

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: 3/12/25
Bill Number: SB 486

Check all that apply:

Original x Correction
Amendment Substitute

Sponsor: Sen. Michael Padilla

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

Person Writing

Analysis: Ellen Venegas

Short Title: Child Welfare & Services
Agency

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
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

SB 307 and HB 391 these bills may be in competition with this one
 SB 363 related to and may be in conflict or competition with this one
 HB 5 related to and may be in conflict or competition with this one
 HB 205 and SB 458 very likely conflict with or compete with this one
 HJR 5 likely conflicts or at least competes with this one

(Details below in the Conflicts section.)

Duplicates/Relates to Appropriation in the General Appropriation Act: None noted

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: SB 486 overhauls the current structure of the Children, Youth & Families Department (CYFD) such that CYFD would be replaced by the child safety and welfare services authority, which is headed by the state superintendent of child safety and welfare services, and overseen by the board of regents of the child safety and welfare services authority. As detailed below, Sections 1 to 21 would enact completely new statutes; Sections 22 to 31 amend various provisions of existing law; Section 34 repeals most of the Children, Youth and Families Department Act; and Sections 32, 33, and 35 address procedural matters.

Section 1 provides that Sections 1 through 21 comprise the “Child Safety and Welfare Services Authority Act.”

Section 2 contains definitions for “authority” (the child safety and welfare services authority), “board” (the board of regents of the child safety and welfare services authority), and “state superintendent” (the state superintendent of child safety and welfare services).

Section 3 sets forth the purposes of the child safety and welfare services authority (the authority): to be “an independent, accredited state agency governed by a board of regents to administer the state’s child welfare and juvenile justice programs formerly administered by [CYFD] and other child and family programs assigned to it by law” and to cooperate and collaborate with other state and local government agencies.

Section 4 creates the authority as an “adjunct agency” governed by a board of regents. This Section includes additional requirements for board composition, such as that it is composed of 7 members appointed by the governor with the advice and consent of the senate and that the board shall include people in certain positions and/or with particular expertise. The board is required to approve the mission, goals and objectives, policies and procedures of the

authority; appoint a state superintendent; approve the budget of the authority; approve rules recommended by the authority; and select the accrediting agency to accredit the authority.

Section 5 includes requirements for the state superintendent and the authority. The state superintendent must meet education and experience requirements. The superintendent may employ staff and shall employ a deputy superintendent for administration and human resources and a deputy superintendent for public policy, who has experience with child welfare or juvenile justice policy. The authority is comprised of the office of the state superintendent, the administrative services division, the child and family welfare division, and the juvenile justice division.

Section 6 includes additional information on the duties and powers of the state superintendent, including managing all operations of the authority under the general direction of the board and administering and enforcing the laws with which the state superintendent or the authority is charged.

Section 7 contains additional duties for the authority.

Section 8 requires background checks for applicants, officers, interns, and volunteers working with the authority and provides that criminal history is confidential and may only be used for limited purposes.

Section 9 prohibits individuals who have been the subject of a substantiated allegation of child abuse or neglect or who have been convicted of a felony “that is directly related to” job duties from having direct unsupervised contact with authority clients and provides other various information concerning disciplinary action.

Section 10 provides that the state superintendent “shall retain the final decision-making authority and responsibility for the administration” relevant laws. It also provides that the authority shall have access to records, data, and information from other state agencies, unless such materials are specifically held confidential by law.

Section 11 provides that the state superintendent may appoint directors of divisions within the authority and that such directors are exempt from the Personnel Act. This Section also states that the superintendent may establish bureaus within divisions and that the superintendent shall employ a chief to be the administrative head of a bureau.

Section 12 creates a quality assurance bureau whose purpose is to facilitate authority efforts to efficiently implement the purposes of the Children’s Code. The quality assurance bureau shall have various specified duties, including to monitor the system for receiving and resolving complaints, to perform periodic investigations and evaluations to assure compliance with the Children’s Code, and to facilitate the publication of public reports assessing the performance of the authority.

Section 13 lists required qualifications for correctional officers of the authority.

Section 14 states that correctional officers of the authority who have completed required training and who have at the particular time the principal duty to hold in custody or supervise any child accused or convicted of a delinquent act or criminal offense shall have the power of a peace officer with respect to arrests and enforcement of laws when: (1) on the premises of a facility of the authority or while transporting a child committed to or under the supervision of

the authority; (2) supervising a child committed to or under the supervision of the authority anywhere within the state; or (3) engaged in any effort to pursue or apprehend a child. This Section also states that no correctional officer of the authority shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.

Section 15 creates the “child safety and welfare services advisory committee,” which is composed of 11 members appointed by the board. This Section also includes additional board composition requirements, such as that at least two members shall be parents who are recipients of services provided by the authority and at least two members shall be youths between the ages of sixteen and twenty-one.

Section 16 states that “[a]ny juvenile justice advisory committee appointed pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974 shall be advisory to the department, except the committee shall serve as the ‘supervisory board’ under that act and any applicable federal regulations.”

Section 17 states that “[t]he legislature finds that pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974, federal regulations and state law, the juvenile justice advisory committee is required to be given explicit power to continue to fulfill its duties in administering the federal funds made available to the state, if such funding is to continue.”

Section 18 provides that the juvenile justice advisory committee shall have policymaking, planning and review powers over only various specified functions pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974.

Section 19 creates a juvenile continuum grant fund as a non-reverting fund in the state treasury. The fund shall be administered by the authority and local and tribal governments may apply for grants from the fund. This Section defines a “juvenile justice continuum” as “a system of services and sanctions for juveniles arrested or referred to juvenile probation and parole or at risk of such referral and consists of a formal partnership among one or more units of local or tribal governments; the children’s court; the district attorney; the public defender; local law enforcement agencies; the public schools; and other entities such as private nonprofit organizations, the business community and religious organizations.”

Section 20 creates a youth alliance that is administratively attached to the authority and consists of youth, aged fourteen to twenty-four, from each New Mexico legislative district. The youth alliance must meet at least four times a year to discuss the assets that exist in communities and schools and the gaps that are present in these systems and to recommend opportunities for problem-solving and collaboration. The alliance shall issue an annual report to the Governor and Legislature.

Section 21 creates a New Mexico domestic violence leadership commission that is administratively attached to the authority, contains twenty-six members appointed by the Governor, and must meet at least six times a year, adhering to the Open Meetings Act.

Section 22 amends NMSA 1978, Section 30-22-11.1 (2009), which addresses escape from the custody of CYFD, to change references from CYFD to the child safety and welfare services authority.

Section 23 amends NMSA 1978, Section 30-22-11.2 (2009), which addresses aggravated

escape from the custody of CYFD, to change references from CYFD to the child safety and welfare services authority.

Section 24 amends NMSA 1978, Section 31-12-12 (2023), which addresses the domestic violence offender intervention fund. Additional language provides that the fund is non-reverting. In addition, a reference to CYFD is changed to the child safety and welfare services authority and a reference to the secretary of CYFD is changed to the state superintendent of child safety and welfare services.

Section 25 amends NMSA 1978, Section 32A-1-4 (2023), the definitions section of the Children's Code, to add definitions for "authority," "board of regents," and "state superintendent" consistent with the definitions in Section 2 of this bill. This Section also deletes the current definition of "department" (which means CYFD) and deletes the current definition of "person" (an individual or other form of entity recognized by law).

Section 26 amends NMSA 1978, Section 32A-15-3 (2024), a statute requiring background checks for employees and prospective foster or adoptive parents and other residents residing in the household. This Section also changes references from "department" to "authority."

Section 27 amends NMSA 1978, Section 32A-15-4 (1993) to change statute reference from 32-9-3 to 32A-15-3 and CYFD secretary to state superintendent.

Section 28 amends NMSA 1978, Section 32A-22-2 (2005), which creates a children's cabinet, to change the cabinet member of CYFD secretary to the "state superintendent as a representative of the board of regents of the authority." This Section also changes the cabinet member position of the secretary of human services to "the secretary of health care authority."

Section 29 amends NMSA 1978, Section 32A-26-11 (2020), concerning administrative appeals, to change references from the department (CYFD) to the authority.

Section 30 amends NMSA 1978, Section 40-7A-3 (2011), the definitions section of the Child Placement Agency Licensing Act, to change references from CYFD to the authority.

Section 31 amends NMSA 1978, Section 40-10B-3 (2023), the definitions section of the Kinship Guardianship Act, to change references from CYFD to the authority.

Section 32 states that on this Act's effective date, all functions, appropriations, money, records, property, contracts, and agreements of CYFD shall be transferred to the child safety and welfare services authority; that all statutory references to CYFD mean child safety and welfare services authority; and that all CYFD rules shall be deemed to be rules of the authority until the authority amends or repeals them. This Section also directs the Governor's office, the department of finance and administration, the state personnel office and CYFD to assist in a smooth transition from CYFD to the child safety and welfare services authority.

Section 33 includes instructions for compilation, specifically that Chapter 32A, Article 27 is an article of the Children's Code.

Section 34 repeals Sections 9-2A-1 through 9-2A-23 NMSA 1978, which is most of the Children, Youth and Families Department Act, and Section 32A-19-1 NMSA 1978, which creates a quality assurance office for CYFD.

Section 35 states that the effective date is “[TBD].” Without a specified date, the bill, if passed, would become effective 90 days after adjournment of the current legislative session.

FISCAL IMPLICATIONS

None for this office

SIGNIFICANT ISSUES

There are several governing and oversight entities created by this bill, which could involve some overlap of duties.

Section 14(B)’s provision shielding from conviction or liability “any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances” is likely too broad and may also be inconsistent with the New Mexico Civil Rights Act. *See* NMSA 1978, § 41-4A-3(A) (2021) (“A public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall not subject or cause to be subjected any resident of New Mexico or person within the state to deprivation of any rights, privileges or immunities secured pursuant to the bill of rights of the constitution of New Mexico.”).

Any changes to the governance of CYFD might require amendments to the state’s Title IV-E plan to ensure continued eligibility for federal funding. Title IV-E refers to a part of the Social Security Act that provides federal funding to states for the administration of foster care, adoption assistance, and kinship care programs. This funding is meant to help ensure that children in the child welfare system are placed in safe, stable, and permanent homes. Each state is required to submit a Title IV-E State Plan to the U.S. Department of Health and Human Services. Any significant modifications to CYFD’s structure and governance would likely necessitate revisions to the state plan, subject to federal approval, to maintain compliance with child safety, permanency, and well-being standards.

PERFORMANCE IMPLICATIONS

None for this office

ADMINISTRATIVE IMPLICATIONS

None for this office

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 307 (2025) and HB 391 (2025) provide for extensive amendments to the Children’s Code, enacting a new statutory scheme known as the Office of Child Ombud Act, which would provide a level of oversight to CYFD and create a process for individuals to file complaints with the Office of Child Ombud. It’s not clear that multiple oversight bodies with similar or identical authority over CYFD are necessary, so these bills seem to be in competition with the purpose and provisions of SB 486.

SB 363 (2025) creates a “Child Protection Authority” separate and distinct from CYFD (administratively attached to RLD), as a nine-member oversight body responsible for receiving and investigating complaints regarding the handling of child abuse, neglect, and foster care cases by CYFD and other child welfare agencies; monitoring and evaluating CYFD’s policies and

practices to ensure compliance with federal and state child welfare laws; making recommendations to the Governor, the Legislature, and CYFD to improve child welfare practices and address systemic issues, and issuing public reports on the authority's findings, including annual reports on trends in child welfare complaints and recommendations for policy reforms; accessing records and data, including CYFD's case files, court records, and law enforcement reports, subject to confidentiality safeguards; providing education and outreach to families, children, and mandated reporters regarding child welfare rights and responsibilities; and operating a toll-free hotline and electronic communication portal to receive complaints. This bill is related to—and may be in conflict with—SB 486. It's not clear that multiple oversight bodies with similar or identical authority over CYFD are necessary, so these bills seem to be in competition with the purpose and provisions of SB 486.

HB 5 (2025) creates an “office of child advocate,” to be administratively attached to NMDNJ. It authorizes the AG to bring a civil cause of action for declaratory or injunctive relief against CYFD or a CYFD employee based on a finding by the office of a violation of federal or state constitutional rights, reckless disregard of the health and safety of a child, or a pattern of conduct or repeated incidents of violating laws and rules relating to child and family welfare. HB 5 is related to—and may be in conflict with—SB 486. Again, it's not clear that multiple oversight bodies with similar or identical authority over CYFD are necessary, so these bills seem to be in competition with the purpose and provisions of SB 486.

HB 205 (2025) and SB 458 (2025) propose to impose various requirements upon CYFD. Those lengthy bills create, inter alia, several oversight functions both within CYFD and without. As such, they very likely conflict with or compete with the purpose and provisions of SB 486.

HJR 5 (2025) proposes a constitutional amendment to change CYFD's governance structure by creating a commission to assume management and operations of CYFD. Because this bill contemplates commission oversight over CYFD, it likely conflicts or competes with SB 486 or its purpose.

Section 21 of SB 486 seems to be repetitive to existing law. *See* NMSA 1978, § 9-2A-24 (2010) (creating domestic violence leadership commission).

TECHNICAL ISSUES

Section 6 addresses the power and responsibility of the superintendent; however, Subsections 6(D) and (E) (p. 9 of the bill) concern the board and authority rather than the superintendent. Those provisions would likely fit better in another Section.

OTHER SUBSTANTIVE ISSUES

Section 9(E) provides for access to information and records that are otherwise confidential. Measures should be taken to ensure such records remain confidential and only used for the limited purposes allowed.

Section 10(B)'s directive that “[t]he authority shall have access to all records, data and information of other state agencies that are not specifically held confidential by law” could be difficult to implement in practice, depending on the nature and volume of the records and information the authority requests from other agencies.

It is unclear whether Section 33's instructions that Chapter 32A, Article 27 be included as an

article of the Children's Code is intended to refer to this new Act. Article 27 is already an existing part of the Children's Code. The Code currently has 28 articles.

If Section 24 is attempting to repeal the entirety of the Children, Youth and Families Department Act, it has 24 sections, not 23. NMSA 1978, Section 9-2A-24 (2010), which is not included in the repeal language in this bill, establishes a New Mexico domestic violence leadership commission, which this bill also does in Section 21.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A