https://www.scacnm.org/>.

Although the proposed work of the Ombud’s office is broader than that of the SCAC insofar as it includes children in state custody through the delinquency system, there is overlap in other aspects of the two entities’ work that should be reviewed carefully to prevent duplication of effort and inconsistent findings and outcomes.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

OFRA is concerned about the growing number of bills that directly affect the Children, Youth, and Families Department (CYFD) and the child and family welfare system more broadly. While these bills may not directly conflict with one another or duplicate efforts, this piecemeal approach could lead to a patchwork of uncoordinated requirements. Together, these changes would create significant administrative and programmatic burdens on CYFD.

Additionally, many of the requirements proposed in the multitude of bills would not improve practices or lead to better outcomes for children and families. OFRA is concerned that these bills, if passed without coordination, would negatively impact our clients and their ability to work with CYFD to reunify their families.

## **ALTERNATIVES**

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

Status quo.

## **AMENDMENTS**

In Section 2(B), we recommend deleting “serious or” from the definition of “near fatality.”

In Section 3, we recommend establishing the office as an adjunct agency in the executive branch pursuant to Section 9-1-6.

In Section 6, Paragraph (A)(6), replace “continuing” with “discontinuing” to avoid confusion. Add permissible reasons for declining to investigate or terminating an investigation.

In Section 7, Paragraph (A)(5), change to say: “the number of children removed from a household ~~subsequent~~ due to abuse or neglect after being returned to a household from which they were removed.”