

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 145

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

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.

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 "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
.222546.5

underscored material = new
[bracketed material] = delete

1 Ombudsman Act:

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

4 B. "fictive kin" means a person not related by
5 birth, adoption or marriage with whom a child has an
6 emotionally significant relationship;

7 C. "guardian" means a person appointed as a
8 guardian by a court or Indian tribal authority or a person
9 authorized to care for the child by a parental power of
10 attorney as permitted by law;

11 D. "office" means the child welfare ombudsman
12 office;

13 E. "parent" means a biological or adoptive parent
14 if the biological or adoptive parent has a constitutionally
15 protected liberty interest in the care and custody of the
16 child; and

17 F. "substitute caregiver" means a person, including
18 a relative of the child, licensed or certified by the
19 department or a child placement agency to provide care for
20 children in the custody of the department or agency."

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

23 "[NEW MATERIAL] CHILD WELFARE OMBUDSMAN OFFICE--CREATED.--
24 The "child welfare ombudsman office" is created and is
25 administratively attached to the department of finance and

.222546.5

1 administration pursuant to Section 9-1-7 NMSA 1978."

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

4 "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN--
5 APPOINTMENT--DUTIES.--The head of the office is the "chief
6 child welfare ombudsman", who shall be appointed for a term of
7 six years, except that the initial term shall begin on July 1,
8 2023 and shall end on December 31, 2023. The chief child
9 welfare ombudsman may be reappointed to successive terms. An
10 appointed chief child welfare ombudsman shall serve and have
11 all of the duties, responsibilities and authority of that
12 office during the period of time prior to appointment of a new
13 chief child welfare ombudsman. The governor may remove the
14 chief child welfare ombudsman only for malfeasance, misfeasance
15 or abuse of office. The chief child welfare ombudsman shall
16 oversee the office and assign and distribute the work of the
17 chief child welfare ombudsman."

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

20 "[NEW MATERIAL] CHIEF CHILD WELFARE OMBUDSMAN SELECTION
21 COMMITTEE--DUTIES.--

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

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

.222546.5

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

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

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

7 (5) four members who shall be selected by the
8 governor, no more than two of whom are from the same political
9 party and one of whom shall have specialized expertise in the
10 federal Indian Child Welfare Act of 1978 and related New Mexico
11 laws and rules; and

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

14 (a) not a candidate for the position of
15 chief child welfare ombudsman; and

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

18 B. The committee shall meet exclusively for the
19 purpose of nominating persons to fill a current or impending
20 vacancy in the position of chief child welfare ombudsman. The
21 committee shall actively solicit, accept and evaluate
22 applications for the position of chief child welfare ombudsman
23 and may require applicants to submit any information that the
24 committee deems relevant to the consideration of applications.
25 Within ninety days before the date on which the term of a chief

.222546.5

1 child welfare ombudsman ends or no later than thirty days after
2 the occurrence of a vacancy in the chief child welfare
3 ombudsman position, the committee shall convene and, within
4 thirty days after convening, submit to the governor the names
5 of persons who are recommended for appointment to the position
6 by a majority of the committee members.

7 C. Immediately after receiving nominations for the
8 chief child welfare ombudsman, the governor may make one
9 request of the committee for submission of additional names.
10 The committee shall promptly submit those additional names if a
11 majority of the committee members find that additional persons
12 would be qualified and recommends those persons for appointment
13 as chief child welfare ombudsman. The governor shall fill a
14 vacancy or appoint a successor to fill an impending vacancy in
15 the office of chief child welfare ombudsman within thirty days
16 after receiving final nominations from the committee by
17 appointing one of the persons nominated by the committee.

18 D. The committee is administratively attached to
19 the department of finance and administration pursuant to the
20 provisions of Section 9-1-7 NMSA 1978.

21 E. After the initial meeting of the committee, the
22 governor or a majority of the committee members may call
23 subsequent meetings of the committee."

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

.222546.5

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

3 A. shall:

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

12 (2) review current systems to determine the
13 extent to which the system protects and enhances children's
14 personal dignity, right to privacy, appropriate health care and
15 education in accordance with state and federal law;

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

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

22 (5) investigate and attempt to resolve
23 complaints made by or on behalf of children placed in the
24 custody of the department, receiving services under the
25 supervision of the department, subject to a referral to the

.222546.5

1 department or under investigation by the department;

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

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

10 (8) 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 (9) work in collaboration with relevant
14 parties to strengthen the department's services for children
15 and families;

16 (10) 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 (11) support children and families by
21 providing information about recipients' rights and
22 responsibilities related to departmental services;

23 (12) upon request, provide systemic
24 information concerning child and family welfare to the
25 governor, state agencies and legislators;

.222546.5

1 (13) submit to the legislature and governor on
2 or before December 1 of each year a report addressing services
3 provided by the department, including:

4 (a) the quality of services provided to
5 children and families;

6 (b) the conditions of placements for New
7 Mexico's children, including the number of out-of-state
8 placements and an assessment of each active congregate care and
9 juvenile justice facility where children in the custody of the
10 department are placed;

11 (c) the number of children removed from
12 a residence of a parent, substitute caregiver or guardian;

13 (d) the number of children returned to a
14 household from which they were removed;

15 (e) the number of children placed in the
16 custody of a juvenile justice facility;

17 (f) the number of children placed in the
18 custody of the department that have run away from a department
19 placement, the number of children placed in the custody of the
20 department that have been found after running away and the
21 number of children placed in the custody of the department that
22 are presently missing;

23 (g) the number of cases in which
24 families subject to court-ordered treatment plans or voluntary
25 placement agreements have absconded with children placed in the

.222546.5

underscoring material = new
~~[bracketed material] = delete~~

1 custody of the department;

2 (h) a review of systemic issues related
3 to services for assistance to children and families within the
4 child protection and juvenile justice systems;

5 (i) findings and recommendations related
6 to the implementation of the federal Indian Child Welfare Act
7 of 1978 and associated provisions of the Children's Code that
8 pertain to the welfare of Indian children;

9 (j) recommendations related to improving
10 services for children and families;

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

15 (l) an outline of the training and
16 certification process for the chief child welfare ombudsman and
17 office staff;

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

21 (15) in the course of investigating a
22 complaint, have authority to request, access and review
23 information, records or documents, including records of third
24 parties, that the office deems necessary to conduct a thorough
25 and independent review of a complaint so long as the department

.222546.5

1 would be entitled to access or receive such information,
2 records or documents; and

3 B. may:

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

14 (2) meet or communicate with any children
15 placed in the custody of the department, receiving services
16 under the supervision of the department, subject to a referral
17 to the department or under investigation by the department."

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

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

21 A. The chief child welfare ombudsman shall ensure
22 that 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;

.222546.5

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

3 (3) the federal Indian Child Welfare Act of
4 1978, related New Mexico laws and rules, tribal culture, tribal
5 relations and sovereign nation status;

6 (4) department policies and procedures,
7 including policies and procedures related to abuse and neglect,
8 out-of-home placement and safety and risk assessments; and

9 (5) such other matters as the office deems
10 appropriate.

11 B. The chief child welfare ombudsman shall develop
12 procedures for the training and certification of appropriate
13 staff.

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

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

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

.222546.5

1 of interest exists whenever the chief child welfare ombudsman,
2 an employee of the office or a person having a contract with
3 the office:

4 A. has direct involvement in the licensing,
5 certification or accreditation of a provider or facility
6 delivering services to children and families;

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

9 C. is employed by or participates in the management
10 of a provider or facility delivering services to children and
11 families; or

12 D. receives or has the right to receive, directly
13 or indirectly, remuneration pursuant to a compensation
14 arrangement with a provider or facility delivering services to
15 children and families."

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

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

19 A. The department shall provide the office with a
20 copy of all reports related to actual physical injury to
21 children in the custody of the department or a significant risk
22 of such an injury.

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

25 (1) a fatality of a child in its custody or

.222546.5

underscoring material = new
[bracketed material] = delete

1 referred or receiving services under the supervision of the
2 department; and

3 (2) the restraint or seclusion of a child in
4 its custody."

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

7 "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by
8 the office, law enforcement agencies shall share with the
9 office all law enforcement reports involving children placed in
10 the custody of the department, receiving services under the
11 supervision of the department, subject to a referral to the
12 department or under investigation by the department."

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

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

16 A. The office shall maintain the confidentiality of
17 all case records, third-party records and court records, as
18 well as any information gathered in the course of
19 investigations and system monitoring duties. These records are
20 exempt from public inspection and copying pursuant to the
21 Inspection of Public Records Act and shall be kept confidential
22 unless:

- 23 (1) disclosure is ordered by the court; or
24 (2) disclosure is necessary to prevent
25 imminent harm.

.222546.5

1 B. Notwithstanding Subsection A of this section,
2 the office may publicly report any patterns of conduct or
3 repeated incidents identified by the office in carrying out the
4 provisions of the Child Welfare Ombudsman Act; provided that
5 the office shall not publicly disclose either of the following:

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

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

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

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

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

18 "[NEW MATERIAL] NOTIFICATION OF OMBUDSMAN OFFICE.--The
19 department shall notify all children placed in the custody of
20 the department, receiving services under the supervision of the
21 department, subject to a referral to the department or under
22 investigation by the department and their parents, guardians,
23 substitute caregivers and fictive kin of the existence of the
24 office, its purpose and function and its toll-free hotline and
25 electronic communication portal with instructions for access."

.222546.5

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

3 "32A-2-32. CONFIDENTIALITY--RECORDS.--

4 A. All records pertaining to the child, including
5 all related social records, behavioral health screenings,
6 diagnostic evaluations, psychiatric reports, medical reports,
7 social studies reports, records from local detention
8 facilities, client-identifying records from facilities for the
9 care and rehabilitation of delinquent children, pre-parole or
10 supervised release reports and supervision histories obtained
11 by the juvenile probation office, parole officers and the
12 juvenile public safety advisory board or in possession of the
13 department, are confidential and shall not be disclosed
14 directly or indirectly to the public.

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

18 C. The records described in Subsection A of this
19 section, other than mental health and developmental disability
20 records, shall be disclosed only to any of the following,
21 provided that the agency, person or institution receiving
22 information shall not re-release the information without proper
23 consent or as otherwise provided by law:

24 (1) court personnel;

25 (2) the child's court appointed special

.222546.5

1 advocates;

2 (3) the child's attorney or guardian ad litem
3 representing the child in any matter;

4 (4) department personnel;

5 (5) corrections department personnel;

6 (6) law enforcement officials when the request
7 is related to the investigation of a crime;

8 (7) district attorneys or children's court
9 attorneys;

10 (8) a state government social services agency
11 in any state;

12 (9) those persons or entities of a child's
13 Indian tribe specifically authorized to inspect such records
14 pursuant to the federal Indian Child Welfare Act of 1978 or any
15 regulations promulgated under that act;

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

18 (11) a foster parent, if the records are those
19 of a child currently placed with that foster parent or of a
20 child being considered for placement with that foster parent,
21 when the disclosure of the information is necessary for the
22 child's treatment or care and shall include only that
23 information necessary to provide for treatment and care of the
24 child;

25 (12) school personnel involved with the child

.222546.5

1 if the records concern the child's educational needs, but shall
2 only include that information necessary to provide for the
3 child's educational planning and needs;

4 (13) a health care or mental health
5 professional involved in the evaluation or treatment of the
6 child, the child's parents, guardians or custodian or other
7 family members;

8 (14) representatives of the protection and
9 advocacy system;

10 (15) the child's parent, guardian or legal
11 custodian when the disclosure of the information is necessary
12 for the child's treatment or care and shall include only that
13 information necessary to provide for the treatment or care of
14 the child;

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

19 (17) the child, if fourteen years of age or
20 older; and

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

25 D. If disclosure of otherwise confidential records

.222546.5

1 is made to the child or any other person or entity pursuant to
2 a valid release of information signed by the child, all victim
3 or witness identifying information shall be redacted or
4 otherwise deleted.

5 E. Whoever intentionally and unlawfully releases
6 any information or records closed to the public pursuant to
7 this section or releases or makes other unlawful use of records
8 in violation of this section is guilty of a petty misdemeanor.

9 F. The department shall promulgate rules for
10 implementing disclosure of records pursuant to this section and
11 in compliance with state and federal law and the Children's
12 Court Rules."

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

15 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

16 A. All records or information concerning a party to
17 a neglect or abuse proceeding, including social records,
18 diagnostic evaluations, psychiatric or psychological reports,
19 videotapes, transcripts and audio recordings of a child's
20 statement of abuse or medical reports incident to or obtained
21 as a result of a neglect or abuse proceeding or that were
22 produced or obtained during an investigation in anticipation of
23 or incident to a neglect or abuse proceeding shall be
24 confidential and closed to the public.

25 B. The records described in Subsection A of this

.222546.5

1 section shall be disclosed only to the parties and:

2 (1) court personnel and persons or entities
3 authorized by contract with the court to review, inspect or
4 otherwise have access to records or information in the court's
5 possession;

6 (2) court-appointed special advocates
7 appointed to the neglect or abuse proceeding;

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

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

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

16 (6) any local substitute care review board or
17 any agency contracted to implement local substitute care review
18 boards;

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

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

23 (9) any state government social services
24 agency in any state or when, in the opinion of the department
25 it is in the best interest of the child, a governmental social

.222546.5

underscoring material = new
~~[bracketed material] = delete~~

1 services agency of another country;

2 (10) those persons or entities of an Indian
3 tribe specifically authorized to inspect the records pursuant
4 to the federal Indian Child Welfare Act of 1978 or any
5 regulations promulgated thereunder;

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

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

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

19 (14) health care or mental health
20 professionals involved in the evaluation or treatment of the
21 child or of the child's parents, guardian, custodian or other
22 family members;

23 (15) protection and advocacy representatives
24 pursuant to the federal Developmental Disabilities Assistance
25 and Bill of Rights Act and the federal Protection and Advocacy

.222546.5

1 for Mentally Ill Individuals Amendments Act of 1991;

2 (16) children's safehouse organizations
3 conducting investigatory interviews of children on behalf of a
4 law enforcement agency or the department;

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

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

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

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

22 C. A parent, guardian or legal custodian whose
23 child has been the subject of an investigation of abuse or
24 neglect where no petition has been filed shall have the right
25 to inspect any medical report, psychological evaluation, law

.222546.5

1 enforcement reports or other investigative or diagnostic
2 evaluation; provided that any identifying information related
3 to the reporting party or any other party providing information
4 shall be deleted. The parent, guardian or legal custodian
5 shall also have the right to the results of the investigation
6 and the right to petition the court for full access to all
7 department records and information except those records and
8 information the department finds would be likely to endanger
9 the life or safety of any person providing information to the
10 department.

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

17 E. The department shall promulgate rules for
18 implementing disclosure of records pursuant to this section and
19 in compliance with state and federal law and the Children's
20 Court Rules."

21 SECTION 16. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2023.