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HOUSE BILL 145

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Kelly K. Fajardo and David M. Gallegos and Candie G. Sweetser
and Siah Correa Hemphill and Micaela Lara Cadena

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; 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 12 of
this act may be cited as the "Child Welfare Ombudsman Act"."

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

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

2 A. "committee" means the chief child welfare
3 ombudsman selection committee;

4 B. "office" means the child welfare ombudsman
5 office; and

6 C. "substitute caregiver" means a person, including
7 a relative of the child, licensed or certified by the
8 department or a child placement agency to provide care for
9 children in the custody of the department or agency."

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

12 "[NEW MATERIAL] CHILD WELFARE OMBUDSMAN OFFICE--CREATED.--
13 The "child welfare ombudsman office" is created and is
14 administratively attached to the department of finance and
15 administration pursuant to Section 9-1-7 NMSA 1978."

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

18 "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN--
19 APPOINTMENT.--The head of the office is the "chief child
20 welfare ombudsman", who shall be appointed for a term of six
21 years, except that the initial term shall begin on July 1, 2022
22 and shall end on December 31, 2022. The chief child welfare
23 ombudsman may be reappointed to successive terms. An appointed
24 chief child welfare ombudsman shall serve and have all of the
25 duties, responsibilities and authority of that office during

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1 the period of time prior to appointment of a new chief child
2 welfare ombudsman. The governor may remove the chief child
3 welfare ombudsman only for malfeasance, misfeasance or abuse of
4 office."

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

7 "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN SELECTION
8 COMMITTEE--DUTIES.--

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

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

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

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

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

19 (5) four members who shall be selected by the
20 governor, no more than two of whom are from the same political
21 party; and

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

24 (a) not a candidate for the position of
25 chief child welfare ombudsman; and

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1 (b) a person with extensive knowledge of
2 child protective or juvenile justice services.

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

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

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1 after receiving final nominations from the committee by
2 appointing one of the persons nominated by the committee.

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

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

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

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

13 A. shall:

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

17 (2) oversee the chief child welfare ombudsman
18 and assign and distribute the work of the chief child welfare
19 ombudsman;

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

23 (4) investigate and attempt to resolve
24 complaints made by or on behalf of substitute caregivers or
25 children placed in the custody of the department or who are

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1 receiving services under the supervision of the department;

2 (5) decide, in its discretion, whether to
3 investigate a complaint or refer complaints to another agency
4 for investigation;

5 (6) upon rendering a decision to investigate a
6 complaint from a complainant, notify the complainant of the
7 intention to investigate and, if the office declines to
8 investigate a complaint or continue an investigation, notify
9 the complainant of the reason for the action of the office;

10 (7) update the complainant on the progress of
11 the investigation and notify the complainant of the final
12 outcome within a reasonable time frame;

13 (8) work in collaboration with relevant
14 parties to strengthen the department's services for children
15 and families;

16 (9) analyze and monitor the development and
17 implementation of federal, state and local laws, regulations
18 and policies relating to child and family welfare and recommend
19 changes when appropriate;

20 (10) review systemic issues in the
21 department's provision of services to children and families
22 that may exist and complaints concerning the actions of the
23 department and of any entity that provides services to children
24 and families through funds provided by the department and make
25 appropriate referrals and investigate complaints when the child

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1 welfare ombudsman determines that a child or family may be in
2 need of assistance from the office;

3 (11) support children and families by
4 providing information about recipients' rights and
5 responsibilities related to departmental services;

6 (12) review current systems to determine to
7 what extent children placed in the custody of the department or
8 who are receiving services under the supervision of the
9 department receive humane and dignified treatment at all times,
10 including consideration by the child welfare ombudsman as to
11 what extent the system protects and enhances children's
12 personal dignity, right to privacy and right to appropriate
13 health care and education in accordance with state and federal
14 law;

15 (13) provide systemic information concerning
16 child and family welfare to the public, the governor, state
17 agencies, legislators and others, as necessary;

18 (14) submit to the legislature and governor on
19 or before December 1 of each year a report addressing services
20 provided by the department, including:

21 (a) the quality of services provided to
22 children and families;

23 (b) the conditions of placements for New
24 Mexico's children, including the number of out-of-state
25 placements and an assessment of each active congregate care

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1 facility;

2 (c) the number of children placed in the
3 custody of the department that have run away;

4 (d) the number of cases in which
5 families have absconded with children placed in the custody of
6 the department or who are receiving services under the
7 supervision of the department;

8 (e) systemic findings related to
9 services for assistance to children and families within the
10 child protection and juvenile justice systems;

11 (f) recommendations related to improving
12 services for children and families; and

13 (g) data disaggregated by race,
14 ethnicity, gender, geographic location, sexual identity,
15 disability status and any other categories that the office
16 deems necessary; and

17 (15) address any challenges accessing
18 information or records that are necessary for carrying out the
19 provisions of the Child Welfare Ombudsman Act; and

20 B. may:

21 (1) adopt and promulgate rules pertaining to
22 the administration of the office and, subject to appropriation,
23 hire and contract for such professional, technical and support
24 staff as needed to carry out the functions of the office;
25 provided that such hiring and contracting shall be without

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1 regard to party affiliation and solely on the grounds of
2 competence and fitness to perform the duties of the position.
3 Employees of the office, except the chief child welfare
4 ombudsman, are subject to the provisions of the Personnel Act;

5 (2) access any record of a state or local
6 agency that is necessary to carry out the office's
7 responsibilities; and

8 (3) meet or communicate with any children
9 placed in the custody of the department or who are receiving
10 services under the supervision of the department."

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

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

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

16 (1) federal, state, local and tribal laws,
17 regulations and policies with respect to foster care and
18 juvenile justice in the state;

19 (2) investigative techniques; and

20 (3) such other matters as the office deems
21 appropriate.

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

24 C. An officer, employee or other representative of
25 the office shall not investigate any complaint filed with the

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1 office unless that person is certified by the office."

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

4 "[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are
5 employees of the office or who have contracts with the office
6 shall not have a conflict of interest with the department or
7 with an entity that provides services to children and families
8 through funds provided by the department relating to the
9 performance of their responsibilities pursuant to the
10 Children's Code. For the purposes of this section, a conflict
11 of interest exists whenever the chief child welfare ombudsman,
12 an employee of the office or a person having a contract with
13 the office:

14 A. has direct involvement in the licensing,
15 certification or accreditation of a provider or facility
16 delivering services to children and families;

17 B. has a direct ownership interest in a provider or
18 facility delivering services to children and families;

19 C. is employed by or participates in the management
20 of a provider or facility delivering services to children and
21 families; or

22 D. receives or has the right to receive, directly
23 or indirectly, remuneration pursuant to a compensation
24 arrangement with a provider or facility delivering services to
25 children and families."

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

3 "[NEW MATERIAL] INCIDENTS AND FATALITIES.--

4 A. The department shall provide the office with a
5 copy of all reports related to actual physical injury to
6 children in the custody of the department or a significant risk
7 of such an injury.

8 B. The department shall provide the office with a
9 written report within forty-eight hours of:

10 (1) a fatality of a child in its custody or
11 referred or receiving services under the supervision of the
12 department; and

13 (2) the restraint or seclusion of a child in
14 its custody."

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

17 "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Law enforcement
18 agencies shall share with the office all law enforcement
19 reports involving children placed in the custody of the
20 department or who are receiving services under the supervision
21 of the department."

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

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

25 A. The files and records of the office may be

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

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

16 (2) the complainant, a guardian or guardian ad
17 litem representing a child in protective custody or in the
18 juvenile justice system or the substitute caregiver gives oral
19 consent that is documented immediately in writing by a
20 representative of the office;

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

22 (4) disclosure is necessary to prevent
23 imminent harm.

24 B. Notwithstanding Subsection A of this section,
25 the office may publicly disclose any patterns of conduct or

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1 repeated incidents identified by the office in carrying out the
2 provisions of the Child Welfare Ombudsman Act if the office
3 reasonably believes that public disclosure is likely to
4 mitigate a risk posed to the health, safety and welfare of a
5 child; provided that the office shall not publicly disclose
6 either of the following:

7 (1) individually identifiable information
8 about a child unless the information is already known to the
9 public; and

10 (2) investigation findings when there is
11 pending law enforcement investigation or prosecution."

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

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

17 SECTION 13. Section 32A-4-33 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 127, as amended) is amended to read:

19 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

20 A. All records or information concerning a party to
21 a neglect or abuse proceeding, including social records,
22 diagnostic evaluations, psychiatric or psychological reports,
23 videotapes, transcripts and audio recordings of a child's
24 statement of abuse or medical reports incident to or obtained
25 as a result of a neglect or abuse proceeding or that were

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1 produced or obtained during an investigation in anticipation of
2 or incident to a neglect or abuse proceeding shall be
3 confidential and closed to the public.

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

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

10 (2) court-appointed special advocates
11 appointed to the neglect or abuse proceeding;

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

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

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

20 (6) any local substitute care review board or
21 any agency contracted to implement local substitute care review
22 boards;

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

25 (8) district attorneys, except when use

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1 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

2 (9) any state government social services
3 agency in any state or when, in the opinion of the department
4 it is in the best interest of the child, a governmental social
5 services agency of another country;

6 (10) those persons or entities of an Indian
7 tribe specifically authorized to inspect the records pursuant
8 to the federal Indian Child Welfare Act of 1978 or any
9 regulations promulgated thereunder;

10 (11) a foster parent, if the records are those
11 of a child currently placed with that foster parent or of a
12 child being considered for placement with that foster parent
13 and the records concern the social, medical, psychological or
14 educational needs of the child;

15 (12) school personnel involved with the child
16 if the records concern the child's social or educational needs;

17 (13) a grandparent, parent of a sibling,
18 relative or fictive kin, if the records or information pertain
19 to a child being considered for placement with that
20 grandparent, parent of a sibling, relative or fictive kin and
21 the records or information concern the social, medical,
22 psychological or educational needs of the child;

23 (14) health care or mental health
24 professionals involved in the evaluation or treatment of the
25 child or of the child's parents, guardian, custodian or other

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1 family members;

2 (15) protection and advocacy representatives
3 pursuant to the federal Developmental Disabilities Assistance
4 and Bill of Rights Act and the federal Protection and Advocacy
5 for Mentally Ill Individuals Amendments Act of 1991;

6 (16) children's safehouse organizations
7 conducting investigatory interviews of children on behalf of a
8 law enforcement agency or the department;

9 (17) representatives of the federal government
10 or their contractors authorized by federal statute or
11 regulation to review, inspect, audit or otherwise have access
12 to records and information pertaining to neglect or abuse
13 proceedings;

14 (18) any person or entity attending a meeting
15 arranged by the department to discuss the safety, well-being
16 and permanency of a child, when the parent or child, or parent
17 or legal custodian on behalf of a child younger than fourteen
18 years of age, has consented to the disclosure; ~~[and]~~

19 (19) any other person or entity, by order of
20 the court, having a legitimate interest in the case or the work
21 of the court; and

22 (20) the child welfare ombudsman office and
23 its employees and contractors, pursuant to the requirements of
24 the Abuse and Neglect Act, if the records are needed for the
25 purpose of implementing the Child Welfare Ombudsman Act.

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1 C. A parent, guardian or legal custodian whose
2 child has been the subject of an investigation of abuse or
3 neglect where no petition has been filed shall have the right
4 to inspect any medical report, psychological evaluation, law
5 enforcement reports or other investigative or diagnostic
6 evaluation; provided that any identifying information related
7 to the reporting party or any other party providing information
8 shall be deleted. The parent, guardian or legal custodian
9 shall also have the right to the results of the investigation
10 and the right to petition the court for full access to all
11 department records and information except those records and
12 information the department finds would be likely to endanger
13 the life or safety of any person providing information to the
14 department.

15 D. Whoever intentionally and unlawfully releases
16 any information or records closed to the public pursuant to the
17 Abuse and Neglect Act or releases or makes other unlawful use
18 of records in violation of that act is guilty of a petty
19 misdemeanor and shall be sentenced pursuant to the provisions
20 of Section 31-19-1 NMSA 1978.

21 E. The department shall promulgate rules for
22 implementing disclosure of records pursuant to this section and
23 in compliance with state and federal law and the Children's
24 Court Rules."

25 SECTION 14. APPROPRIATION.--One million dollars

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1 (\$1,000,000) is appropriated from the general fund to the child
2 welfare ombudsman office for expenditure in fiscal year 2023
3 for the establishment and operation of a child welfare
4 ombudsman office in accordance with the provisions of the Child
5 Welfare Ombudsman Act. Any unexpended or unencumbered balance
6 remaining at the end of fiscal year 2023 shall revert to the
7 general fund.

8 SECTION 15. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2022.

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