

LFC Requester:

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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/20/26

Check all that apply:

Bill Number: HB 86

Original Correction
Amendment Substitute

Sponsor: Rep. Eleanor Chávez

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Children, Youth and Families Commission

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: House Bill 86 proposes to restructure the Children, Youth and Families Department by creating an independent Children, Youth and Families Commission to set policy and oversee operations, replacing the current governor-appointed secretary model, and establishing a superintendent to manage the Department under the Commission’s authority, contingent on a constitutional amendment.

Section 1 updates the Children’s Code definitions to include the newly-created Children, Youth and Families Commission and Superintendent, replacing references to the previous secretary-led structure, as well as the definitions of “council” (referring to the substitute care advisory council) and “person.”

Section 2 establishes the new provisions as the Children, Youth and Families Department Act.

Section 3 creates the Commission to set operational policy and to oversee the Department. The bipartisan Commission is composed of three members appointed by the Governor, Speaker, and Senate President Pro Tempore, and the members serve staggered six-year terms. The members must have extensive experience in social work, child psychology, child welfare, behavioral health, juvenile justice, or related fields, and must additionally have experience in administering large social welfare agencies or provider organizations. They must meet monthly, and members may be removed by the Supreme Court for malfeasance, misfeasance, or neglect of duty.

Section 4 lays out the Commission’s discretionary and mandatory powers and duties, including:

- Commission *may* adopt rules, issues orders to ensure implementation of their legal responsibilities, delegate authority to the Superintendent, sue and be sued, investigate and take testimony, and approve grants/gifts/donations to the Commission or Department.
- Commission *shall* appoint the Superintendent, meet monthly to receive updates, and exercise general supervisory authority over the Department and approve organizational changes, budgets, and contracts.

Section 5 creates the Children, Youth and Families Department as an independent adjunct agency to the executive branch and defines its structure, which includes the office of the Superintendent and three divisions. The section authorizes the creation of bureaus and the hiring of directors, and allows a reorganization with Commission approval. The Superintendent retains final decision-making authority. The section also gives the Department access to all records, data, and information of other state departments that are not otherwise specifically held confidential by law.

Section 6 defines the qualifications and appointment process for the Superintendent, who manages oversight of the Department under Commission oversight. Powers of the Superintendent are outlined, which include: delegating authority, hiring staff, proposing organizational changes, providing for professional development and practical training, proposing budgets, applying for and receiving federal funds and grants, suggesting rules, coordinating with other agencies, and reporting to the Commission.

Section 7 requires the Department, in consultation with the Commission, to: develop service priorities and statewide databases, coordinate services across agencies, implement prevention and early intervention programs, assume the lead responsibility for children's mental health and substance abuse services, conduct biennial assessments and strategic planning to address services gaps and needs, ensure compliance with behavioral health standards, and implement the families-first plan.

Section 8 amends Section 32A-19-1 to establish a quality assurance bureau, rather than the previously existing office, which will be maintained under the Superintendent and which will monitor compliance, investigate complaints, evaluate performance, and publish public reports.

Section 9 requires employees in positions requiring professional licensure to maintain licenses in good standing and states that failure to do so can result in dismissal or reassignment. Section 9 also states that an employee may appeal a dismissal, suspension, or reassignment.

Section 10 limits or prohibits employment of certain individuals with substantiated child abuse allegations or felony convictions, and provides disciplinary procedures.

Section 11 sets qualifications for correctional officers, grants them peace officer powers under specific circumstances (e.g., supervising or transporting juveniles), and provides limited immunity for performance of their duties.

Section 12 affirms the juvenile justice advisory committee's role under federal law to oversee certain juvenile justice functions, approve plans, review compliance, and assist in policy development.

Section 13 creates a nonreverting fund to support local and tribal juvenile justice continuums, with grant application rules and matching requirements.

Section 14 mandates strict backup and retention requirements for electronic records,

including retention for at least seven years after employment ends, ensuring compliance with federal data protection laws.

Section 15 amends Section 32A-22-2 to update membership to the Children’s Cabinet to include the new Superintendent, maintaining its advisory role under the Governor.

Section 16 sets a timeline for transition of CYFD from secretary-led to Commission/Superintendent-led. The Commission takes office on July 1, 2027 and assists in transitioning the Department to an adjunct agency, with full implementation by January 1, 2028.

Sections 17 and 18 recompile certain statutory sections into the new structure and repeals outdated provisions from the previous secretary-led department structure.

Section 19 makes the act effective only upon approval of a constitutional amendment creating the Commission.

FISCAL IMPLICATIONS:

None for the NMDOJ.

SIGNIFICANT ISSUES:

Eligibility to receive federal financial participation (FFP) for foster care maintenance payments and adoption assistance under Title IV-E of the Social Security Act requires compliance with a plan submitted by a “title IV-E agency.” Further analysis and federal consultation may be prudent to ensure that structural changes to CYFD’s governance model do not affect the approval of the state’s current plan and federal reimbursement eligibility. See 42 U.S.C. §§ 620 *et seq.*; 45 CFR §§ 1356.10-1356.86.

Any change in governance structure removing CYFD as an executive cabinet-level department would need to ensure that the collaboration and consultation between Commission leadership and the state’s Nations, Pueblos, and Tribes remains compliant with the State-Tribal Collaboration Act (NMSA 1978, §§ 11-18-1 to -5), and in alignment with the Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901 *et seq.*) and Indian Family Protection Act (IFPA) (NMSA 1978, §§ 32A-28-1 to -42).

While an independent commission model may be challenged as violative of the Governor’s broad constitutional and statutory authority to appoint cabinet and subordinate officials under N.M. Const. art. 5, § 5 and NMSA 1978, § 9-1-4, New Mexico law provides substantial authority for the Legislature to opt for creating departments independent of governor control and placing them under commissions or other governance entities. N.M. Const. art. 5, § 5 states that “[t]he governor shall nominate and, by and with the consent of the senate, appoint all officers *whose appointment or election is not otherwise provided for*” in the constitution. (Emphasis added.) Examples of departments operating under governance structures other than a secretary-led, governor-appointed model include:

- Department of Game and Fish – Operated through the state game commission who employs a director. NMSA 1978, §§ 17-1-1 to -29;

- Department of Agriculture – Created under the control of the board of regents of New Mexico State University. The board appoints and affixes the salary of a full-time director of the Department. NMSA 1978, §§ 76-1-1 to -5.

Section 3(B) requires that a vacancy on the Commission shall be filled by appointment by the original appointing authority. However, it is unclear whether maintaining the Commission’s bipartisan balance is required when filling a vacancy. If that is the intent, the drafter may want to address what happens if the original appointing authority previously appointed a member from the opposite party, and a different party selection is needed to preserve political diversity. For example, if the departing Commission member is a Republican, appointed by a Republican Speaker, but at the time of vacancy the Speaker is a Democrat, is that person required to appoint a Republican to preserve the bipartisan balance?

Section 3(B)(4) states that the Commission approves classification and compensation of exempt employees, but Section 6(C)(2) states “that a candidate for an exempt position shall be approved by the commission.” This suggests that the hiring decision of an exempt employee is made by the Commission. If so, that should be clarified in the Commission’s duties under Section 3(B).

Section 4(B)(5) requires the Commission to approve contracts over a monetary limit established by the Commission but does not appear to confer any express authority in the Superintendent under Section 6(C) to approve contracts under that establishment limit.

PERFORMANCE IMPLICATIONS:

None for the NMDOJ.

ADMINISTRATIVE IMPLICATIONS:

None for the NMDOJ.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

There is companionship with HJR 4, which proposes to amend the New Mexico Constitution to provide for the creation of the Children, Youth, and Families Commission set forth in HB 86.

There is a relationship with HM 1, a memorial requesting that the LFC appoint a task force to study the feasibility and implications of repurposing the state’s Children, Youth and Families Department (CYFD) as an independent executive department with an independent governing commission to hire and oversee an executive director.

There is a relationship with HB 65, which creates a short-term stabilization plan for CYFD.

TECHNICAL ISSUES:

Section 3(F) may benefit from two possible changes: 1) consider removing the word “successfully,” as that requires subjective interpretation rather than an empirical metric; 2) the phrase “shall not be related *to* the third degree of consanguinity” likely should say “shall not be related *within* the third degree of consanguinity.”

Section 6(C)(6) refers to the Superintendent preparing a proposed budget and an annual budget. It is unclear if this is an intentional distinction.

Section 6(C)(10) states that the Superintendent “provide a monthly procurement and contract report to the commission, including contracts, small purchases and purchase orders as determined by the commission; provided that procurements and contracts over the amount specified in the Procurement Code as small purchases or purchase orders shall be *approved* by the commission.” The use of the word *approved* can be interpreted to mean that the Commission must agree with and authorize the contract in which such purchases are made. The drafter may mean the Commission is the entity responsible for the *review* of those higher-dollar purchases. Clarification may be warranted.

Regarding Section 7(G), (H): Subsection G says the Department shall “assume and implement responsibility” for children’s mental health and substance abuse services. Subsection H says the Department shall “assume and implement *the lead* responsibility” for domestic violence services. It is unclear if these are intended to be synonymous or to mean two separate things.

Section 10(C) states that, “[u]pon appeal of a disciplinary action to the personnel board pursuant to this section, the personnel board shall *defer* to the record of the administrative hearing affirming a substantiated allegation of abuse or neglect, if one exists, in determining whether the action taken by the agency was with just cause.” It may be that the drafters meant *refer* to the record, so there could be meaningful review. Alternatively, if *defer* was intended, it is unclear whether it is intended to mean a deferential standard of review, deference to the facts/evidence taken, or some other meaning of deference.

Section 10(D) states that “[a]n employee of the department subject to dismissal under this section shall have no right to progressive discipline as a condition precedent to discipline under this section.” It is unclear if this means “as a condition precedent to *dismissal*.”

OTHER SUBSTANTIVE ISSUES:

Section 4(A)(2) refers to taking “administrative action” in court. The drafters may want to consider removing the word “administrative,” as that may imply that action may only be sought with an administrative law judge, when other judicial officers and venues may be necessary to effectuate the Commission or Department’s orders and instructions.

Section 6(C) states that “[t]o perform the duties of office, the superintendent shall have every power expressly enumerated in the law, whether granted to the superintendent, the department or any subdivision of the department, except when the subdivision is explicitly exempted from the power of the superintendent by statute.” It is unclear why the last clause would be necessary unless it is expected that this situation may exist in the future. The Superintendent doesn’t currently exist, so there is nowhere in existing law where a subdivision of a Department is exempted from the power of the Superintendent, and it does not appear that there are any instances throughout this bill where a particular subdivision is explicitly exempted from the power of the Superintendent.

Section 7(L) references the requirement to *develop* the families-first strategic plan. There would only be a requirement to *implement* the families-first plan, as the plan was approved by the U.S. Department of Health and Human Services in September 2025. This bill draft was likely contemplated in advance of that approval.

ALTERNATIVES:

Section 9 requires the Department to ensure employees that require licensure per their job titles

or descriptions maintain that licensure. To the extent that the Department is not inclined to hire licensed professionals (due to low supply or the need to pay higher salaries, for example), it would be feasible to simply write job titles and descriptions without requiring licensure. If licensure (most clearly, social work) for certain positions was desirable, an affirmative obligation to hire those with BSWs or LSWs for certain divisions may be considered as an alternative.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

Status quo

AMENDMENTS:

None.