

HOUSE BILL 213

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Kelly K. Fajardo and Rebecca Dow and David M. Gallegos

AN ACT

RELATING TO FAMILIES; ENACTING THE CHILD WELFARE OMBUDSMAN ACT;  
PROVIDING FOR THE CHIEF CHILD WELFARE OMBUDSMAN; CREATING THE  
CHILD WELFARE OMBUDSMAN OFFICE AND ESTABLISHING THE POWERS AND  
DUTIES OF THAT OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE  
CHIEF CHILD WELFARE OMBUDSMAN SELECTION COMMITTEE AND REGIONAL  
AND LOCAL CHILD WELFARE OMBUDSMAN PROGRAMS; ESTABLISHING  
TRAINING REQUIREMENTS; PROVIDING FOR CONFIDENTIALITY;  
TRANSFERRING FUNCTIONS, PERSONNEL, PROPERTY, CONTRACTS AND  
REFERENCES IN LAW; REPEALING THE CITIZEN SUBSTITUTE CARE REVIEW  
ACT; AMENDING, REPEALING 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:

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1           "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of  
2 this act may be cited as the "Child Welfare Ombudsman Act"."

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

5           "[NEW MATERIAL] DEFINITIONS.--As used in the Child Welfare  
6 Ombudsman Act:

7           A. "committee" means the chief child welfare  
8 ombudsman selection committee;

9           B. "office" means the child welfare ombudsman  
10 office; and

11           C. "substitute caregiver" means a substitute  
12 caregiver, a guardian or a kinship caregiver."

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

15           "[NEW MATERIAL] CHILD WELFARE OMBUDSMAN OFFICE--CREATED.--  
16 The "child welfare ombudsman office" is created and is  
17 administratively attached to the department pursuant to Section  
18 9-1-7 NMSA 1978."

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

21           "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN--  
22 APPOINTMENT.--The head of the office is the "chief child  
23 welfare ombudsman", who shall be appointed for a term of six  
24 years, except that the initial term shall begin on July 1, 2020  
25 and shall end on December 31, 2020. The chief child welfare

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1 ombudsman may be reappointed to successive terms. An appointed  
2 chief child welfare ombudsman shall serve and have all of the  
3 duties, responsibilities and authority of that office during  
4 the period of time prior to appointment of a new chief child  
5 welfare ombudsman. The governor may remove the chief child  
6 welfare ombudsman only for malfeasance, misfeasance or abuse of  
7 office."

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

10 "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN SELECTION  
11 COMMITTEE--DUTIES.--

12 A. The "chief child welfare ombudsman selection  
13 committee" is created and consists of nine members, including:

14 (1) four members who are selected by the New  
15 Mexico legislative council, no more than two of whom are from  
16 the same political party;

17 (2) four members who are selected by the  
18 governor, no more than two of whom are from the same political  
19 party; and

20 (3) a committee chair, whom a majority of the  
21 other eight members select and who is:

22 (a) not a candidate for the position of  
23 chief child welfare ombudsman; and

24 (b) a former secretary of children,  
25 youth and families, a former director of the protective

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1 services division of the department, a former chief child  
2 welfare ombudsman or another person with extensive knowledge of  
3 child protective or juvenile justice services.

4 B. The committee shall meet exclusively for the  
5 purpose of nominating persons to fill a current or impending  
6 vacancy in the position of chief child welfare ombudsman. The  
7 committee shall actively solicit, accept and evaluate  
8 applications for the position of chief child welfare ombudsman  
9 and may require applicants to submit any information that the  
10 committee deems relevant to the consideration of applications.  
11 Within ninety days before the date on which the term of a chief  
12 child welfare ombudsman ends or no later than thirty days after  
13 the occurrence of a vacancy in the chief child welfare  
14 ombudsman position, the committee shall convene and, within  
15 thirty days after convening, submit to the governor the names  
16 of persons who are recommended for appointment to the position  
17 by a majority of the committee members.

18 C. Immediately after receiving nominations for the  
19 chief child welfare ombudsman, the governor may make one  
20 request of the committee for submission of additional names.  
21 The committee shall promptly submit those additional names if a  
22 majority of the committee members find that additional persons  
23 would be qualified and recommends those persons for appointment  
24 as chief child welfare ombudsman. The governor shall fill a  
25 vacancy or appoint a successor to fill an impending vacancy in

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1 the office of chief child welfare ombudsman within thirty days  
2 after receiving final nominations from the committee by  
3 appointing one of the persons nominated by the committee.

4 D. The committee is administratively attached to  
5 the department pursuant to the provisions of Section 9-1-7 NMSA  
6 1978.

7 E. After the initial meeting of the committee, the  
8 governor or a majority of the committee members may call  
9 subsequent meetings of the committee."

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

12 "[NEW MATERIAL] CHILD WELFARE OMBUDSMAN OFFICE--POWERS--  
13 DUTIES.--The office:

14 A. shall:

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

18 (2) oversee the office and assign and  
19 distribute the work of the office;

20 (3) operate a toll-free hotline and electronic  
21 communication portal to receive complaints pursuant to this  
22 section;

23 (4) disseminate information on:

24 (a) the hotline and communication portal  
25 established pursuant to Paragraph (3) of this subsection;

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- 1 (b) the rights and well-being of  
2 children in protective custody or in the juvenile justice  
3 system, biological parents and other affected parties; and  
4 (c) the services provided by the office;
- 5 (5) investigate and attempt to resolve  
6 complaints made by or on behalf of substitute caregivers or  
7 children placed in foster care and related to foster care,  
8 placement or services;
- 9 (6) decide, in its discretion, whether to  
10 investigate a complaint or refer complaints to another agency  
11 for investigation;
- 12 (7) upon rendering a decision to investigate a  
13 complaint from a complainant, notify the complainant of the  
14 intention to investigate and, if the office declines to  
15 investigate a complaint or continue an investigation, notify  
16 the complainant of the reason for the action of the office;
- 17 (8) update the complainant on the progress of  
18 the investigation and notify the complainant of the final  
19 outcome;
- 20 (9) document the number, source, origin,  
21 location and nature of complaints on an annual basis; and
- 22 (10) compile and make available on an annual  
23 basis to the secretary of children, youth and families, the  
24 legislature and, by posting on the office's website, the public  
25 a report of all data, in aggregate form, collected over the

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1 course of the year, including the number of contacts to the  
2 toll-free hotline and electronic communication portal, the  
3 number of complaints made, including the type and source of  
4 those complaints, the number of investigations performed by the  
5 office, the trends and issues that arose in the course of  
6 investigating complaints, the number of referrals made and the  
7 number of pending complaints; and

8 B. may:

9 (1) adopt and promulgate rules pertaining to  
10 the administration of the office and, subject to appropriation,  
11 hire and contract for such professional, technical and support  
12 staff as needed to carry out the functions of the office;  
13 provided that such hiring and contracting shall be without  
14 regard to party affiliation and solely on the grounds of  
15 competence and fitness to perform the duties of the position.  
16 Employees of the office, except the chief child welfare  
17 ombudsman, are subject to the provisions of the Personnel Act;

18 (2) access any record of a state or local  
19 agency that is necessary to carry out the office's  
20 responsibilities;

21 (3) meet or communicate with any child in  
22 protective custody in the child's placement or elsewhere; and

23 (4) establish, in consultation with a  
24 committee of interested individuals, regional or local child  
25 welfare ombudsman offices for the purposes of expediting

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1 investigations and resolving complaints, subject to legislative  
2 appropriation."

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

5 "[NEW MATERIAL] REGIONAL AND LOCAL CHILD WELFARE OMBUDSMAN  
6 PROGRAMS.--

7 A. In carrying out the duties of the office, the  
8 chief child welfare ombudsman may designate an entity as a  
9 regional or local child welfare ombudsman entity and may  
10 designate an employee to represent the entity. An individual  
11 so designated shall, in accordance with the policies and  
12 procedures established by the office:

13 (1) provide services to protect the rights and  
14 well-being of children in protective custody or in the juvenile  
15 justice system, biological parents and other affected parties;

16 (2) ensure that children in protective custody  
17 or in the juvenile justice system and substitute caregivers in  
18 the service area of the entity have regular, timely access to  
19 representatives of the program and timely responses to  
20 complaints and requests for assistance;

21 (3) identify, investigate and resolve  
22 complaints made by or on behalf of children in protective  
23 custody or in the juvenile justice system and substitute  
24 caregivers that relate to action, inaction or decisions that  
25 may adversely affect the health, safety, welfare or rights of

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1 the children in protective custody or in the juvenile justice  
2 system and substitute caregivers;

3 (4) represent the interests of children in  
4 protective custody or in the juvenile justice system and  
5 substitute caregivers before government agencies and seek  
6 administrative, legal and other remedies to protect the rights  
7 of children in protective custody or in the juvenile justice  
8 system and substitute caregivers;

9 (5) review and, if necessary, comment on any  
10 existing and proposed laws, regulations and other government  
11 policies and actions that pertain to the rights and well-being  
12 of children in protective custody or in the juvenile justice  
13 system, biological parents and other affected parties;

14 (6) facilitate the ability of the public to  
15 comment on the laws, agency rules, policies and actions; and

16 (7) carry out other activities that the chief  
17 child welfare ombudsman determines to be appropriate.

18 B. To be eligible to be designated as regional or  
19 local child welfare ombudsman entities, and individuals  
20 eligible to be designated as representatives of such entities,  
21 the entities shall:

22 (1) have demonstrated capability to carry out  
23 the responsibilities of the office;

24 (2) be free of conflicts of interest;

25 (3) in the case of the entities, be public or

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1 nonprofit private entities; and

2 (4) meet such additional requirements as the  
3 chief child welfare ombudsman may specify."

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

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

7 A. The chief child welfare ombudsman shall ensure  
8 that office staff are trained in:

9 (1) federal, state, local and tribal laws,  
10 regulations and policies with respect to foster care and  
11 juvenile justice in the state;

12 (2) investigative techniques; and

13 (3) such other matters as the office deems  
14 appropriate.

15 B. The chief child welfare ombudsman shall develop  
16 procedures for the certification of office staff.

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

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

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

23 A. The files and records of the office may be  
24 disclosed only for purposes of fulfilling the duties of the  
25 office pursuant to the Child Welfare Ombudsman Act at the

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1 discretion of the chief child welfare ombudsman or the chief  
2 child welfare ombudsman's designee. All child welfare  
3 ombudsman files and records pertaining to children in  
4 protective custody or in the juvenile justice system and  
5 substitute caregivers are confidential and not subject to the  
6 provisions of the Inspection of Public Records Act. The chief  
7 child welfare ombudsman shall not disclose the identity of any  
8 complainant, child in protective custody or in the juvenile  
9 justice system or substitute caregiver about whom the office  
10 maintains files or records unless:

11 (1) the complainant, child in protective  
12 custody or in the juvenile justice system or substitute  
13 caregiver consents in writing to the disclosure;

14 (2) the complainant, child in protective  
15 custody or in the juvenile justice system or substitute  
16 caregiver gives oral consent that is documented immediately in  
17 writing by a representative of the office;

18 (3) disclosure is ordered by the court; or

19 (4) disclosure is necessary to prevent  
20 imminent harm.

21 B. The chief child welfare ombudsman shall have  
22 access to the records and files of the office to verify the  
23 effectiveness and quality of the program where the identity of  
24 any complainant, child in protective custody or in the juvenile  
25 justice system or substitute caregiver is not disclosed."

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

3 "[NEW MATERIAL] OTHER REMEDIES.--An individual who pursues  
4 remedies pursuant to the Child Welfare Ombudsman Act is not  
5 precluded from pursuing other legal or equitable remedies."

6 SECTION 11. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
7 Chapter 77, Section 13, as amended) is amended to read:

8 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

9 A. "adult" means a person who is eighteen years of  
10 age or older;

11 B. "child" means a person who is less than eighteen  
12 years old;

13 [~~C.~~] ~~"council" means the substitute care advisory~~  
14 ~~council established pursuant to Section 32A-8-4 NMSA 1978;~~

15 ~~D.~~] C. "court", when used without further  
16 qualification, means the children's court division of the  
17 district court and includes the judge, special master or  
18 commissioner appointed pursuant to the provisions of the  
19 Children's Code or supreme court rule;

20 [~~E.~~] D. "court-appointed special advocate" means a  
21 person appointed pursuant to the provisions of the Children's  
22 Court Rules to assist the court in determining the best  
23 interests of the child by investigating the case and submitting  
24 a report to the court;

25 [~~F.~~] E. "custodian" means an adult with whom the

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1 child lives who is not a parent or guardian of the child;

2 [G-] F. "department" means the children, youth and  
3 families department, unless otherwise specified;

4 [H-] G. "disproportionate minority contact" means  
5 the involvement of a racial or ethnic group with the criminal  
6 or juvenile justice system at a proportion either higher or  
7 lower than that group's proportion in the general population;

8 [I-] H. "foster parent" means a person, including a  
9 relative of the child, licensed or certified by the department  
10 or a child placement agency to provide care for children in the  
11 custody of the department or agency;

12 [J-] I. "guardian" means a person appointed as a  
13 guardian by a court or Indian tribal authority or a person  
14 authorized to care for the child by a parental power of  
15 attorney as permitted by law;

16 [K-] J. "guardian ad litem" means an attorney  
17 appointed by the children's court to represent and protect the  
18 best interests of the child in a case; provided that no party  
19 or employee or representative of a party to the case shall be  
20 appointed to serve as a guardian ad litem;

21 [L-] K. "Indian child" means an unmarried person  
22 who is:

23 (1) less than eighteen years old;

24 (2) a member of an Indian tribe or is eligible  
25 for membership in an Indian tribe; and

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1 (3) the biological child of a member of an  
2 Indian tribe;

3 ~~[M-]~~ L. "Indian child's tribe" means:

4 (1) the Indian tribe in which an Indian child  
5 is a member or eligible for membership; or

6 (2) in the case of an Indian child who is a  
7 member or eligible for membership in more than one tribe, the  
8 Indian tribe with which the Indian child has more significant  
9 contacts;

10 ~~[N-]~~ M. "Indian tribe" means a federally recognized  
11 Indian tribe, community or group pursuant to 25 U.S.C. Section  
12 1903(1);

13 ~~[O-]~~ N. "judge", when used without further  
14 qualification, means the judge of the court;

15 ~~[P-]~~ O. "legal custody" means a legal status  
16 created by order of the court or other court of competent  
17 jurisdiction or by operation of statute that vests in a person,  
18 department or agency the right to determine where and with whom  
19 a child shall live; the right and duty to protect, train and  
20 discipline the child and to provide the child with food,  
21 shelter, personal care, education and ordinary and emergency  
22 medical care; the right to consent to major medical,  
23 psychiatric, psychological and surgical treatment and to the  
24 administration of legally prescribed psychotropic medications  
25 pursuant to the Children's Mental Health and Developmental

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1 Disabilities Act; and the right to consent to the child's  
2 enlistment in the armed forces of the United States;

3 [Q-] P. "parent" or "parents" includes a biological  
4 or adoptive parent if the biological or adoptive parent has a  
5 constitutionally protected liberty interest in the care and  
6 custody of the child;

7 [R-] Q. "permanency plan" means a determination by  
8 the court that the child's interest will be served best by:

9 (1) reunification;

10 (2) placement for adoption after the parents'  
11 rights have been relinquished or terminated or after a motion  
12 has been filed to terminate parental rights;

13 (3) placement with a person who will be the  
14 child's permanent guardian;

15 (4) placement in the legal custody of the  
16 department with the child placed in the home of a fit and  
17 willing relative; or

18 (5) placement in the legal custody of the  
19 department under a planned permanent living arrangement;

20 [S-] R. "person" means an individual or any other  
21 form of entity recognized by law;

22 [T-] S. "plan of care" means a plan created by a  
23 health care professional intended to ensure the safety and  
24 well-being of a substance-exposed newborn by addressing the  
25 treatment needs of the child and any of the child's parents,

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1 relatives, guardians, family members or caregivers to the  
2 extent those treatment needs are relevant to the safety of the  
3 child;

4 ~~[U.]~~ T. "preadoptive parent" means a person with  
5 whom a child has been placed for adoption;

6 ~~[V.]~~ U. "protective supervision" means the right to  
7 visit the child in the home where the child is residing,  
8 inspect the home, transport the child to court-ordered  
9 diagnostic examinations and evaluations and obtain information  
10 and records concerning the child;

11 ~~[W.]~~ V. "relative" means a person related to  
12 another person by blood within the fifth degree of  
13 consanguinity or through marriage by the fifth degree of  
14 affinity;

15 ~~[X.]~~ W. "reunification" means either a return of  
16 the child to the parent or to the home from which the child was  
17 removed or a return to the noncustodial parent;

18 ~~[Y.]~~ X. "tribal court" means:

19 (1) a court established and operated pursuant  
20 to a code or custom of an Indian tribe; or

21 (2) any administrative body of an Indian tribe  
22 that is vested with judicial authority;

23 ~~[Z.]~~ Y. "tribal court order" means a document  
24 issued by a tribal court that is signed by an appropriate  
25 authority, including a judge, governor or tribal council

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1 member, and that orders an action that is within the tribal  
2 court's jurisdiction; and

3 ~~[AA.]~~ Z. "tribunal" means any judicial forum other  
4 than the court."

5 SECTION 12. Section 32A-4-25.1 NMSA 1978 (being Laws  
6 1997, Chapter 34, Section 8, as amended by Laws 2016, Chapter  
7 54, Section 7 and by Laws 2016, Chapter 60, Section 3) is  
8 amended to read:

9 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW  
10 HEARINGS.--

11 A. A permanency hearing shall be commenced within  
12 six months of the initial judicial review of a child's  
13 dispositional order or within twelve months of a child entering  
14 foster care pursuant to Subsection ~~[D]~~ E of this section,  
15 whichever occurs first. Prior to the initial permanency  
16 hearing:

17 (1) the department shall submit a copy of any  
18 continuation of the dispositional order and notice of hearing  
19 to the ~~[council or any substitute care review board designated~~  
20 ~~pursuant to Section 32A-8-5 NMSA 1978]~~ child welfare ombudsman  
21 office;

22 (2) the department shall submit a progress  
23 report to any designated ~~[substitute care review board]~~ child  
24 welfare ombudsman office;

25 (3) all parties to the hearing shall attend a

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1 mandatory meeting and attempt to settle issues attendant to the  
2 permanency hearing and develop a proposed [~~treatment~~] case plan  
3 that serves the child's best interest; and

4 (4) any designated [~~substitute care review~~  
5 ~~board~~] child welfare ombudsman office may review the child's  
6 case and the department's progress report and report its  
7 findings and recommendations to the court.

8 B. At the permanency hearing, all parties shall  
9 have the opportunity to present evidence and to cross-examine  
10 witnesses. At the conclusion of the permanency hearing, the  
11 court shall order one of the following permanency plans for the  
12 child:

13 (1) reunification;

14 (2) placement for adoption after the parents'  
15 rights have been relinquished or terminated or after a motion  
16 has been filed to terminate parental rights;

17 (3) placement with a person who will be the  
18 child's permanent guardian;

19 (4) placement in the legal custody of the  
20 department with the child placed in the home of a fit and  
21 willing relative; or

22 (5) placement in the legal custody of the  
23 department under a planned permanent living arrangement,  
24 provided that there is substantial evidence that none of the  
25 above plans is appropriate for the child.

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1 C. If the court adopts a permanency plan of  
2 reunification, the court shall adopt a plan for transitioning  
3 the child home within a reasonable period depending on the  
4 facts and circumstances of the case, but not to exceed six  
5 months, and schedule a permanency review hearing within three  
6 months. If the child is reunified, the subsequent hearing may  
7 be vacated.

8 D. At the permanency review hearing, all parties  
9 and the child's guardian ad litem or attorney shall have the  
10 opportunity to present evidence and cross-examine witnesses.  
11 Based on the evidence, the court shall:

12 (1) change the plan from reunification to one  
13 of the alternative plans provided in Subsection B of this  
14 section;

15 (2) dismiss the case and return custody of the  
16 child to the child's parent, guardian or custodian;

17 (3) continue legal custody of the child in the  
18 department to complete a transition home to the child's parent,  
19 guardian or custodian and continue the case plan for not more  
20 than six months, after which the case shall be dismissed unless  
21 the plan is changed as provided in Paragraph (1) of this  
22 subsection; or

23 (4) return the child to the custody of the  
24 child's parent, guardian or custodian, subject to any  
25 conditions or limitations as the court may prescribe, including

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1 protective supervision of the child by the department and  
2 continuation of the case plan for not more than six months,  
3 after which the case shall be dismissed. The department may  
4 seek removal of a child from the home by obtaining an order in  
5 the pending case or by seeking emergency removal under Section  
6 32A-4-6 NMSA 1978 during the period of protective supervision  
7 if the child's best interest requires such action. When a  
8 child is removed in this situation, a permanency hearing shall  
9 be scheduled within thirty days of the child coming back into  
10 the department's legal custody.

11 E. The court shall hold a permanency hearing and  
12 adopt a permanency plan for a child within twelve months of the  
13 child entering foster care. For purposes of this section, a  
14 child shall be considered to have entered foster care on the  
15 earlier of:

16 (1) the date of the first judicial finding  
17 that the child has been abused or neglected; or

18 (2) sixty days after the date on which the  
19 child was removed from the home.

20 F. The court shall hold permanency hearings every  
21 twelve months when a child is in the legal custody of the  
22 department.

23 G. The children's court attorney shall give notice  
24 of the time, place and purpose of any permanency hearing or  
25 permanency review hearing held pursuant to this section to:

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- 1 (1) all parties, including:
- 2 (a) the child alleged to be neglected or
- 3 abused or in need of court-ordered services, by and through the
- 4 child's guardian ad litem or attorney;
- 5 (b) the child's parent, guardian or
- 6 custodian, who has allegedly neglected or abused the child or
- 7 is in need of court-ordered services; and
- 8 (c) any other person made a party by the
- 9 court;
- 10 (2) the child's foster parent or substitute
- 11 care provider;
- 12 (3) the child's court-appointed special
- 13 advocate; and
- 14 (4) ~~[if designated by the council, the~~
- 15 ~~substitute care review board]~~ the child welfare ombudsman
- 16 office.

17 H. The Rules of Evidence shall not apply to

18 permanency hearings. The court may admit testimony by any

19 person given notice of the permanency hearing who has

20 information about the status of the child or the status of the

21 treatment plan. All testimony shall be subject to cross-

22 examination."

23 **SECTION 13.** Section 32A-8-4 NMSA 1978 (being Laws 1993,

24 Chapter 77, Section 206, as amended) is recompiled as part of

25 the Child Welfare Ombudsman Act and is amended to read:

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1           "~~SUBSTITUTE CARE ADVISORY COUNCIL--MEMBERS--~~  
2           COMPENSATION] CHIEF CHILD WELFARE OMBUDSMAN--RESPONSIBILITIES  
3           ~~[ADVISORY COMMITTEE].--~~

4                   ~~[A. The "substitute care advisory council" is~~  
5           ~~created and, in accordance with the provisions of Section 9-1-7~~  
6           ~~NMSA 1978, is administratively attached to the regulation and~~  
7           ~~licensing department. The general purpose of the council is to~~  
8           ~~oversee substitute care review boards in their monitoring of~~  
9           ~~children placed in the custody of the children, youth and~~  
10           ~~families department to identify systemic policy issues~~  
11           ~~regarding substitute care. The council shall be composed of~~  
12           ~~nine persons, including:~~

13                           ~~(1) the secretary of public education or the~~  
14           ~~secretary's designee;~~

15                           ~~(2) the secretary of human services or the~~  
16           ~~secretary's designee;~~

17                           ~~(3) the secretary of finance and~~  
18           ~~administration or the secretary's designee;~~

19                           ~~(4) the secretary of health or the secretary's~~  
20           ~~designee;~~

21                           ~~(5) two public members, appointed by the~~  
22           ~~governor, who:~~

23                                   ~~(a) are at least eighteen and no more~~  
24           ~~than thirty years of age at the time of appointment; and~~

25                                   ~~(b) were previously placed in substitute~~

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1 care;

2 ~~(6) two public members, appointed by the~~  
3 ~~governor, who have expertise in the area of child welfare; and~~

4 ~~(7) one children's court judge, appointed by~~  
5 ~~the governor.~~

6 B. ~~The council may hire staff and contract for~~  
7 ~~services to carry out the purposes of the Citizen Substitute~~  
8 ~~Care Review Act. Except as provided pursuant to Paragraph (7)~~  
9 ~~of Subsection A of this section, a person or a relative of a~~  
10 ~~person employed by the department or a district court shall not~~  
11 ~~serve on the council.~~

12 G. ~~Terms of office of public members of the council~~  
13 ~~shall be three years. Public members shall be eligible for~~  
14 ~~reappointment. In the event that a vacancy occurs among the~~  
15 ~~members of the council, the governor shall appoint another~~  
16 ~~person to serve the unexpired portion of the term.~~

17 D. ~~The council shall select a chairperson, a vice~~  
18 ~~chairperson and other officers as it deems necessary.~~

19 E. ~~The council shall meet no less than twice~~  
20 ~~annually and more frequently upon the call of the chairperson.~~

21 F.] A. The [council] chief child welfare ombudsman  
22 shall adopt reasonable rules relating to the functions and  
23 procedures of the substitute care review boards and the  
24 [council] office in accordance with the duties of the boards as  
25 provided in the [Citizen Substitute Care Review] Child Welfare

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1 Ombudsman Act. These rules shall:

2 (1) establish training requirements for  
3 substitute care review board members;

4 (2) establish criteria for council designation  
5 of cases for substitute care review board review;

6 (3) establish procedures for substitute care  
7 review board review of designated cases;

8 (4) establish criteria for membership and  
9 tenure on and operating procedures for substitute care review  
10 boards;

11 (5) specify the information needed for  
12 designated cases to be monitored by substitute care review  
13 boards; and

14 (6) specify case information to be tracked and  
15 reported to the council.

16 [~~G.~~] B. When adopting rules establishing criteria  
17 for designation of cases for substitute care review board  
18 review, the [~~council~~] chief child welfare ombudsman shall weigh  
19 the importance of the following factors, including:

20 (1) sibling placements;

21 (2) the frequency and severity of neglect or  
22 abuse;

23 (3) the behavioral health status of household  
24 members;

25 (4) the placement of children in households

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1 where there are no relatives of the children;

2 (5) data related to demographics; and

3 (6) relevant trend data.

4 ~~[H.]~~ C. The ~~[council]~~ chief child welfare ombudsman  
5 shall review and coordinate the activities of the substitute  
6 care review boards and make a report with its recommendations  
7 to the department, the courts and the appropriate legislative  
8 interim committees, on or before November 1 of each year,  
9 regarding statutes, rules, policies and procedures relating to  
10 substitute care. This report shall include recommendations for  
11 any changes to substitute care review boards.

12 ~~[I. Council members shall receive per diem and~~  
13 ~~mileage as provided for nonsalaried public officers in the Per~~  
14 ~~Diem and Mileage Act; provided that, if a different provision~~  
15 ~~of that act applies to a specific member, that member shall be~~  
16 ~~paid pursuant to that applicable provision. Members shall~~  
17 ~~receive no other compensation, perquisite or allowance.~~

18 ~~J. The council shall appoint by October 1 of each~~  
19 ~~year a six-member advisory committee from a list of substitute~~  
20 ~~care review board members that the substitute care review~~  
21 ~~boards shall nominate. The advisory council shall meet with~~  
22 ~~the council at least once per year to advise the council on~~  
23 ~~matters relating to substitute care review. Advisory committee~~  
24 ~~members shall serve terms of one year and may be reappointed.]"~~

25 SECTION 14. Section 32A-8-5 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 207, as amended) is recompiled as part of  
2 the Child Welfare Ombudsman Act and is amended to read:

3 "SUBSTITUTE CARE REVIEW BOARDS--APPOINTMENTS--EXCLUSION--  
4 TERMS--TRAINING--COMPENSATION--MEETINGS.--

5 A. The ~~[council]~~ chief child welfare ombudsman  
6 shall establish no fewer than three substitute care review  
7 boards and, in each judicial district established pursuant to  
8 Section 34-6-1 NMSA 1978, no more than the following number of  
9 substitute care review boards:

10 (1) two substitute care review boards in the  
11 first judicial district;

12 (2) three substitute care review boards in the  
13 second judicial district;

14 (3) one substitute care review board in the  
15 third judicial district;

16 (4) two substitute care review boards in the  
17 fourth judicial district;

18 (5) two substitute care review boards in the  
19 fifth judicial district;

20 (6) two substitute care review boards in the  
21 sixth judicial district;

22 (7) two substitute care review boards in the  
23 seventh judicial district;

24 (8) two substitute care review boards in the  
25 eighth judicial district;

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1 (9) one substitute care review board in the  
2 ninth judicial district;

3 (10) one substitute care review board in the  
4 tenth judicial district;

5 (11) two substitute care review boards in the  
6 eleventh judicial district;

7 (12) two substitute care review boards in the  
8 twelfth judicial district; and

9 (13) two substitute care review boards in the  
10 thirteenth judicial district.

11 ~~[B. The council, or a contractor performing~~  
12 ~~services for the council pursuant to Subsection B of Section~~  
13 ~~32A-8-4 NMSA 1978, shall provide administrative support to~~  
14 ~~substitute care review boards in accordance with the Citizen~~  
15 ~~Substitute Care Review Act and rules that the council has~~  
16 ~~adopted.~~

17 ~~G.]~~ B. A person or a relative of a person employed  
18 by the department of finance and administration, the children,  
19 youth and families department, the human services department,  
20 the public education department, the department of health, a  
21 contractor of the [~~council~~] office or a district court shall  
22 not serve on a substitute care review board.

23 ~~[D.]~~ C. The composition of each substitute care  
24 review board shall be broadly representative of the community  
25 in which the board serves and include members with expertise in

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1 the prevention and treatment of child abuse and neglect and may  
2 include adult former victims of child abuse or neglect.

3 ~~[E.]~~ D. Each substitute care review board shall  
4 meet at least once per quarter to review cases designated in  
5 accordance with ~~[council]~~ office rules.

6 ~~[F.]~~ E. Substitute care review board members may  
7 receive per diem and mileage as provided for nonsalaried public  
8 officers in the Per Diem and Mileage Act; provided that, if a  
9 different provision of that act applies to a specific member,  
10 that member shall be paid pursuant to that applicable  
11 provision. Members shall receive no other compensation,  
12 perquisite or allowance.

13 ~~[G.]~~ F. Upon request of the ~~[council]~~ chief child  
14 welfare ombudsman, a substitute care review board shall prepare  
15 a report summarizing its activities. These reports shall not  
16 contain confidential information."

17 **SECTION 15. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,**  
18 **PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July**  
19 **1, 2020:**

20 A. all functions, personnel, appropriations, money,  
21 records, equipment, supplies and other property of the  
22 substitute care advisory council shall be transferred to the  
23 child welfare ombudsman office;

24 B. all contracts of the substitute care advisory  
25 council shall be binding and effective on the child welfare

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1 ombudsman office; and

2 C. all references in law to the substitute care  
3 advisory council shall be deemed to be references to the child  
4 welfare ombudsman office.

5 SECTION 16. APPROPRIATION.--One million dollars  
6 (\$1,000,000) is appropriated from the general fund to the child  
7 welfare ombudsman office for expenditure in fiscal year 2021  
8 for the establishment and operation of a child welfare  
9 ombudsman office in accordance with the provisions of the Child  
10 Welfare Ombudsman Act. Any unexpended or unencumbered balance  
11 remaining at the end of fiscal year 2021 shall revert to the  
12 general fund.

13 SECTION 17. REPEAL.--Sections 32A-8-1, 32A-8-2, 32A-8-6  
14 and 32A-8-7 NMSA 1978 (being Laws 1993, Chapter 77, Sections  
15 203, 204, 208 and 209, as amended) are repealed.