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HOUSE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILDREN; ENACTING THE OFFICE OF CHILD ADVOCATE ACT; PROVIDING FOR THE STATE CHILD ADVOCATE; CREATING THE OFFICE OF CHILD ADVOCATE AND ESTABLISHING THE POWERS AND DUTIES OF THAT OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE STATE CHILD ADVOCATE SELECTION COMMITTEE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Office of Child Advocate Act"."

SECTION 2. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Office of

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1 Child Advocate Act:

2 A. "committee" means the state child advocate
3 selection committee;

4 B. "near fatality" means an injury or condition
5 caused by abuse or neglect that results in a child:

6 (1) being placed in serious or critical
7 condition, as certified by a licensed physician; and

8 (2) receiving critical care for at least
9 twenty-four hours following the child's admission to a critical
10 care unit; and

11 C. "office" means the office of child advocate."

12 SECTION 3. A new section of the Children's Code is
13 enacted to read:

14 "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--CREATED.--The
15 "office of child advocate" is created and is administratively
16 attached to the office of the attorney general pursuant to
17 Section 9-1-7 NMSA 1978. The office shall maintain autonomy
18 over the office's budget and any decisions the office may
19 take."

20 SECTION 4. A new section of the Children's Code is
21 enacted to read:

22 "[NEW MATERIAL] STATE CHILD ADVOCATE--APPOINTMENT--
23 DUTIES.--The head of the office is the "state child advocate",
24 who shall be appointed for a term of six years, except that the
25 initial term shall begin on December 1, 2024 and shall end on

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1 June 30, 2025. The state child advocate may be reappointed to
2 successive terms. An appointed state child advocate shall
3 serve and have all of the duties, responsibilities and
4 authority of that office until appointment of a new state child
5 advocate. The governor or the supreme court may remove the
6 state child advocate only for malfeasance, misfeasance or abuse
7 of office."

8 SECTION 5. A new section of the Children's Code is
9 enacted to read:

10 "[NEW MATERIAL] STATE CHILD ADVOCATE SELECTION COMMITTEE--
11 DUTIES.--

12 A. The "state child advocate selection committee"
13 is created and consists of nine members, including:

14 (1) one member who shall be selected by the
15 president pro tempore of the senate;

16 (2) one member who shall be selected by the
17 minority floor leader of the senate;

18 (3) one member who shall be selected by the
19 speaker of the house of representatives;

20 (4) one member who shall be selected by the
21 minority floor leader of the house of representatives;

22 (5) four members who shall be selected by the
23 governor:

24 (a) no more than two of whom are from
25 the same political party and have not changed political party

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1 affiliation in the last two years;

2 (b) one of whom shall have specialized
3 expertise in the federal Indian Child Welfare Act of 1978 and
4 the Indian Family Protection Act; and

5 (c) one of whom shall have extensive
6 knowledge of child protective services, juvenile justice
7 services or child welfare; and

8 (6) a committee chair, whom a majority of the
9 other eight members select and who is:

10 (a) not a candidate for the position of
11 state child advocate; and

12 (b) a person with extensive knowledge of
13 child welfare and the Children's Code.

14 B. The committee shall meet exclusively for the
15 purpose of nominating persons to fill a current or impending
16 vacancy in the position of state child advocate. The committee
17 shall actively solicit, accept and evaluate applications for
18 the position of state child advocate and may require applicants
19 to submit any information that the committee deems relevant to
20 the consideration of applications. Within ninety days before
21 the date on which the term of a state child advocate ends or no
22 later than sixty days after the occurrence of a vacancy in the
23 state child advocate position, the committee shall convene and,
24 within sixty days after convening, submit to the governor the
25 names of persons who are recommended for appointment to the

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1 position by a majority of the committee members.

2 C. After receiving nominations for the state child
3 advocate, the governor may make one request of the committee
4 for submission of additional names. The committee shall
5 promptly submit those additional names if a majority of the
6 committee members find that additional persons would be
7 qualified and recommends those persons for appointment as state
8 child advocate. The governor shall fill a vacancy or appoint a
9 successor to fill an impending vacancy in the office within
10 sixty days after receiving final nominations from the committee
11 by appointing one of the persons nominated by the committee.

12 D. The committee is administratively attached to
13 the office of the attorney general pursuant to the provisions
14 of Section 9-1-7 NMSA 1978.

15 E. After the initial meeting of the committee, the
16 governor or the chair of the committee may call subsequent
17 meetings of the committee to nominate persons to fill a current
18 or impending vacancy in the position of state child advocate.

19 F. The members of the committee shall receive per
20 diem and mileage as provided in the Per Diem and Mileage Act
21 and shall receive no other compensation, perquisite or
22 allowance."

23 SECTION 6. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--POWERS--

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1 DUTIES.--The office:

2 A. shall:

3 (1) review the department's provision of
4 services to children and families, receive complaints
5 concerning the actions of the department or of any entity that
6 provides services to children and families through funds
7 provided by the department and make appropriate referrals when
8 the state child advocate determines that a child or family may
9 be in need of assistance from the office;

10 (2) review current systems to determine the
11 extent to which the department's policies and procedures
12 protect and enhance children's personal dignity, right to
13 privacy, appropriate health care and education in accordance
14 with state and federal law;

15 (3) adopt and promulgate rules in accordance
16 with the State Rules Act as are deemed necessary to carry out
17 the provisions of the Office of Child Advocate Act;

18 (4) operate a toll-free hotline and electronic
19 communication portal to receive complaints pursuant to this
20 section;

21 (5) investigate and attempt to resolve
22 complaints made by or on behalf of children placed in the
23 custody of the department, receiving services under the
24 supervision of the department, referred to the department or
25 whose parent, guardian or custodian is under investigation by

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1 the department;

2 (6) upon investigation of a complaint, notify
3 the complainant and subjects of the complaint of the
4 investigation or, if the office declines to investigate a
5 complaint or continue an investigation, notify the complainant
6 and the subjects of the complaint that no further action will
7 be taken by the office;

8 (7) update the complainant on the progress of
9 the investigation every ninety days and notify the complainant
10 and the subjects of the complaint of the final outcome within
11 ninety days of the completion of the investigation;

12 (8) provide information about recipients'
13 rights and responsibilities related to departmental services;

14 (9) provide information concerning child and
15 family welfare to the governor, state agencies and legislators;

16 (10) compile an annual report pursuant to
17 Section 7 of the Office of Child Advocate Act;

18 (11) subpoena witnesses to provide testimony
19 in cases in which a fatality or near fatality of a child has
20 occurred while the child was in the custody of the department;

21 (12) access information or records that are
22 necessary for carrying out the provisions of the Office of
23 Child Advocate Act; and

24 (13) access and review information, records or
25 documents, including records of third parties, that the office

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1 deems necessary to conduct a thorough and independent review of
2 a complaint; provided that the department would be entitled to
3 access or receive such information, records or documents; and

4 B. may:

5 (1) hire and contract for such professional,
6 technical and support staff as needed to carry out the
7 functions of the office;

8 (2) meet or communicate with any child placed
9 in the custody of the department, receiving services under the
10 supervision of the department, referred to the department or
11 whose parent, guardian or custodian is under investigation by
12 the department in a developmentally sensitive method; and

13 (3) decide whether to investigate a complaint
14 or refer a complaint to another agency for investigation."

15 SECTION 7. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] ANNUAL REPORT--REPORT CONTENTS--CREATION
18 AND MAINTENANCE OF WEBSITE CONTAINING REPORT INFORMATION.--

19 A. Each year, the office shall submit to the
20 legislative finance committee, the department and the governor
21 on or before September 1 a report addressing services provided
22 by the department, including:

23 (1) the quality of services provided to
24 children and families;

25 (2) the conditions of placements for New

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1 Mexico's children, including the number of out-of-state
2 placements and an assessment of each active congregate care and
3 juvenile justice facility in which children in the custody of
4 the department are placed;

5 (3) the number of children removed from a
6 residence of a parent, foster parent or guardian;

7 (4) the number of children returned to a
8 household from which they were removed;

9 (5) the number of children removed from a
10 household subsequent to being returned to a household from
11 which they were removed;

12 (6) the number of children placed in the
13 custody of a juvenile justice facility;

14 (7) the number of children placed in the
15 custody of the department who have run away from a department
16 placement, the number of children placed in the custody of the
17 department who have been found after running away and the
18 number of children placed in the custody of the department who
19 are currently missing;

20 (8) the number of cases in which families
21 subject to court-ordered treatment plans or voluntary placement
22 agreements have absconded with children placed in the custody
23 of the department;

24 (9) a review of systemic issues related to
25 services for assistance to children and families within the

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1 child protection and juvenile justice systems;

2 (10) findings and recommendations related to
3 the implementation of the federal Indian Child Welfare Act of
4 1978 and the Indian Family Protection Act;

5 (11) recommendations related to improving
6 services for children and families;

7 (12) data disaggregated by race, ethnicity,
8 gender, geographic location, sexual identity, disability status
9 and any other categories that the office deems necessary; and

10 (13) the training and certification process
11 for the state child advocate and office staff.

12 B. The office shall create and maintain a web page
13 on which the data contained in Subsection A of this section
14 shall be provided in an accessible manner and updated
15 quarterly.

16 C. Each year the annual report shall be posted to
17 the web page created pursuant to Subsection B of this section."

18 SECTION 8. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] TRAINING AND CERTIFICATION.--

21 A. The state child advocate shall ensure that
22 office staff are trained in:

23 (1) federal, state, local and tribal laws,
24 regulations and policies with respect to child protection and
25 juvenile justice services in the state;

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1 (2) investigative techniques, including
2 trauma-informed care and questioning;

3 (3) the federal Indian Child Welfare Act of
4 1978, the Indian Family Protection Act, tribal culture, tribal
5 relations and sovereign nation status; and

6 (4) department policies and procedures.

7 B. The state child advocate shall develop
8 procedures for the training and certification of appropriate
9 staff.

10 C. An officer, employee or other representative of
11 the office shall not investigate any complaint filed with the
12 office unless that person is certified by the office."

13 SECTION 9. A new section of the Children's Code is
14 enacted to read:

15 "[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are
16 employees of the office or who have contracts with the office
17 shall not have a conflict of interest with the department or
18 with an entity that provides services to children and families
19 through funds provided by the department relating to the
20 performance of their responsibilities pursuant to the
21 Children's Code. For the purposes of this section, a conflict
22 of interest exists whenever the state child advocate, an
23 employee of the office or a person having a contract with the
24 office:

25 A. licenses, certifies or accredits a provider or

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1 facility delivering services to children and families pursuant
2 to the Children's Code;

3 B. has a direct ownership interest in a provider or
4 facility delivering services to children and families pursuant
5 to the Children's Code;

6 C. is employed by or participates in the management
7 of a provider or facility delivering services to children and
8 families pursuant to the Children's Code; or

9 D. receives, directly or indirectly, remuneration
10 pursuant to a compensation arrangement with a provider or
11 facility delivering services to children and families pursuant
12 to the Children's Code."

13 SECTION 10. A new section of the Children's Code is
14 enacted to read:

15 "[NEW MATERIAL] INCIDENTS, FATALITIES AND NEAR
16 FATALITIES.--

17 A. The department shall provide the office with a
18 copy of all reports related to actual physical injury to
19 children in the custody of the department within thirty days of
20 receiving the report, whether substantiated or unsubstantiated.

21 B. The department shall provide the office with a
22 written notification within seventy-two hours of:

23 (1) a fatality or near fatality of a child in
24 its custody or referred or receiving services under the
25 supervision of the department; and

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1 (2) the restraint or seclusion of a child in
2 its custody.

3 C. As used in this section:

4 (1) "restraint" means a measure or condition
5 that keeps someone or something under control or within limits.
6 "Restraint" may include mechanical or physical restraint; and

7 (2) "seclusion" means the involuntary
8 confinement of a child alone in a room from which egress is
9 prevented. "Seclusion" does not mean the use of a voluntary
10 behavior management technique, including a timeout location, as
11 part of a child's education plan, individual safety plan,
12 behavioral plan or individualized education program that
13 involves the child's separation from a larger group for
14 purposes of calming."

15 SECTION 11. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by
18 the office, law enforcement agencies shall share with the
19 office all law enforcement reports involving children
20 identified by the agencies as having been placed in the custody
21 of the department, receiving services under the supervision of
22 the department, referred to the department or whose parent,
23 guardian or custodian is under investigation by the
24 department."

25 SECTION 12. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

3 A. The office shall maintain the confidentiality of
4 all case records, third-party records and court records, as
5 well as any information gathered in the course of
6 investigations and system monitoring duties. These records are
7 exempt from public inspection and copying pursuant to the
8 Inspection of Public Records Act and shall be kept confidential
9 unless disclosure is:

10 (1) ordered by the court;

11 (2) necessary to prevent imminent harm and the
12 imminent harm is communicated directly to the state child
13 advocate or staff of the office;

14 (3) necessary to the department in order for
15 the department to determine the appropriateness of initiating
16 an investigation regarding potential abuse or neglect or other
17 emergency circumstances; or

18 (4) necessary to the department in order for
19 the department to determine the appropriateness of initiating
20 an investigation to determine facility compliance with
21 applicable rules of licensure or certification or both.

22 B. Notwithstanding the provisions of Subsection A
23 of this section, the office may publicly report any patterns of
24 conduct or repeated incidents identified by the office in
25 carrying out the provisions of the Office of Child Advocate

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1 Act; provided that the office shall not publicly disclose
2 either of the following:

3 (1) individually identifiable information
4 about a child; and

5 (2) investigation findings when there is
6 pending law enforcement investigation or prosecution."

7 SECTION 13. A new section of the Children's Code is
8 enacted to read:

9 "[NEW MATERIAL] NOTIFICATION OF OFFICE OF CHILD
10 ADVOCATE.--The department shall notify all children placed in
11 the custody of the department, receiving services under the
12 supervision of the department, referred to the department or
13 whose parent, guardian or custodian is under investigation by
14 the department and their parents, guardians, foster parents and
15 identified fictive kin of the existence of the office, its
16 purpose and function and its toll-free hotline and electronic
17 communication portal with instructions for access."

18 SECTION 14. Section 32A-2-32 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 61, as amended) is amended to read:

20 "32A-2-32. CONFIDENTIALITY--RECORDS.--

21 A. All records pertaining to the child, including
22 all related social records, behavioral health screenings,
23 diagnostic evaluations, psychiatric reports, medical reports,
24 social studies reports, records from local detention
25 facilities, client-identifying records from facilities for the

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1 care and rehabilitation of delinquent children, pre-parole or
2 supervised release reports and supervision histories obtained
3 by the juvenile probation office, parole officers and the
4 juvenile public safety advisory board or in possession of the
5 department, are confidential and shall not be disclosed
6 directly or indirectly to the public.

7 B. The disclosure of all mental health and
8 developmental disability records shall be made pursuant to the
9 Children's Mental Health and Developmental Disabilities Act.

10 C. The records described in Subsection A of this
11 section, other than mental health and developmental disability
12 records, shall be disclosed only to any of the following;
13 provided that the agency, person or institution receiving
14 information shall not re-release the information without proper
15 consent or as otherwise provided by law:

- 16 (1) court personnel;
- 17 (2) the child's court appointed special
18 advocates;
- 19 (3) the child's attorney or guardian ad litem
20 representing the child in any matter;
- 21 (4) department personnel;
- 22 (5) corrections department personnel;
- 23 (6) law enforcement officials when the request
24 is related to the investigation of a crime;
- 25 (7) district attorneys or children's court

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1 attorneys;

2 (8) a state government social services agency
3 in any state;

4 (9) those persons or entities of a child's
5 Indian tribe specifically authorized to inspect such records
6 pursuant to the federal Indian Child Welfare Act of 1978, the
7 Indian Family Protection Act or any regulations promulgated
8 under [~~that act~~] those acts;

9 (10) tribal juvenile justice system and social
10 service representatives;

11 (11) a foster parent, if the records are those
12 of a child currently placed with that foster parent or of a
13 child being considered for placement with that foster parent,
14 when the disclosure of the information is necessary for the
15 child's treatment or care and shall include only that
16 information necessary to provide for treatment and care of the
17 child;

18 (12) school personnel involved with the child
19 if the records concern the child's educational needs, but shall
20 only include that information necessary to provide for the
21 child's educational planning and needs;

22 (13) a health care or mental health
23 professional involved in the evaluation or treatment of the
24 child, the child's parents, guardians or custodian or other
25 family members;

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1 (14) representatives of the protection and
2 advocacy system;

3 (15) the child's parent, guardian or legal
4 custodian when the disclosure of the information is necessary
5 for the child's treatment or care and shall include only that
6 information necessary to provide for the treatment or care of
7 the child;

8 (16) any other person or entity, by order of
9 the court, having a legitimate interest in the case or the work
10 of the court who agrees not to otherwise release the records;
11 [~~and~~]

12 (17) the child, if fourteen years of age or
13 older; and

14 (18) the office of child advocate and its
15 employees and contractors, pursuant to the requirements of the
16 Delinquency Act, if the records are needed for the purpose of
17 implementing the Office of Child Advocate Act.

18 D. If disclosure of otherwise confidential records
19 is made to the child or any other person or entity pursuant to
20 a valid release of information signed by the child, all victim
21 or witness identifying information shall be redacted or
22 otherwise deleted.

23 E. Whoever intentionally and unlawfully releases
24 any information or records closed to the public pursuant to
25 this section or releases or makes other unlawful use of records

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1 in violation of this section is guilty of a petty misdemeanor.

2 F. The department shall promulgate rules for
3 implementing disclosure of records pursuant to this section and
4 in compliance with state and federal law and the Children's
5 Court Rules."

6 SECTION 15. Section 32A-4-33 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 127, as amended) is amended to read:

8 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

9 A. All records or information concerning a party to
10 a neglect or abuse proceeding, including social records,
11 diagnostic evaluations, psychiatric or psychological reports,
12 videotapes, transcripts and audio recordings of a child's
13 statement of abuse or medical reports incident to or obtained
14 as a result of a neglect or abuse proceeding or that were
15 produced or obtained during an investigation in anticipation of
16 or incident to a neglect or abuse proceeding shall be
17 confidential and closed to the public.

18 B. The records described in Subsection A of this
19 section shall be disclosed only to the parties and:

20 (1) court personnel and persons or entities
21 authorized by contract with the court to review, inspect or
22 otherwise have access to records or information in the court's
23 possession;

24 (2) court-appointed special advocates
25 appointed to the neglect or abuse proceeding;

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1 (3) the child's guardian ad litem;

2 (4) the attorney representing the child in an
3 abuse or neglect action, a delinquency action or any other
4 action under the Children's Code;

5 (5) department personnel and persons or
6 entities authorized by contract with the department to review,
7 inspect or otherwise have access to records or information in
8 the department's possession;

9 (6) any local substitute care review board or
10 any agency contracted to implement local substitute care review
11 boards;

12 (7) law enforcement officials, except when use
13 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

14 (8) district attorneys, except when use
15 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

16 (9) any state government or tribal government
17 social services agency in any state or when, in the opinion of
18 the department, it is in the best interest of the child, a
19 governmental social services agency of another country;

20 (10) a foster parent, if the records are those
21 of a child currently placed with that foster parent or of a
22 child being considered for placement with that foster parent
23 and the records concern the social, medical, psychological or
24 educational needs of the child;

25 (11) school personnel involved with the child

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1 if the records concern the child's social or educational needs;

2 (12) a grandparent, parent of a sibling,
3 relative or fictive kin, if the records or information pertain
4 to a child being considered for placement with that
5 grandparent, parent of a sibling, relative or fictive kin and
6 the records or information concern the social, medical,
7 psychological or educational needs of the child;

8 (13) health care or mental health
9 professionals involved in the evaluation or treatment of the
10 child or of the child's parents, guardian, custodian or other
11 family members;

12 (14) protection and advocacy representatives
13 pursuant to the federal Developmental Disabilities Assistance
14 and Bill of Rights Act and the federal Protection and Advocacy
15 for Mentally Ill Individuals Amendments Act of 1991;

16 (15) children's safehouse organizations
17 conducting investigatory interviews of children on behalf of a
18 law enforcement agency or the department;

19 (16) representatives of the federal government
20 or their contractors authorized by federal statute or
21 regulation to review, inspect, audit or otherwise have access
22 to records and information pertaining to neglect or abuse
23 proceedings;

24 (17) any person or entity attending a meeting
25 arranged by the department to discuss the safety, well-being

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1 and permanency of a child, when the parent or child, or parent
2 or legal custodian on behalf of a child younger than fourteen
3 years of age, has consented to the disclosure; ~~and~~

4 (18) any other person or entity, by order of
5 the court, having a legitimate interest in the case or the work
6 of the court; and

7 (19) the office of child advocate and its
8 employees and contractors, pursuant to the requirements of the
9 Abuse and Neglect Act, if the records are needed for the
10 purpose of implementing the Office of Child Advocate Act.

11 C. A parent, guardian or legal custodian whose
12 child has been the subject of an investigation of abuse or
13 neglect where no petition has been filed shall have the right
14 to inspect any medical report, psychological evaluation, law
15 enforcement reports or other investigative or diagnostic
16 evaluation; provided that any identifying information related
17 to the reporting party or any other party providing information
18 shall be deleted. The parent, guardian or legal custodian
19 shall also have the right to the results of the investigation
20 and the right to petition the court for full access to all
21 department records and information except those records and
22 information the department finds would be likely to endanger
23 the life or safety of any person providing information to the
24 department.

25 D. Whoever intentionally and unlawfully releases

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1 any information or records closed to the public pursuant to the
2 Abuse and Neglect Act or releases or makes other unlawful use
3 of records in violation of that act is guilty of a petty
4 misdemeanor and shall be sentenced pursuant to the provisions
5 of Section 31-19-1 NMSA 1978.

6 E. The department shall promulgate rules for
7 implementing disclosure of records pursuant to this section and
8 in compliance with state and federal law and the Children's
9 Court Rules."

10 SECTION 16. APPROPRIATION.--Five hundred fifteen thousand
11 dollars (\$515,000) is appropriated from the general fund to the
12 office of child advocate for expenditure in fiscal year 2025 to
13 establish the office, to provide for the salaries and benefits
14 for the state child advocate and four full-time staff members
15 and any necessary office equipment and supplies. Any
16 unexpended or unencumbered balance remaining at the end of
17 fiscal year 2025 shall revert to the general fund.

18 SECTION 17. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2024.