

LFC Requester:

Carlie Malone

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: 01/21/26

Check all that apply:

Bill Number: HM 1

Original Correction

Amendment Substitute

Sponsor: Rep. Patricia Roybal
Caballero, Rep. Pamelya
Herndon

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

Short Title: Study CYFD as Independent
Executive Department

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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: This memorial requests that the Legislative Finance Committee (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.

The memorial is broken into two main parts: the first part provides a background and justifications for seeking the study (the "Whereas" clauses), and the second part seeks that certain steps be taken to effectuate creation of the task force (the "Be It Resolved" clauses).

Part 1:

The memorial emphasizes the need for a well-structured system to serve vulnerable children and families effectively. It notes that CYFD was formed to consolidate services for children and families under a single cabinet secretary, but that over time, the Department has taken on numerous obligations which has reduced its focus and performance. The memorial highlights CYFD's challenges, including leadership instability, high turnover, and poor outcomes for children and families.

The memorial further provides a snapshot of current metrics and performance data, including the number of children in state custody, the number of licensed foster homes, pending abuse and neglect investigations, employee vacancy rate, children maltreatment rate, and repeat child maltreatment rate.

The memorial cites CYFD's notable failures, including missed federal reimbursement opportunities and a possible misuse of a legislative appropriation for behavioral health start-up costs. It notes that the child welfare subcommittee of the LFD provided a suggested framework to improve outcomes for children and families, including evidence-based prevention programs, a professional workforce, expanded behavioral health access and stronger oversight and accountability.

The memorial asserts that while CYFD is currently a cabinet-level department under the Governor, stakeholders have proposed an independent commission governance model. This commission, which would hire and oversee CYFD's executive director, may require restructuring through a constitutional amendment. Before pursuing such an amendment, the memorial states the need to evaluate the feasibility, benefits, challenges and costs of such a change. This evaluation should include input from staff, experts, advocacy groups, tribal

governments, and impacted families, as well as a comparison with similar structures in other states.

Part 2:

The memorial requests that the LFC appoint a bipartisan task force to study the feasibility of restructuring CYFD. The task force would contain up to 18 members, composed of: a bipartisan group of legislators, CYFD staff, subject-matter experts, tribal representatives, and advocacy groups. The task force would meet monthly and operate publicly and transparently. The LFC would provide administrative support.

The scope of the task force's study would include: the advantages/disadvantages of independent commission governance; the estimated costs of creating and maintaining the commission; a review of similar structures and outcomes in other states; the impact on accountability, transparency, and coordination; qualifications for commission members and the executive director; transition plan and timeline; a review of legal and constitutional issues; tribal input on Indian child welfare impacts; and other relevant considerations.

The memorial requests that the task force's study recommendations be due by November 15, 2026 for consideration in the next legislative session.

FISCAL IMPLICATIONS:

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for the NMDOJ.

SIGNIFICANT ISSUES:

While the task force would be obligated to study possible legal and constitutional issues of the independent commission governance model in more depth, some issues to consider may include:

- 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 executive 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 place them under commissions or other governance entities. N.M. Const. Art. 5, § 5 itself states that “The 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. Examples of department 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.

PERFORMANCE IMPLICATIONS:

None for this office.

ADMINISTRATIVE IMPLICATIONS:

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Relationship with HB 86, which affirmatively creates an independent commission governance model for CYFD.

Relationship with HJR 4, which proposes to amend the state constitution to provide for the creation of the children, youth, and families commission set forth in HB 86.

Relationship with HB 65, which creates a short term stabilization plan for CYFD.

TECHNICAL ISSUES:

None.

OTHER SUBSTANTIVE ISSUES:

One potential inaccuracy exists on page 4 (Ln 7) of the memorial. The memorial asserts that CYFD has failed to obtain approval of a federal Family First Prevention Services Act plan. While CYFD did fail to obtain necessary federal approval after three separate proposals, CYFD’s plan was approved by the federal Health and Human Services Department Administration for Children and Families in September 2025.

As cabinet secretaries are appointed by and serve at the pleasure of the Governor, a task force studying these governance changes may also want to evaluate and clarify who has removal authority (and under what circumstances) over both commission members and the executive director.

ALTERNATIVES:

Pursuing either HB 86 or HJR 4.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

Status quo.

AMENDMENTS:

None.