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HOUSE BILL 391

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

Jenifer Jones and Gail Armstrong

AN ACT

RELATING TO FAMILIES; ENACTING THE OFFICE OF CHILD OMBUD ACT;  
PROVIDING FOR THE STATE CHILD OMBUD; CREATING THE OFFICE OF  
CHILD OMBUD AND ESTABLISHING THE POWERS AND DUTIES OF THAT  
OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE STATE CHILD  
OMBUD SELECTION COMMITTEE; AMENDING AND ENACTING SECTIONS OF  
THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is  
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of  
this act may be cited as the "Office of Child Ombud Act"."

SECTION 2. A new section of the Children's Code is  
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Office of  
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1 Child Ombud Act:

2 A. "committee" means the state child ombud  
3 selection committee;

4 B. "near fatality" means an injury or condition  
5 caused by abuse or neglect that results in a child:

6 (1) being placed in serious or critical  
7 condition, as certified by a licensed physician; and

8 (2) receiving critical care for at least  
9 twenty-four hours following the child's admission to a critical  
10 care unit;

11 C. "office" means the office of child ombud; and

12 D. "ombud" means the individual who heads the  
13 office and has the powers and duties set forth in Section 6 of  
14 the Office of Child Ombud Act."

15 SECTION 3. A new section of the Children's Code is  
16 enacted to read:

17 "[NEW MATERIAL] OFFICE OF CHILD OMBUD--CREATED.--The  
18 "office of child ombud" is created and is administratively  
19 attached to the administrative office of the courts. The  
20 office shall maintain autonomy over the office's budget and any  
21 decisions the office may take."

22 SECTION 4. A new section of the Children's Code is  
23 enacted to read:

24 "[NEW MATERIAL] STATE CHILD OMBUD--APPOINTMENT--  
25 DUTIES.--The head of the office is the "state child ombud", who  
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1 shall be appointed for a term of six years. The ombud may be  
2 reappointed to successive terms. An appointed ombud shall  
3 serve and have all of the duties, responsibilities and  
4 authority of that office until appointment of a new ombud. The  
5 governor or the supreme court may remove the ombud only for  
6 malfeasance, misfeasance or abuse of office."

7 SECTION 5. A new section of the Children's Code is  
8 enacted to read:

9 "[NEW MATERIAL] STATE CHILD OMBUD SELECTION COMMITTEE--  
10 DUTIES.--

11 A. The "state child ombud selection committee" is  
12 created and consists of nine members, including:

13 (1) one member who shall be selected by the  
14 president pro tempore of the senate;

15 (2) one member who shall be selected by the  
16 minority floor leader of the senate;

17 (3) one member who shall be selected by the  
18 speaker of the house of representatives;

19 (4) one member who shall be selected by the  
20 minority floor leader of the house of representatives;

21 (5) four members who shall be selected by the  
22 governor:

23 (a) no more than two of whom are from  
24 the same political party and have not changed political party  
25 affiliation in the last two years;

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1 (b) one of whom shall have specialized  
2 expertise in the federal Indian Child Welfare Act of 1978 and  
3 the Indian Family Protection Act; and

4 (c) one of whom shall have extensive  
5 knowledge of child protective services, juvenile justice  
6 services or child welfare; and

7 (6) the chair of the committee, whom a  
8 majority of the other eight members select and who is:

9 (a) not a candidate for the position of  
10 ombud; and

11 (b) a person with extensive knowledge of  
12 child welfare and the Children's Code.

13 B. The committee shall meet exclusively for the  
14 purpose of nominating persons to fill a current or impending  
15 vacancy in the position of ombud. The committee shall actively  
16 solicit, accept and evaluate applications for the position of  
17 ombud and may require applicants to submit any information that  
18 the committee deems relevant to the consideration of  
19 applications. Within ninety days before the date on which the  
20 term of an ombud ends or no later than sixty days after the  
21 occurrence of a vacancy in the ombud position, the committee  
22 shall convene and, within sixty days after convening, submit to  
23 the governor the names of persons who are recommended for  
24 appointment to the position by a majority of the committee  
25 members.

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1 C. After receiving nominations for the position of  
2 ombud, the governor may make one request of the committee for  
3 submission of additional names. The committee shall promptly  
4 submit those additional names if a majority of the committee  
5 members finds that additional persons would be qualified and  
6 recommends those persons for appointment as ombud. The  
7 governor shall fill a vacancy or appoint a successor to fill an  
8 impending vacancy in the position of ombud within sixty days  
9 after receiving final nominations from the committee by  
10 appointing one of the persons nominated by the committee.

11 D. The committee is administratively attached to  
12 the administrative office of the courts.

13 E. After the initial meeting of the committee, the  
14 governor or the chair of the committee may call subsequent  
15 meetings of the committee to nominate persons to fill a current  
16 or impending vacancy in the position of ombud.

17 F. The members of the committee shall receive per  
18 diem and mileage as provided in the Per Diem and Mileage Act  
19 and shall receive no other compensation, perquisite or  
20 allowance."

21 SECTION 6. A new section of the Children's Code is  
22 enacted to read:

23 "[NEW MATERIAL] OFFICE OF CHILD OMBUD--POWERS--DUTIES.--  
24 The office:

25 A. shall:

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1 (1) review the department's provision of  
2 services to children and families, receive complaints  
3 concerning the actions of the department or of any entity that  
4 provides services to children and families through funds  
5 provided by the department and make appropriate referrals when  
6 the ombud determines that a child or family may be in need of  
7 assistance from the office;

8 (2) review current systems to determine the  
9 extent to which the department's policies and procedures  
10 protect and enhance children's personal dignity, right to  
11 privacy, appropriate health care and education in accordance  
12 with state and federal law;

13 (3) adopt and promulgate rules in accordance  
14 with the State Rules Act as are deemed necessary to carry out  
15 the provisions of the Office of Child Ombud Act;

16 (4) operate a toll-free hotline and electronic  
17 communication portal to receive complaints pursuant to this  
18 section;

19 (5) investigate and attempt to resolve  
20 complaints made by or on behalf of children placed in the  
21 custody of the department, receiving services under the  
22 supervision of the department, referred to the department or  
23 whose parent, guardian or custodian is under investigation by  
24 the department;

25 (6) upon investigation of a complaint, notify

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1 the complainant and subjects of the complaint of the  
2 investigation or, if the office declines to investigate a  
3 complaint or continue an investigation, notify the complainant  
4 and the subjects of the complaint that no further action will  
5 be taken by the office;

6 (7) update the complainant on the progress of  
7 the investigation every ninety days and notify the complainant  
8 and the subjects of the complaint of the final outcome within  
9 ninety days of the completion of the investigation;

10 (8) provide information about recipients'  
11 rights and responsibilities related to departmental services;

12 (9) provide information concerning child and  
13 family welfare to the governor, state agencies and legislators;

14 (10) compile an annual report pursuant to  
15 Section 7 of the Office of Child Ombud Act;

16 (11) subpoena witnesses to provide testimony  
17 in cases in which a fatality or near fatality of a child has  
18 occurred while the child was in the custody of the department;

19 (12) access information or records that are  
20 necessary for carrying out the provisions of the Office of  
21 Child Ombud Act; and

22 (13) access and review information, records or  
23 documents, including records of third parties, that the office  
24 deems necessary to conduct a thorough and independent review of  
25 a complaint so long as the department would be entitled to

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1 access or receive such information, records or documents; and

2 B. may:

3 (1) hire and contract for such professional,  
4 technical and support staff as needed to carry out the  
5 functions of the office;

6 (2) meet or communicate with any child placed  
7 in the custody of the department, receiving services under the  
8 supervision of the department, referred to the department or  
9 whose parent, guardian or custodian is under investigation by  
10 the department in a developmentally sensitive method; and

11 (3) decide whether to investigate a complaint  
12 or refer a complaint to another agency for investigation."

13 SECTION 7. A new section of the Children's Code is  
14 enacted to read:

15 "[NEW MATERIAL] ANNUAL REPORT--REPORT CONTENTS--CREATION  
16 AND MAINTENANCE OF WEBSITE CONTAINING REPORT INFORMATION.--

17 A. Each year, the office shall submit to the  
18 legislative finance committee, the department and the governor  
19 on or before September 1 a report addressing services provided  
20 by the department, including:

21 (1) the quality of services provided to  
22 children and families;

23 (2) the conditions of placements for New  
24 Mexico's children, including the number of out-of-state  
25 placements and an assessment of each active congregate care and

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1 juvenile justice facility in which children in the custody of  
2 the department are placed;

3 (3) the number of children removed from a  
4 residence of a parent, foster parent or guardian;

5 (4) the number of children returned to a  
6 household from which they were removed;

7 (5) the number of children removed from a  
8 household subsequent to being returned to a household from  
9 which they were removed;

10 (6) the number of children placed in the  
11 custody of a juvenile justice facility;

12 (7) the number of children placed in the  
13 custody of the department who have run away from a department  
14 placement, the number of children placed in the custody of the  
15 department who have been found after running away and the  
16 number of children placed in the custody of the department who  
17 are currently missing;

18 (8) the number of cases in which families  
19 subject to court-ordered treatment plans or voluntary placement  
20 agreements have absconded with children placed in the custody  
21 of the department;

22 (9) a review of systemic issues related to  
23 services for assistance to children and families within the  
24 child protection and juvenile justice systems;

25 (10) findings and recommendations related to

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1 the implementation of the federal Indian Child Welfare Act of  
2 1978 and the Indian Family Protection Act;

3 (11) recommendations related to improving  
4 services for children and families;

5 (12) data disaggregated by race, ethnicity,  
6 gender, geographic location, sexual identity, disability status  
7 and any other categories that the office deems necessary; and

8 (13) the training and certification process  
9 for the ombud and office staff.

10 B. The office shall create and maintain a web page  
11 on which the data contained in Subsection A of this section  
12 shall be provided in an accessible manner and updated  
13 quarterly.

14 C. Each year the annual report shall be posted to  
15 the web page created pursuant to Subsection B of this section."

16 SECTION 8. A new section of the Children's Code is  
17 enacted to read:

18 "[NEW MATERIAL] TRAINING AND CERTIFICATION.--

19 A. The ombud shall ensure that office staff are  
20 trained in:

21 (1) federal, state, local and tribal laws,  
22 regulations and policies with respect to child protection and  
23 juvenile justice services in the state;

24 (2) investigative techniques, including  
25 trauma-informed care and questioning;

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1 (3) the federal Indian Child Welfare Act of  
2 1978, the Indian Family Protection Act, tribal culture, tribal  
3 relations and sovereign nation status; and

4 (4) department policies and procedures.

5 B. The ombud shall develop procedures for the  
6 training and certification of appropriate staff.

7 C. An officer, employee or other representative of  
8 the office shall not investigate any complaint filed with the  
9 office unless that person is certified by the office."

10 SECTION 9. A new section of the Children's Code is  
11 enacted to read:

12 "[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are  
13 employees of the office or who have contracts with the office  
14 shall not have a conflict of interest with the department or  
15 with an entity that provides services to children and families  
16 through funds provided by the department relating to the  
17 performance of their responsibilities pursuant to the  
18 Children's Code. For the purposes of this section, a conflict  
19 of interest exists whenever the ombud, an employee of the  
20 office or a person having a contract with the office:

21 A. licenses, certifies or accredits a provider or  
22 facility delivering services to children and families pursuant  
23 to the Children's Code;

24 B. has a direct ownership interest in a provider or  
25 facility delivering services to children and families pursuant

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1 to the Children's Code;

2 C. is employed by or participates in the management  
3 of a provider or facility delivering services to children and  
4 families pursuant to the Children's Code; or

5 D. receives, directly or indirectly, remuneration  
6 pursuant to a compensation arrangement with a provider or  
7 facility delivering services to children and families pursuant  
8 to the Children's Code."

9 SECTION 10. A new section of the Children's Code is  
10 enacted to read:

11 "[NEW MATERIAL] INCIDENTS, FATALITIES AND NEAR  
12 FATALITIES.--

13 A. The department shall provide the office with a  
14 copy of all reports related to actual physical injury to  
15 children in the custody of the department within thirty days of  
16 receiving the report, whether substantiated or unsubstantiated.

17 B. The department shall provide the office with a  
18 written notification within seventy-two hours of:

19 (1) a fatality or near fatality of a child in  
20 its custody or referred or receiving services under the  
21 supervision of the department; and

22 (2) the restraint or seclusion of a child in  
23 its custody."

24 SECTION 11. A new section of the Children's Code is  
25 enacted to read:

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1            "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by  
2 the office, law enforcement agencies shall share with the  
3 office all law enforcement reports involving children  
4 identified by the agencies as having been placed in the custody  
5 of the department, receiving services under the supervision of  
6 the department, referred to the department or whose parent,  
7 guardian or custodian is under investigation by the  
8 department."

9            SECTION 12. A new section of the Children's Code is  
10 enacted to read:

11            "[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

12            A. The office shall maintain the confidentiality of  
13 all case records, third-party records and court records, as  
14 well as any information gathered in the course of  
15 investigations and system monitoring duties. These records are  
16 exempt from public inspection and copying pursuant to the  
17 Inspection of Public Records Act and shall be kept confidential  
18 unless:

- 19                            (1) disclosure is ordered by the court;  
20                            (2) disclosure is necessary to prevent  
21 imminent harm and the imminent harm is communicated directly to  
22 the ombud or staff of the office;  
23                            (3) disclosure is necessary to the department  
24 in order for the department to determine the appropriateness of  
25 initiating an investigation regarding potential abuse or

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1 neglect or other emergency circumstances; or

2 (4) disclosure is necessary to the department  
3 in order for the department to determine the appropriateness of  
4 initiating an investigation to determine facility compliance  
5 with applicable rules of licensure or certification or both.

6 B. Notwithstanding the provisions of Subsection A  
7 of this section, the office may publicly report any patterns of  
8 conduct or repeated incidents identified by the office in  
9 carrying out the provisions of the Office of Child Ombud Act;  
10 provided that the office shall not publicly disclose either of  
11 the following:

12 (1) individually identifiable information  
13 about a child; and

14 (2) investigation findings when there is  
15 pending law enforcement investigation or prosecution."

16 SECTION 13. A new section of the Children's Code is  
17 enacted to read:

18 "[NEW MATERIAL] NOTIFICATION OF OFFICE OF CHILD OMBUD.--  
19 The department shall notify all children placed in the custody  
20 of the department, receiving services under the supervision of  
21 the department, referred to the department or whose parent,  
22 guardian or custodian is under investigation by the department  
23 and their parents, guardians, foster parents and identified  
24 fictive kin of the existence of the office, its purpose and  
25 function and its toll-free hotline and electronic communication  
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1 portal with instructions for access."

2 SECTION 14. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 61, as amended) is amended to read:

4 "32A-2-32. CONFIDENTIALITY--RECORDS.--

5 A. All records pertaining to the child, including  
6 all related social records, behavioral health screenings,  
7 diagnostic evaluations, psychiatric reports, medical reports,  
8 social studies reports, records from local detention  
9 facilities, client-identifying records from facilities for the  
10 care and rehabilitation of delinquent children, pre-parole or  
11 supervised release reports and supervision histories obtained  
12 by the juvenile probation office, parole officers and the  
13 juvenile public safety advisory board or in possession of the  
14 department, are confidential and shall not be disclosed  
15 directly or indirectly to the public.

16 B. The disclosure of all mental health and  
17 developmental disability records shall be made pursuant to the  
18 Children's Mental Health and Developmental Disabilities Act.

19 C. The records described in Subsection A of this  
20 section, other than mental health and developmental disability  
21 records, shall be disclosed only to any of the following,  
22 provided that the agency, person or institution receiving  
23 information shall not re-release the information without proper  
24 consent or as otherwise provided by law:

25 (1) court personnel;

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- 1 (2) the child's court appointed special
- 2 advocates;
- 3 (3) the child's attorney or guardian ad litem
- 4 representing the child in any matter;
- 5 (4) department personnel;
- 6 (5) corrections department personnel;
- 7 (6) law enforcement officials when the request
- 8 is related to the investigation of a crime;
- 9 (7) district attorneys or children's court
- 10 attorneys;
- 11 (8) a state government social services agency
- 12 in any state;
- 13 (9) those persons or entities of a child's
- 14 Indian tribe specifically authorized to inspect such records
- 15 pursuant to the federal Indian Child Welfare Act of 1978, the
- 16 Indian Family Protection Act or any regulations promulgated
- 17 under ~~[that act]~~ those acts;
- 18 (10) tribal juvenile justice system and social
- 19 service representatives;
- 20 (11) a foster parent, if the records are those
- 21 of a child currently placed with that foster parent or of a
- 22 child being considered for placement with that foster parent,
- 23 when the disclosure of the information is necessary for the
- 24 child's treatment or care and shall include only that
- 25 information necessary to provide for treatment and care of the

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1 child;

2 (12) school personnel involved with the child  
3 if the records concern the child's educational needs, but shall  
4 only include that information necessary to provide for the  
5 child's educational planning and needs;

6 (13) a health care or mental health  
7 professional involved in the evaluation or treatment of the  
8 child, the child's parents, guardians or custodian or other  
9 family members;

10 (14) representatives of the protection and  
11 advocacy system;

12 (15) the child's parent, guardian or legal  
13 custodian when the disclosure of the information is necessary  
14 for the child's treatment or care and shall include only that  
15 information necessary to provide for the treatment or care of  
16 the child;

17 (16) any other person or entity, by order of  
18 the court, having a legitimate interest in the case or the work  
19 of the court who agrees not to otherwise release the records;  
20 [and]

21 (17) the child, if fourteen years of age or  
22 older; and

23 (18) the office of child ombud and its  
24 employees and contractors, pursuant to the requirements of the  
25 Delinquency Act, if the records are needed for the purpose of

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1 implementing the Office of Child Ombud Act.

2 D. If disclosure of otherwise confidential records  
3 is made to the child or any other person or entity pursuant to  
4 a valid release of information signed by the child, all victim  
5 or witness identifying information shall be redacted or  
6 otherwise deleted.

7 E. Whoever intentionally and unlawfully releases  
8 any information or records closed to the public pursuant to  
9 this section or releases or makes other unlawful use of records  
10 in violation of this section is guilty of a petty misdemeanor.

11 F. The department shall promulgate rules for  
12 implementing disclosure of records pursuant to this section and  
13 in compliance with state and federal law and the Children's  
14 Court Rules."

15 SECTION 15. Section 32A-4-33 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 127, as amended) is amended to read:

17 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

18 A. All records or information concerning a party to  
19 a neglect or abuse proceeding, including social records,  
20 diagnostic evaluations, psychiatric or psychological reports,  
21 videotapes, transcripts and audio recordings of a child's  
22 statement of abuse or medical reports incident to or obtained  
23 as a result of a neglect or abuse proceeding or that were  
24 produced or obtained during an investigation in anticipation of  
25 or incident to a neglect or abuse proceeding shall be

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1 confidential and closed to the public.

2 B. The records described in Subsection A of this  
3 section shall be disclosed only to the parties and:

4 (1) court personnel and persons or entities  
5 authorized by contract with the court to review, inspect or  
6 otherwise have access to records or information in the court's  
7 possession;

8 (2) court-appointed special advocates  
9 appointed to the neglect or abuse proceeding;

10 (3) the child's guardian ad litem;

11 (4) the attorney representing the child in an  
12 abuse or neglect action, a delinquency action or any other  
13 action under the Children's Code;

14 (5) department personnel and persons or  
15 entities authorized by contract with the department to review,  
16 inspect or otherwise have access to records or information in  
17 the department's possession;

18 (6) any local substitute care review board or  
19 any agency contracted to implement local substitute care review  
20 boards;

21 (7) law enforcement officials, except when use  
22 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

23 (8) district attorneys, except when use  
24 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

25 (9) any state government or tribal government

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1 social services agency in any state or when, in the opinion of  
2 the department, it is in the best interest of the child, a  
3 governmental social services agency of another country;

4 (10) a foster parent, if the records are those  
5 of a child currently placed with that foster parent or of a  
6 child being considered for placement with that foster parent  
7 and the records concern the social, medical, psychological or  
8 educational needs of the child;

9 (11) school personnel involved with the child  
10 if the records concern the child's social or educational needs;

11 (12) a grandparent, parent of a sibling,  
12 relative or fictive kin, if the records or information pertain  
13 to a child being considered for placement with that  
14 grandparent, parent of a sibling, relative or fictive kin and  
15 the records or information concern the social, medical,  
16 psychological or educational needs of the child;

17 (13) health care or mental health  
18 professionals involved in the evaluation or treatment of the  
19 child or of the child's parents, guardian, custodian or other  
20 family members;

21 (14) protection and advocacy representatives  
22 pursuant to the federal Developmental Disabilities Assistance  
23 and Bill of Rights Act and the federal Protection and Advocacy  
24 for Mentally Ill Individuals Amendments Act of 1991;

25 (15) children's safehouse organizations

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1 conducting investigatory interviews of children on behalf of a  
2 law enforcement agency or the department;

3 (16) representatives of the federal government  
4 or their contractors authorized by federal statute or  
5 regulation to review, inspect, audit or otherwise have access  
6 to records and information pertaining to neglect or abuse  
7 proceedings;

8 (17) any person or entity attending a meeting  
9 arranged by the department to discuss the safety, well-being  
10 and permanency of a child, when the parent or child, or parent  
11 or legal custodian on behalf of a child younger than fourteen  
12 years of age, has consented to the disclosure; ~~[and]~~

13 (18) any other person or entity, by order of  
14 the court, having a legitimate interest in the case or the work  
15 of the court; and

16 (19) the office of child ombud and its  
17 employees and contractors, pursuant to the requirements of the  
18 Abuse and Neglect Act, if the records are needed for the  
19 purpose of implementing the Office of Child Ombud Act.

20 C. A parent, guardian or legal custodian whose  
21 child has been the subject of an investigation of abuse or  
22 neglect where no petition has been filed shall have the right  
23 to inspect any medical report, psychological evaluation, law  
24 enforcement reports or other investigative or diagnostic  
25 evaluation; provided that any identifying information related

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1 to the reporting party or any other party providing information  
2 shall be deleted. The parent, guardian or legal custodian  
3 shall also have the right to the results of the investigation  
4 and the right to petition the court for full access to all  
5 department records and information except those records and  
6 information the department finds would be likely to endanger  
7 the life or safety of any person providing information to the  
8 department.

9 D. Whoever intentionally and unlawfully releases  
10 any information or records closed to the public pursuant to the  
11 Abuse and Neglect Act or releases or makes other unlawful use  
12 of records in violation of that act is guilty of a petty  
13 misdemeanor and shall be sentenced pursuant to the provisions  
14 of Section 31-19-1 NMSA 1978.

15 E. The department shall promulgate rules for  
16 implementing disclosure of records pursuant to this section and  
17 in compliance with state and federal law and the Children's  
18 Court Rules."

19 SECTION 16. APPROPRIATION.--One million dollars  
20 (\$1,000,000) is appropriated from the general fund to the  
21 administrative office of the courts for expenditure in fiscal  
22 year 2026 for expenses to be incurred in establishing the  
23 office of child ombud. Any unexpended or unencumbered balance  
24 remaining at the end of fiscal year 2026 shall revert to the  
25 general fund.

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SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.