

LFC Requester:

Rachel Mercer-Garcia

## AGENCY BILL ANALYSIS - 2025 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:** 03/14/2025

*Check all that apply:*

**Bill Number:** HB 5a

Original       

Correction       

Amendment   X  

Substitute       

**Sponsor:** Rep. Michelle Paulene Abeyta,  
Rep. (Speaker) Javier Martinez,  
Rep. Dayan Hochman-Vigil, Rep.  
Reena Szczepanski, Rep. Gail  
Armstrong

**Agency Name and** 305 – New Mexico

**Code Number:** Department of Justice

**Person Writing**

**Analysis:** Serena Wheaton

**Short**

**Title:** Office of Child Advocate Act

**Phone:** 505-537-7676

**Email:** legisfir@nmag.gov

### **SECTION II: FISCAL IMPACT**

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(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**

Original Synopsis: HB 5 would enact the Office of the Child Advocate Act ("Act"), consisting of 18 mostly new sections to the New Mexico Children's Code, NMSA 1978, Sections 32A-1-1 to -22 (1978, as amended through 2023) ("Code"), and would create a new Office of the Child Advocate ("Office").

**Sections 1-2.** Provide the title of the Act and the definitions used therein.

**Section 3.** Creates the Office and administratively attaches it to the New Mexico Department of Justice ("NMDOJ") while ensuring that the Office maintains its autonomy.

**Section 4.** Establishes the appointment process for the head of the Office—the "state child advocate"—which, except for the very first advocate's term upon the Office's creation, shall be a six-year appointment. The very first term state child advocate shall be appointed only from July 1, 2025 to December 31, 2025. This Section further establishes the credentials for the advocate. Further, there would be an ability to serve innumerable successive terms, assuming the selection committee continued to appoint the same advocate.

**Section 5.** Sets forth the parameters and qualifications of the selection committee which consists of eight (8) committee members appointed by various political positions within New Mexico. The only appointer who has restrictions placed upon their appointment choice is the governor who must appoint someone who has specialized knowledge as defined by the Act. This section goes on to set forth how and when the committee would meet to select names for a vacant state child advocate position. The selection committee would also be administratively attached to the NMDOJ.

**Section 6.** Sets forth the powers and duties of the Office which include: review of Children, Youth, and Families Department ("CYFD") services; the ability to receive complaints about CYFD; referral power to children and families in need of assistance; the duty to determine the extent to which CYFD's policies and procedures protect and enhance children; the ability to adopt and promulgate rules; the duty to operate of a toll-free hotline and online portal to receive complaints; the duty to investigate and attempt to resolve complaints, refer complaints to other agencies, and keep complainants informed; monitor implementation of state and federal laws and regulations concerning children and families; provide information

to children, families, and political oversight entities, access and review records necessary for any investigation—including the ability to subpoena witnesses. The Office is to refer violations of federal or state constitutional rights to the NMDOJ.

The Office can hire and contract professional, technical, and support staff—noting that such hires shall be without regard to party affiliation, shall be based on competence, and the Act places employees under the Personnel Act.

**Section 7.** Establishes the parameters and required content for the Office’s annual report on its operations.

**Section 8.** Sets forth the training and certification requirements for Office staff.

**Section 9.** Details the requirements to avoid conflicts of interest.

**Section 10.** Addresses the duty of the Office to supervise and report upon any incidents, fatalities, or near fatalities of a child in CYFD custody and control.

**Section 11.** Gives the Office access to all law enforcement reports involving a child in CYFD custody, supervision, or under CYFD referral or investigation.

**Section 12.** Provides for confidential treatment of all information (including, but not limited to, case records, third-party records, and court records) gathered by the Office except in certain circumstances such as a court order allowing disclosure.

**Sections 13-14.** Discuss how the Act does not limit legal remedies of those pursuing remedy under the Act and that the Office shall ensure children in CYFD custody know about the Office’s services.

**Section 15.** Sets forth that the Attorney General may bring a civil cause of action for declaratory or injunctive relief against CYFD or a CYFD employee based on constitutional violations, reckless disregard for health and safety of a child, or a pattern of conduct or repeated incidents of the violation of law.

**Sections 16.** Details amendment to the existing section, NMSA 1978, Section 32A-2-32 (1993, as amended through 2023) clarifying the confidentiality provisions addressed to records pertaining to children and exempts said records from disclosure except to a list of entities, including the Attorney General, which then are obligated to also ensure the records are not released without consent or as provided by law.

**Section 17.** Provides amendments to the existing section, NMSA 1978, Section 32A-4-33 (1993, as amended through 2023) which governs penalties including for intentional release of records would result in the violator being guilty of a petty misdemeanor.

**Section 18.** Provides the enactment date of July 1, 2025.

### **HJC Amendment**

The amendment to HB 5 would strike the language relating to the term length and initial term of the child advocate in Section 4. The amendment to HB 5 would add language requiring the

nominating committee to meet by September 1, 2025 to appoint the first child advocate.

### **House Floor Amendment**

The House Floor Amendment would strike language from Section 5(C) which permitted the governor or attorney general to request additional names from the selection committee after receiving a nominee for state child advocate. As a result, the governor would have 30 days in which to appoint a child advocate from the committee's nominees.

### **Senate Judiciary Amendment**

The Senate Judiciary Amendment (SJA) proposes adding substantial new material to the bill through amending the Citizen Substitute Care Review Act ("CSCRA"), as found in the New Mexico Children's Code, NMSA 1978, §§ 32A-8-1 to -7 (1978, as amended through 2016), to work in concert with the Office of the Child Advocate as proposed by HB 5. These changes include additional responsibilities for the Attorney General. The balance of HB 5 otherwise remains unchanged from the House Floor Amendment.

**Section Title:** The SJA would amend the Section Title of HB 5 to expand the Act as providing for the office of the child advocate to substitute as the provider of administrative services currently provided for by the care advisory council, changing the council's membership, processes and procedures, establishing staff qualifications and training, providing for local boards, specifying child welfare confidentiality and providing actions by the Attorney General and by private parties.

**Section 18:** The SJA includes new material not contained in the original HB 5, which provides for changes to the current CSCRA. The CSCRA currently has no definitions, and the new material would add: "board," "case," "council," "identified adult," "identified child," "office," "public member," "substitute care," and "volunteer member."

**Section 19:** The SJA would amend Section 32A-8-4 of the CSCRA. Originally the substitute review council ("Council") created by the CSCRA was administratively attached to the Regulation and Licensing Department (RLD).

The SJA would remove the Council from RLD and instead would attach it to the Office of the Child Advocate (and thereby, to the NMDOJ). The Council would provide administrative services for the Office of the Child Advocate. The SJA would also reduce the number of people on the Council from nine to seven, change the make-up of who sits on the Council (removing designee options in lieu of the secretaries themselves), removing the Secretary of Finance and Administration from the Council and substituting that position with the Child Advocate, and adding a new position for the Attorney General. The qualifications of those who may serve as a public member of the Council are also changed. The Secretary of CYFD may serve as a non-voting member. The SJA provides for per diem and mileage for all Council members. It also sets forth the duties of the Council to include when they are required to meet and what they are required to accomplish.

**Section 20:** This section of the SJA would add new material to the CSCRA and would define the interplay of the Child Advocate and the Council. The Child Advocate would be charged with hiring the director of the Council, employ and arrange compensation of the Council staff, and would prepare a budget request to be submitted to the NMDOJ. The section also sets forth the necessary qualifications for the director and for staff.

**Section 21:** This section of the SJA would add new material to the CSCRA and details the additional relationship between the Attorney General and the Council—specifically that the Attorney General would advise and consult with the Council and would provide legal services to the Council, upon request.

**Section 22:** This section of the SJA would add new material to the CSCRA giving the Council the ability to promulgate rules relating to volunteer member participation, including the recruitment process, and qualifications to be a volunteer member. As will be explained in the next section, these volunteer members will be seated on boards throughout the State.

**Section 23:** This section of the SJA would add new material to the CSCRA creating boards of volunteer members tasked with reviewing cases in accordance with the rules and regulations of the Council. This section sets forth the process for when a case to be reviewed by a board is a children’s court case and process for when the child may be an Indian Child subject to the Indian Family Protection Act. The board shall review those cases assigned to it and then submit a report of its findings and recommendations to the children’s court, CYFD, and the parties in the case. CYFD must acknowledge the report within 10 days and provide a response to the report within 30 days.

**Section 24:** This section of the SJA would add new material to the CSCRA providing for Council staff to have access to records, including to inspect or copy, necessary to carry out the Council’s responsibilities and unless otherwise provided for by state or federal law. CYFD is tasked with establishing procedures to ensure that the Council has timely access to the requested records. It also provides that CYFD is to refrain from discharging or discriminating against any employee who communicates with the Council about a case review or provision of a record.

**Section 25:** This section of the SJA would add new material to the CSCRA providing for confidentiality of records generated by the Council and expressly exempting said records from the Inspection of Public Records Act. This section also sets forth the limited exceptions to this confidentiality to include if it is requested and the identified child and identified adult provide written or oral consent for the records to be released, or if a court orders the release.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Original: N/A

HJC Amendment: The amendment strikes the six-year term of the child advocate, leaving his or her term length unclear. This creates ambiguity with the remaining language in the section, which refers to the term of the advocate.

SJA Amendment: The amendment uses the term “department” in what is understood to be reference to CYFD; however, as this amendment proposes new definitions, it may create clarity to add “department” to the list of those definitions.

## **PERFORMANCE IMPLICATIONS**

N/A

## ADMINISTRATIVE IMPLICATIONS

HB 5 would administratively attach the Office and the appointment committee to the NMDOJ.

Adoption of HB 5 may require the reviewing and updating of state plans required under federal laws, such as the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. 5106a and the Federal Payments for Foster Care, Prevention, and Permanency Act under the Social Security Act, 42 U.S.C. 671(a)(8).

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Original: SB 307 and HB 391 are duplicates of each other and are related to HB 5 in that they seek to create a similar type of office as the one described in HB 5. They do not appear to be companions to HB 5 and would conflict with HB 5. Under SB 307 and HB 391, the office would be called the Office of Child Ombud and would be attached to the Administrative Office of the Courts. Unlike HB 5, which provides NMDOJ with explicit enforcement power to ensure the well-being of children, SB 307 and HB 391 do not appear to create any enforcement mechanism. The lack of enforcement in SB 307 and HB 391 may be due to attaching the office to the Administrative Office of the Courts, because civil and criminal cases are ultimately brought before the courts for adjudication.

SB 363, the Child Protection Authority Act is not a duplication or companion bill of HB 5. It would create an “authority” and would administratively attach it to the Regulation and Licensing Department. There is a different selection process for the authority than either HB 5 or SB 307/HB 391. SB 363 establishes a complaint system and reporting process, but does not have enforcement mechanisms.

SB 84 would significantly amend Section 32A-4-33 and its confidentiality provisions (currently contained within Section 17 of HB 5) to provide additional ability to obtain confidential information in the context of a CYFD investigation into abuse or neglect, but importantly does not provide a carve out for the NMDOJ to receive access to confidential information as does Section 17 of HB 5. Further SB 84 details an alternative process for the release of records in an instance of a fatality or near fatality, amending Section 32A-4-33.1, but again differs from HB 5 as the NMDOJ is not listed among those which would be granted access to confidential information.

**Amendment: SB 84 has a substitute bill, SB 84-s, but the substitute bill contains the same conflicts identified above in the original version of SB 84. Update: SB 84 has not advanced through committee.**

It is also possible that other proposed changes to the Children’s Code, or to CYFD itself, could result in relationship to HB 5 although there is no present or apparent conflict, duplication, companionship or other direct relationship to HB 5. Among these other bills are HJR 5 (proposing a constitutional amendment to move place CYFD under commission management; **Amendment: HJR 5 has passed committee. Update: HJR 5 is now on the House calendar**); HB 173 (requiring CYFD to investigate failures to plans of care); or HB 205 (creating a nominating committee for the Secretary of CYFD, authorizing rule-making for placement of children under the Code, and otherwise making substantial changes to the Code.

## TECHNICAL ISSUES

N/A

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

None.