

LFC Requester:	
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 2025-02-14
Bill No: HB391

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and Code
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Short OFFICE OF CHILD
Title: OMBUD ACT

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	0		
0	0		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0		
0	0	0		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	0		

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 391 (HB 391) proposes the creation of the Office of Child Ombud (OCO) in New Mexico to oversee and improve child welfare services. The bill establishes a State Child Ombud and outlines its powers, duties, and the selection process.

Key Provisions

1. Creation of the Office of Child Ombud (OCO):

- * The OCO will be independent but administratively attached to the Administrative Office of the Courts (AOC).
- * It will monitor child welfare services, investigate complaints, and provide oversight of the Children, Youth and Families Department (CYFD).

2. Appointment of the State Child Ombud:

- * A State Child Ombud Selection Committee will be formed to nominate candidates.
- * The Governor will appoint the State Child Ombud for a six-year term from name(s) given by the committee.
- * The Governor or Supreme Court can only remove the ombud for malfeasance, misfeasance, or abuse of office.

3. Powers and Duties of the Office of Child Ombud:

- * Investigate complaints about CYFD services and child welfare cases.
- * Operate a toll-free hotline and electronic communication portal for concerns.
- * Monitor CYFD policies to ensure they align with state and federal child welfare laws.
- * Subpoena witnesses and access records in cases involving child fatalities or near fatalities.
- * Publish an annual report with data on child welfare services, missing children, and systemic issues.

4. Annual Reporting & Transparency:

- * The office must submit an annual report on child welfare services,

including:

- * Child placement data (e.g., foster care, juvenile justice system, missing children).

- * Findings on systemic issues within child protection services.

- * Compliance with federal laws, including the Indian Child Welfare Act.

- * The report must be publicly available online and updated quarterly.

5. Confidentiality & Information Access:

- * The office will maintain confidentiality of records but can disclose findings to prevent imminent harm.

- * CYFD must notify the office of child injuries, fatalities, and use of restraints or seclusion within 72 hours.

- * Law enforcement must share reports involving children in state custody upon request.

6. Conflict of Interest Provisions:

- * Employees of the Office of Child Ombud cannot have ties to CYFD or any entity receiving CYFD funding.

- * The State Child Ombud is responsible for ensuring that OCO staff are trained in:

- * Federal, state, local, and tribal laws regarding child protection and juvenile justice.

- * Investigative techniques, including trauma-informed care and questioning.

- * Indian Child Welfare Act (ICWA), the Indian Family Protection Act, tribal culture, and tribal relations.

- * Children, Youth, and Families Department (CYFD) policies and procedures.

7. Funding & Implementation:

- * The bill allocates \$1 million from the state general fund to establish the office in the administrative office of the courts.

- * The law will take effect on July 1, 2025.

FISCAL IMPLICATIONS

HB 391 requires significant collaboration and action by CYFD to provide information, data and reports. The investigation process will generate records requests, prompting additional efforts from CYFD program staff that will require responses and actions by CYFD program staff and records custodians, guided by Children's Court Attorneys and/or the Office of General Counsel. However, the absence of specific funding in this bill means that CYFD will need to address the fiscal impact, as existing resources are insufficient to absorb these costs

The bill mentions that the Office shall maintain autonomy over its budget but does not specify funding sources or levels. Clearly outlining funding mechanisms and ensuring adequate resources are allocated will be crucial for the effective

operation of the Office.

SIGNIFICANT ISSUES

Section 5

While the legislature has the authority to appoint any members they choose, the bill requires the Governor to appoint one member with expertise in the Indian Child Welfare Act (ICWA) and another with knowledge of child protective services, juvenile justice services, or child welfare. To ensure a well-rounded perspective, legislative appointments should also include individuals with experience as respondent parents' counsel, a former foster child, a current foster parent, a healthcare professional with experience in child abuse and neglect cases, a legal professional with dependency and neglect case experience, and a criminal justice professional specializing in cases involving children and youth. Ensuring diverse representation on the committee will help evaluate the ombuds nominee's qualifications through a comprehensive child welfare lens.

Section 6

Subsection (1): The term "complaints" is undefined and should be limited to ensure the ombudsman acts within its intended scope. Defining complaints as reports made by or on behalf of a child regarding actions, inactions, or decisions of public agencies or publicly funded providers that may adversely affect the child's safety, permanency, or well-being would align with the office's child welfare focus.

Subsection (2): The ombudsman should not have unilateral authority to review CYFD's systems without specific complaints. Instead, recommendations on department policies should be based on patterns identified through investigated complaints, ensuring informed and relevant policy suggestions.

Subsection (9): It is unclear how and when the ombudsman would initiate reviews of "systemic issues" if they are not prompted by a complaint. The office's role should be limited to evaluating concerns raised by the community regarding child protection policies and making recommendations to the appropriate entities.

Subsection (11): Granting the ombudsman subpoena power raises legal and operational concerns, as this authority is typically reserved for judicial or law enforcement bodies. Relying on voluntary cooperation, inter-agency agreements, and legislative oversight would better maintain the ombudsman's intended role without creating enforcement conflicts or additional litigation risks.

Subsection (12): This provision is duplicative of Subsection (13) and is overly broad, as it is not clearly tied to complaint investigations. Narrowing the language would prevent unnecessary overlap.

Complaint Resolution Process: The bill does not specify what happens after the ombudsman issues findings. Language should be added to allow the ombudsman to seek resolution, including referring complaints to the relevant agency and making formal recommendations for action.

Collaboration with Stakeholders: The bill should include language requiring the ombudsman's office to collaborate with CYFD's Office of Child Advocacy, HCA, DOH, and other child welfare organizations. Strengthening partnerships between these entities would enhance child protection and ensure a more coordinated approach to addressing concerns.

Section 7

It is unclear how the ombudsman would report this data or maintain neutrality while doing so, given that the primary role of an ombudsman is to investigate complaints. The purpose of the office is to provide an accountability mechanism for the department by recommending system-wide improvements to benefit children and families. However, those recommendations are typically based on the areas it reviews or the specific subjects of complaints.

These recommendations should be presented in annual reports to the state legislature or governor. However, this section outlines broad areas of coverage, meaning the office's findings would be limited to the information derived from related complaints. Furthermore, Kevin S. already compiles this data annually, and CYFD publishes it on togetherwethrivenm.org [<http://togetherwethrivenm.org/>].

It is also unclear what data metrics the ombudsman would use for each subject area to ensure unbiased findings. This bill does not specify what data the office would rely on to assess the outlined areas, raising concerns about the accuracy and objectivity of its conclusions.

Section 10

The bill requires the department to provide the ombudsman's office with all reports of physical injuries to children in its custody within 30 days, regardless of substantiation. It also mandates disclosure within 72 hours of any child fatality, near-fatality, or instance of restraint or seclusion.

However, it is unclear why this level of reporting is necessary. Ombudsmen are intended to address complaints and make recommendations based on those complaints, not function as an oversight body. This raises concerns about

potential overreach and the intended use of this information. Additionally, Kevin S. already compiles and publishes this data annually.

The United States Ombudsman Association (USOA) defines a public sector ombudsman as an independent and impartial official who investigates complaints about government actions and makes recommendations when appropriate. This bill should clarify the office's role to ensure alignment with that standard.

Section 12

Subsection B states “May publicly report any patterns of conduct or repeated incidents identified by the office...”

This section needs clarification and the intent thereof. Section 10 already requires the office to report to the legislature and the governor. Public reporting should aim to drive meaningful reform rather than create unnecessary conflict. This approach could undermine the ombudsman's role and strain collaborative efforts. Clarity on the purpose and scope of public reporting would help ensure it aligns with the office's intended function.

Section 14

"Contractors" are included to be allowed for the release of strict confidential abuse and neglect records maintained by CYFD. The inclusion of “contractors” as authorized recipients of CYFD records raises significant legal concerns. Disclosing confidential records to third parties outside the agency creates potential legal risks, particularly regarding confidentiality protections.

Additionally, without direct oversight of contractor agreements, CYFD cannot ensure that the appropriate confidentiality provisions are in place or enforced. To mitigate this risk, contractors should be omitted.

Additionally, the bill should clarify or limit disclosures to entities that are legally bound by the same confidentiality requirements as the department. Strengthening these safeguards would help prevent unintended breaches and legal exposure.

PERFORMANCE IMPLICATIONS

CYFD has performance measures concerning the safety and well-being of children which may be affected by the diversion of resources necessary to fulfill the obligations placed on CYFD by this bill without commensurate fiscal support.

The Kevin S. Settlement requires CYFD to have a grievance process and produce certain data metrics. CYFD has Child and Youth and Resource/Foster Parent Bills of Rights and processes to address grievances, alleged violations, and retaliation through the CYFD Office of Advocacy and Office of Inspector General, which are co-located with CYFD staff and records. The Office of Advocacy is revising trainings that will be offered to staff and resource/foster parents. The bill should consider the agency's current processes as it relates to Kevin S. and address how CYFD's Office of Advocacy and Office of Inspector General would work in the framework set out by HB 391.

CYFD already reports the requested data in Section 7 on the TogetherWeThriveNM.org dashboard. This bill potentially adds another layer of data production to an agency that is in the process of upgrading to a new federally approved child welfare data system and should be considered.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 307 and HB 391 (duplicates) – both attempt to unconstitutionally tie the office to AOC. “Ombudsman” offices have been established in a variety of state, municipal, county, local, and federal governments as independent and impartial organizations tasked with investigating and resolving conflicts or complaints. Both bills include sections that overreach the purpose, powers, and duties of the office such as Sections 7, 10, and 12 which makes this more of an oversight office rather than maintaining focus on investigation and resolution of complaints. This bill allows for a 9-member committee to appoint an ombud and requires annual reports to the governor and legislature.

HB 5 - establishes the Office of Child Advocate attached to the New Mexico Department of Justice, however, per the Executive Reorganization Act, the Office of Child Advocate cannot be administratively linked to the Attorney General. The dual structure established in the legislation could lead to jurisdictional disputes and/or potential conflicts of interest. In addition, the Attorney General's Office represents the state in litigation, including cases involving CYFD. If the Child Advocate investigates and finds systemic issues that lead to lawsuits against CYFD or the state, the AG's office could find itself in a conflicted role. Also, if there is a complaint related to personnel misconduct, State Personnel guidelines for investigation and due process must be followed and all matters related to personnel investigations are confidential. The bill's requirement to notify the complainant of the outcome of the investigation could

potentially violate a CYFD employee's right to confidentiality in their personnel matters.

SB 363 – proposes the child protection authority under the executive where it can legally be created, contains balanced and streamlined powers and duties of the office, and is focused on accountability and is tasked with investigating and resolving conflicts or complaints. This bill allows for a 9 member “authority” led by a director who reports to the authority and requires annual reports to the governor and legislature.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.