

LFC Requester:

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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: 2/15/2025

Check all that apply:

Bill Number: SB363

Original Correction
Amendment Substitute

Sponsor: Sen. Michael Padilla

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

Short Title: Child Protection Authority 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:

HJR5 – potential overlap/relation. There does not appear to be a conflict

SB307 and HB 391 – duplicates various actions

HB5 – duplicative

SB 84 – may conflict

HB 205 and SB 458 – may conflict or compete

(For all noted, detail in Conflicts section below).

Duplicates/Relates to Appropriation in the General Appropriation Act

None noted

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

Synopsis:

SB363 proposes to create the Child Protection Authority (“Authority”) under the Regulation and Licensing Department (RLD). The Authority would be governed by nine members, five appointed by the Governor, and four appointed by the Legislature. The main purpose of the Authority would be oversight of the Children, Youth and Families Department (“CYFD”).

The duties of the Authority would be to (1) investigate complaints of child abuse, neglect, and foster care cases by child welfare agencies; (2) monitor CYFD’s policies and practices for legal compliance; (3) recommend improvements of child welfare practices; (4) issue public reports; (5) access records and data from CYFD and law enforcement; (6) provide education and outreach; (7) operate a hotline to receive complaints.

Sections 1-4 establish the basic structure and parameters of the Authority.

Section 5 details the new complaint process. Complaints may be submitted anonymously, the Authority must maintain communication with the complainant, and upon resolution, submit its findings to CYFD and the complainant within ten days (if possible).

Section 6 requires annual reporting and quarterly public meetings, as well as performance and fiscal audits of CYFD at the discretion of the Governor or the legislative finance committee.

Section 7 grants the Authority whistleblower protections and immunity from civil liability for actions taken in “good faith while performing their duties.”

Section 8 proposes to amend NMSA 1978, Section 32A-2-32 (2009) to allow the Authority access to CYFD's confidential records.

Section 9 requires CYFD to notify anyone under its services of the existence and the purpose of the Authority, including the hotline information.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.
None noted

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.
None noted

SIGNIFICANT ISSUES

Section 5 of SB363 establishes guidelines for the complaint process. In general, it permits complaints to be submitted anonymously, mandates consistent communication with the complainant, and requires the Authority to report its findings to CYFD.

The proposed complaint process, however, fails to address any procedural due process safeguards that may arise in abuse and neglect proceedings. *See State ex rel. Children, Youth & Families Dep't v. Maria C.*, 2004-NMCA-083, ¶ 24, 136 N.M. 53 (“Root principles of fairness dictate that procedural due process be afforded whenever a government decision threatens to deprive an individual of a fundamental liberty or property interest.”).

A parent has a constitutional right to fair notice and an opportunity to participate in all critical stages of abuse and neglect proceedings. *Id.* ¶ 28. Because SB363 does not establish any due process safeguards, like notice or opportunity, it could produce legal challenges to its complaint process.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship with HJR5 (“CYFD Commission, CA”), a joint resolution that proposes to amend the Constitution of the State of New Mexico to establish a Children, Youth and Families Commission with similar duties as the Authority. This commission would become the management structure of CYFD. It would be composed of members nominated the Governor, the president pro tempore of the senate, the speaker of the house of representatives, the minority floor leader of the senate, and the minority floor leader of the house. These appointed representatives would hire an executive director of CYFD. There does not appear to be a conflict with this statute and the other pending legislation relating to CYFD.

Relationship with SB307 and HB 391 (“Child Ombud Act”), which seeks to create a committee attached to the Administrative Office of the Courts to provide similar oversight of CYFD. A lot of the information gathering powers are duplicative with SB 363 so is the reporting powers. However, the ombud does not have the power to bring suit. The duplicative data gathering and reporting requirements are not necessarily conflicting, and the multiple reports could help give the Legislature more info to continue troubleshooting this statutory scheme as a whole in the future.

Relationship with HB5 (“Office of Child Advocate Act”), which also seeks to provide a State Child Advocate with similar oversight responsibilities of CYFD. This act is duplicative of SB 363. However, this act would create a new subdepartment of the NM Department of Justice, where SB 363 creates a new authority.

SB 84, which specifies and restricts to whom and under what circumstances CYFD information pertaining child abuse and neglect proceedings may be shared, could conflict with the record sharing provisions in this bill.

HB 205 and SB 458 propose to impose various requirements upon CYFD. Those lengthy bills create, *inter alia*, several oversight functions both within CYFD and without. As such, they may conflict with or compete with the purpose and provisions of HB 363.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

This bill creates a new Authority within RLD but provides for no appropriations.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A