

LFC Requester:	Mercer-Garcia, Rachel
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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: 2/15/25 *Check all that apply:*
Bill Number: SB 363 Original Correction
 Amendment Substitute

Sponsor: Sen. Michael Padilla **Agency Name and Code:** AOC 218
Short Title: Child Protection Authority Act **Person Writing:** Kathleen Sabo
Title: _____ **Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HB 5, HB 391 and SB 307 (also amending Section 32A-2-32 NMSA 1978). Related to SB 307 and HB 391, creating the Office of Child Ombud, and HB 5, creating the Office of Child Advocate.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 363 enacts the “Child Protection Authority Act,” (CPAA) creating the 9-member Child Protection Authority (“authority”), administratively attached to the Regulation and Licensing Department and required to undertake the following:

- (1) receive and investigate complaints regarding the handling of child abuse, neglect and foster care cases by the department and other child welfare agencies;
- (2) monitor and evaluate the department's policies and practices to ensure compliance with federal and state child welfare laws;
- (3) make recommendations to the governor, the legislature and the department to improve child welfare practices and address systemic issues;
- (4) issue public reports on the authority's findings, including annual reports on trends in child welfare complaints and recommendations for policy reforms;
- (5) access records and data, including the department's case files, court records and law enforcement reports, subject to confidentiality safeguards;
- (6) provide education and outreach to families, children and mandated reporters regarding child welfare rights and responsibilities; and
- (7) operate a toll-free hotline and electronic communication portal to receive complaints.

SB 363 requires the authority to be led by a director appointed by the members of the authority and serve a 6-year term, subject to removal for cause. The director is required to hire staff that includes investigators, attorneys and policy analysts, as necessary, with expertise in child welfare, juvenile law or social services.

SB 363 requires the authority to establish a transparent complaint process for individuals to report concerns regarding Child Protective Services (CPS), and permits complaints to be submitted anonymously, and required to be investigated promptly. SB 363 expressly denies subpoena power to the authority for purposes of investigating a complaint and require the authority to maintain communication with the complainant until the complaint is resolved. SB 363 requires the authority, upon resolution of a complaint, to report its findings to the Children, Youth, and Families Department (CYFD) and to the complainant to the extent allowable by law within 10 days.

SB 363 requires the authority to maintain confidentiality of records and protect the identity of complaints, except when necessary to conduct an investigation or disclosure is required by law. The law provides that authority staff shall be granted whistleblower protections and immunity from civil liability for actions taken in good faith while performing their duties.

SB 363 amends Section 32A-2-32 NMSA 1978, within the Children’s Code, and governing confidentiality of records to provide that the records described in Section 32A-2-32(A) NMSA 1978, other than mental health and developmental disability records, shall be disclosed to the authority and its staff, pursuant to the requirements of the Abuse and Neglect

Act, if the records are needed for the purpose of implementing the CPAA, provided that the information shall not be re-released without proper consent or as otherwise provided by law.

SB 363 requires CYFD to notify all children placed in the custody of the department, receiving services under the supervision of the department, referred to the department or whose parents, guardians or custodians are under investigation by the department and the children's parents, guardians, foster parents or identified fictive kin of the existence of the child protection authority, the child protection authority's purpose, function, toll-free hotline and electronic communication portal.

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 any increase in court cases arising from the complaints and investigations authorized under this law, as well as the involvement of court personnel in the provision of court records to the CPA. 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

SB 363, Section 3(D)(1) requires the CPA to receive and investigate complaints regarding the handling of child abuse, neglect and foster care cases by the department and other child welfare agencies. Section 5 sets out the complaint process, with Subsection B permitting complaints to be submitted anonymously and requiring complaints to be investigated promptly. Subsection D requires the authority to maintain communication with the complainant until the complaint is resolved. Subsection E provides that, upon resolution of a complaint, the authority shall report its findings to the department and to the complainant to the extent allowable by law within 10 days.

It appears to be unclear how the CPA will “resolve” a complaint and what a “resolution” will look like. Under Section 5(C), the CPA is denied subpoena power for purposes of investigating a complaint. There is no reference in the CPAA to enforcement or even agreement or cooperation between the CPA and the department and agencies, and their employees, that the CPA may be called upon to investigate. There are no provisions providing for agencies and individuals to comply with any directives that emanate from the CPA. There are no time limits to investigations or actions to be taken in response to investigations. There are no penalties provided for a lack of cooperation. It is unclear what the “authority” of the CPA is other than as a recipient of complaints which are then reported on to the department following investigation and resolution.

In contrast, to some extent, SB 307 creates the “Office of Child Ombud,” (OCO), and tasked with receiving complaints “concerning the actions of the department or of any entity that provides services to children and families...and make appropriate referrals when the ombud determines that a child or family may be in need of assistance from the office.” (Section 6(A)(1)) Additional subsections of Section 6 require the OCO to investigate and attempt to resolve complaints (Subsection A(5)); notify the complainant and subjects of the complaint of an investigation or, if the office declines to investigate, notify the complainant and subjects of the complaint that no further action will be taken by the OCO (Subsection A(6)); update a complainant on investigation every 90 days and notify the complainant and the subjects of the complaint of final outcome within 90 days of investigation completion (Subsection A(7)); provide information about recipients’ rights and responsibilities related to departmental services (Subsection A(8)); and subpoena witnesses to provide testimony in cases in which a fatality or

near fatality of a child has occurred while the child was in the custody of the department (Subsection A(11)). Subsection B(3) also permits the OCO to decide whether to investigate a complaint or refer a complaint to another agency for investigation.

While creating a different entity, the CPA, rather than establishing an OCO, the entities created under SB 363 and SB 307 would undertake similar tasks. SB 307 provides some necessary detail as to how the complaint, investigation, referral and resolution process would proceed. SB 363 does not.

PERFORMANCE IMPLICATIONS

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

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 5, HB 391 and SB 307 (also amending Section 32A-2-32 NMSA 1978). Related to SB 307 and HB 391, creating the Office of Child Ombud, and HB 5, creating the Office of Child Advocate.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) Provide some necessary detail as to how the complaint, investigation, referral and resolution process would proceed. (See “Significant Issues,” #1, above.)