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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Jaramillo/Cates/Szczepanski/Chavez/ Matthews</u>	<b>LAST UPDATED</b> <u>3/16/23</u> <b>ORIGINAL DATE</b> <u>2/27/23</u>
<b>SHORT TITLE</b> <u>Office of Child Advocate Act</u>	<b>BILL NUMBER</b> <u>House Bill 11/aHAFC/aHFL/a SJC</u>
<b>ANALYST</b> <u>Chenier</u>	

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$84.1 – \$252.2	\$84.1 – \$252.2	\$168.2-\$504.4	Recurring	General Fund CYFD
		\$515.0	\$515.0	\$1,030.0	Recurring	General NMAG
<b>Total</b>		<b>\$599.1-\$767.2</b>	<b>\$599.1-\$767.2</b>	<b>\$1,198.2- \$1,534.4</b>		

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Responses Received From  
 Children, Youth and Families Department (CYFD)  
 Attorney General’s Office (NMAG)  
 Administrative Office of the Courts (AOC)

## SUMMARY

### Synopsis of SJC Amendment to House Bill 11

The Senate Judiciary Committee amendment to House Bill 11 strikes all prior amendments along with most of the original bill. However, new amendments were mostly the same as the original bill outlined below, with the exception of moving the effective date of the bill to July 1, 2023.

### Synopsis of HFL#1 Amendment to House Bill 11

The House Floor Amendment to House Bill 11 made minor changes that were later struck by the Senate Judiciary Committee Amendment.

### Synopsis of HAFC Amendment to House Bill 11

The House Appropriations and Finance Committee Amendment to House Bill 11 strikes the appropriation, eliminates the definition for substitute caregiver, adds the requirement that one

member on the State Child Advocate Selection Committee should have a lived experience in the foster care or juvenile justice systems, changes some of Office of Child Advocate’s (OCA) responsibilities including bringing “any person” that provides services to children receiving funding from CYFD under the purview of the office, and requires the office update the complainant on investigation progress within 30 days.

The amendment would require OCA’s annual report also be sent to the Supreme Court and makes several other language clarifications throughout.

## **Synopsis of Original Bill**

House Bill 11 would establish the Office of Child Advocate (OCA) that would be administratively attached to the Office of the Attorney General (NMAG) with an appointed “state child advocate” who would serve for a term of six years. The office would be responsible for reviewing CYFD’s provision of services to children and families, receive complaints, make referrals, operate a toll-free hotline, investigate, and attempt to resolve complaints, make recommendations, and compile an annual report, subpoena witnesses, and other responsibilities as outlined in the bill.

The annual report would be submitted each year to LFC, CYFD, and the governor before September 1st. The report would address quality of services, the condition of placements, require reporting of specific data points such as the number of children removed, and include findings and recommendations.

The bill would also establish a state child advocate selection committee consisting of members selected by legislative members and the governor.

The bill includes several other provisions outlining conflicts of interest, staff training, law enforcement reports, and confidentiality provisions.

House Bill 11 appropriates \$500 thousand from the general fund to NMAG to create and staff the Office of Child Advocate.

The effective date of this bill is July 1, 2024.

## **FISCAL IMPLICATIONS**

In the original version of the bill, the \$500 thousand appropriation would have covered much of the expense of operating the new OCA. However, now that the appropriation was struck NMAG will have to cover the costs of operating much of the office.

It is assumed that the office would require at least 5 FTE including the chief advocate, an administrator, and three personnel to conduct the investigations. Assuming an average FTE cost of \$98 thousand including benefits and \$25 thousand for computer equipment and other supplies, the minimum cost of the office would be \$515 thousand.

CYFD provided the following:

That it is estimated the department will require a minimum of two (2) additional FTE to field the records requests associated with the office. This will be in addition to the staff time related to participation in the investigations themselves. The current anticipated

impact to CYFD is between \$84.1 thousand and \$252.2 thousand annually.

## SIGNIFICANT ISSUES

NMAG said the act makes several references to “department.” Presumably, “department” refers to the Children, Youth and Families Department. However, HB11 does not contain a definition for “department” or provide an explanation for which “department” is intended throughout the bill.

CYFD provided the following:

This bill duplicates services and programs already provided at CYFD by the Office of Children’s Rights (OCR), which administers the CYFD grievances process for children and youth. The OCR supports the promotion of the New Mexico Child and Youth Bill of Rights and grievance process; investigates cases, advocates for children and youth, and provides CYFD with final determinations and recommendations; offers recommendations for systemic reform; provides numerous training and presentations to the public and a required course for all CYFD protective services staff; and promotes the rights of children and families in New Mexico by supporting social justice advocacy through inclusion, equity, LGBTQ rights, access to reproductive health services and trauma-responsive behavioral health services, and a family-centered approach by identifying innovative and transformative approaches to child welfare reform.

This bill gives the office the power to subpoena witnesses to provide testimony in cases in which a fatality or near fatality of a child has occurred with the child in CYFD custody.

Further, this bill is redundant of processes already in existence at CYFD. The Kevin S. Settlement requires CYFD to have a grievance process and produce certain data metrics. CYFD has in place grievance processes for the Resource Family Bill of Rights and Foster Child and Youth Bill of Rights, as well as a procedure to address retaliation. The bill would duplicate these processes, potentially complicating outcomes for children and families, and impacting compliance with the settlement agreement.

Of particular concern is the phrase “subject to a referral to the department”. The language allows for CYFD’s actions to be investigated in matters involving a child or family where CYFD had no authority under the Children’s Code to investigate. The investigatory authority into matters concerning persons “subject to a referral to the department” could lead to invasive and inappropriate policing of families.

Consistent with the Kevin S. litigation settlement, CYFD has improved its grievance processes available to children, resource parents, and parents involved in the child welfare system. This work was conducted with Casey Family Programs and other stakeholders in a thoughtful and inclusive manner. This is consistent with child advocate offices in multiple other states, including California and Texas, as found at the website for the National Conference of State Legislatures, which have child advocate offices within the state child welfare agency.

The language emphasizing the reporting of systemic issues duplicates the role and function of the Substitute Care Advisory Council (SCAC), which is authorized by both

state and federal law NMSA 1978, §§32A-8-1 et seq., and the federal Child Abuse Prevention & Treatment Act (CAPTA), 42 U.S.C. §5101 et seq). The SCAC provides independent monitoring of children placed in CYFD custody and evaluates the extent to which CYFD is effectively discharging its child protection responsibilities. These evaluations also include reporting of systemic issues and concerns. It is unclear how this office would interact with the SCAC, or indeed any of the other existing entities that perform similar review processes, including the New Mexico Children’s Court Improvement Commission, the New Mexico Child Fatality Review Board, Juvenile Justice Advisory Committee and Boards, and the Governor’s Children’s Cabinet.

It is unclear how this bill interacts with either the Indian Family Protection Act, which codifies the federal Indian Child Welfare Act and expands protections and procedures for Native children, or the office of Family Representation and Advocacy Act, an independent office for the representation of children and families in abuse and neglect matters.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with SB373, which also establishes an office of child advocate, and conflicts with HB461, which establishes the office of children’s rights.

## **TECHNICAL ISSUES**

CYFD said the bill also does not discuss or address federal confidentiality requirements such as the Health Information Portability and Accountability Act, the Federal Education Rights and Privacy Act, or the Violence Against Women Act. 42 U.S.C. 5106a. Title IV-E of the Social Security Act, 42 U.S.C. 671(a)(8), and related federal rules at 45 CFR 1355.30 and 45 CFR 205.50, require that states restrict use and disclosure of information regarding children receiving title IV-E assistance, such as those receiving placements or sex trafficking victims, to receive federal funding.

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