

NM Stat § 32A-8

The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring of children in the custody of the Children, Youth and Families Department (CYFD) to evaluate the extent to which CYFD is effectively discharging their child protection responsibilities.

The Act was revised effective FY 17 to establish a Substitute Care Advisory Council to identify systemic policy issues regarding substitute care and to report annually its recommendations regarding statutes, policies and procedures relating to substitute care.

www.scacnm.org
nm.crb@rld.nm.gov

SUBSTITUTE CARE ADVISORY COUNCIL

SFY 24 ANNUAL REPORT

to

CYFD

Courts

Legislative Interim Committees



Approved
25 October 2024



Substitute Care Advisory Council
PO Box 3204, Mesilla Park, New Mexico 88047
(833) CRB-CALL ▪ nm.crb@rld.nm.gov ▪ www.scacnm.org



25 October 2024

Dear Judicial, Legislative, and Executive Members,

NM Stat § 32A-8, *Citizen Substitute Care Review Act (Act)* is the only New Mexico legislation with the purpose to provide a permanent system of independent and objective monitoring of children and youth in the custody of the Children, Youth and Families Department (CYFD).

Through the examination of policies, procedures, and practices in specific case reviews, CYFD's effectiveness in the discharge of its child protection responsibilities is evaluated. The Substitute Care Advisory Council (Council) reviews and coordinates the activities of substitute care review boards and makes an annual report with its recommendations in regard to statutes, rules, policies and procedures relating to substitute care to CYFD, the courts and the appropriate legislative interim committees on or before 1 November.

This report, along with the Council's past annual reports may be found on the Council's website www.scacnm.org. Our next report, an interim report, is expected by 1 May 2025.

Thank you for your attention to the information contained within this report. We invite you to engage in discussion and collaboration to result in positive change for New Mexico's child protection response system. Notices of Council meetings are on our website. Please contact the Council Director, Shelly A. Bucher, LMSW at 505.469.4781 (cell with text) or Email shelly.bucher@rld.nm.gov for further information or request to be notified directly of Council meetings.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Scates".

Sean Scates
Chair

TABLE OF CONTENTS

Executive Summary	3
Recommendations	4
CHILDREN YOUTH AND FAMILIES DEPARTMENT (CYFD)	4
COUNCIL	4
COURTS	4
LEGISLATURE	4
REGULATION AND LICENSING DEPARTMENT (RLD)	4
Council SFY 24	5
Case Review Demographics and Trends SFY 24	5
Demographics at Time of Case Review	6
GENDER, RACE/ETHNICITY AND CYFD INVOLVEMENT PRIOR TO CUSTODY	6
AGE AT TIME OF CUSTODY	7
NUMBER OF MONTHS IN CUSTODY AT THE TIME OF REVIEW	7
NUMBER OF CHANGES IN PLACEMENT BY MONTHS IN CUSTODY	8
PLACEMENT TYPE	9
AGE AT TIME OF CUSTODY	9
Trends Noted in Case Reviews	10
SFY 25 Focus Topics for Refinements	11
Appendix I	12
Authority, Organization, and Funding	12
Appendix II	14
SUBSTITUTE CARE ADVISORY COUNCIL OCTOBER 2024	14
ADVISORY COMMITTEE TO THE COUNCIL	14
Appendix III Council Staff	15
Appendix IV Council Activities SYF 24	16
Appendix V New Mexico State Courts	17
Appendix VI	18
NM FOSTER CHILD AND YOUTH BILL OF RIGHTS	149
CYFD RESOURCE PARENT BILL OF RIGHTS	19

EXECUTIVE SUMMARY

The Citizen Substitute Care Review Act¹ (Act) was enacted in 1985 evolving from a Summary Judgement and Consent Decree², familiarly known as *Joseph A*, a class action lawsuit brought against New Mexico on behalf of children in foster care. While the Act has undergone revisions throughout the years, the basic purpose of providing ‘*a permanent system for independent and objective monitoring of children placed in the custody*’ of the state, to review cases of children in the care of the state, submit a case review report to the court and annually report ‘*recommendations regarding statutes, policies and procedures relating to substitute care*’ to the department, the courts and the legislature has remained constant.

Recently there has been an increase in calls to action for New Mexico to construct yet another ‘independent oversight’ entity to ‘fix’ the Children, Youth & Families Department (CYFD). A state agency which receives state and federal funding is subject to multiple entities of oversight/monitoring. In New Mexico, this includes CYFD’s internal resources of Office of Constituent Affairs, Office of Performance & Accountability, Office of Inspector General, Office of Advocacy; the Policy Council created by gubernatorial executive order in February 2023; Kevin S Settlement’s three co-neutrals evaluation towards agreed upon commitments; Legislative Finance Committee Agency Performance Report Cards, Senate Memorial (SM) 5 Taskforce³; and the Citizen Substitute Care Review Act. These are in addition to various federal monitoring requirements, such as the Children and Family Services Review (CFSR) which requires CYFD to meet seven outcomes in the safety, permanency and well-being of children/youth and to develop and monitor a program improvement plan for specific areas which do not meet outcome standards. There has not been any coordination between these various evaluating and reporting entities to share and interpret their wealth of information, nor is there any collaboration to reach consensus on what needs improvement and how best to remedy.

An agency that is constantly responding to multiple entities induces the ‘*tyranny of the urgent*’⁴, where time and effort is spent reacting to what others see as ‘urgent’ rather than spending time and effort on what is ‘important’, such as planning and implementing needed changes. New Mexico does not need another entity to report on what is wrong with CYFD, make recommendations and expect CYFD to respond. What New Mexico needs is an institutionalized monitoring system which results in the coordination of information gathered, collaboration on identifying, implementing and monitoring solutions to improve our child protection response system.

SM5 of the 2024 legislative session created a task force to ‘*examine the organizational structure and operations of the children, youth and families department and make recommendations for necessary changes*’ in fourteen areas of protective and juvenile justice services. However, a specific examination of existing oversight/monitoring processes was not included. Such an examination must be completed prior to any consideration of another entity to provide ‘independent oversight’ of CYFD.

It is said the best way to predict the future is to create it together⁵. In SFY 24, CYFD and Council Staff made progress in establishing an ongoing process of sharing information to result in continuous refinement of the NM child protection response system. This is movement in the right direction. Implementing the recommendations in this report will build on this momentum and lead us to an institutionalized monitoring system which produces what we all want: better outcomes for our children, youth and families.

¹ Section 32A-8 et seq. NMSA 1978.

² *Joseph A. by Wolfe v. N.M. Dept. of Human Services*, 575 F.Supp.346 (1983).

³ <https://www.nmlegis.gov/Sessions/24%20Regular/final/SM005.pdf>

⁴ Charles E. Hummel.

⁵ Joe Echevarria.

RECOMMENDATIONS

CHILDREN YOUTH AND FAMILIES DEPARTMENT (CYFD)

- ✚ In collaboration with the Council:
 - develop a pilot project for the Council to be a third party review for grievances which are not successfully resolved internally.
 - establish a Memorandum of Understanding (MOU) with the Council which includes, but is not limited to:
 - the work of the Council meeting CYFD's CAPTA requirements for citizen review panels,
 - procedures for sharing information,
 - procedures for responding to reports following case specific reviews,
 - procedures for responding to Council reports,
 - procedures for responding to reviews of foster parent grievances,
 - including Council staff on task force, workgroups,
 - participation in Council meetings as a non-voting member.
 - create written plans to result in refinements in policies and procedures relating to Educational Decision Making, Substitute Care Review Boards, Youth Services, Case Planning and Progress Reports to the Courts.

COUNCIL

- ✚ Develop standard operating procedures.
- ✚ Update 8.26.7 NMAC to include the role of its Advisory Committee.
- ✚ Submit to the Children's Court Rules Committee proposed changes to notices of changes of placement, identifying substitute care providers at hearings and affidavits for *ex parte* custody orders and establishing protocol for status hearings.
- ✚ Issue an interim report by 01 May 2025 noting progress towards implementation of recommendations.

COURTS

- ✚ Review practices and make changes to result in findings for all allegations in an abuse/neglect petition included in adjudicatory orders and that the factual basis for pleas/findings are clear and specific.
- ✚ Children's Court Rules Committee adopt changes to notice of changes of placement, identifying substitute care providers at hearings and affidavits for *ex parte* custody orders.

LEGISLATURE

- ✚ Establish direct funding to the Council to meet staffing and operating needs.
- ✚ Sponsor legislative changes to the Act regarding the composition of the Council.

REGULATION AND LICENSING DEPARTMENT (RLD)

- ✚ In collaboration with the Council, establish a Memorandum of Understanding (MOU) to meet the statutory requirements of NM Stat § 9-1-7.

COUNCIL SFY 24

Per the revision of the Act in 2016, the Council was established consisting of nine members which includes the Cabinet Secretary or their designee of the Department of Finance and Administration (DFA), Public Education Department (PED), Human Services Department, now known as the Health Care Authority (HSD/HCA) and the Department of Health (DOH) and five members appointed by the Governor⁶. The Council does not include the Secretary of the Early Childhood Education & Care Department (ECECD) which was launched in 2020, nor does it include the Secretary of CYFD as a non-voting member. Since its onset in 2016, the Council has never been fully appointed and by its design is transitory.

Through strategic planning sessions held in SFY 24, the Council identified the need to develop written Standard Operating Procedures for its functioning to result in continuity. The Act is vague as to the role of its Advisory Committee⁷ offering only the Advisory Committee is to meet with the Council *'at least once a year to advise the council on matters relating to substitute care review'*. As part of the strategic planning discussions, the Council identified the need to institutionalize the role of its Advisory Committee.

[Appendix VI](#) provides a listing of activities the Council and staff in SFY 24.

CASE REVIEW DEMOGRAPHICS AND TRENDS SFY 24

Pursuant to the Act, the Council is authorized to conduct specific case reviews to fulfill the purpose of the Act. In New Mexico, case reviews are conducted through a Substitute Care Review Board (SCRB) in accordance with administrative rules⁸ established by the Council. Each SCRB is comprised of trained volunteers and each review is facilitated by Council Staff. Following the adopted Quality Services Review⁹ model, case reviews include research of documents, CYFD policy and procedures, best practices, and receipt of confidential individual¹⁰ perspectives. Per the Council rules, at least one case is reviewed in each of the thirteen judicial districts¹¹ each quarter. A case may represent one or more children/youth.

Per the Act, a written report is submitted to the court for each case reviewed. The report is also provided to CYFD and other Interested Parties to a case. Each report provides demographics, a summary narrative, identifies strengths, concerns and recommendations as to each child and youth in a case.

In SFY 24, case reviews were conducted in all thirteen judicial districts and 27 counties. Fifty-four cases were reviewed, representing 101 children/youth. Thirty-three of these children/youth had been reviewed in prior fiscal years.

The following pages provide the demographics of the children/youth reviewed as to

- Gender
- Race
- Age
- Length of custody at the time of review
- CYFD involvement before custody
- Placement type at the time of review
- Number of federal changes in placement at the time of review

The trends observed from these case reviews follow the demographics.

⁶ Appendix I provides the members of the Council as of October 2024.

⁷ Appendix I provides the members of the Advisory Committee appointed September 2024 – September 2025.

⁸ 8.26.7 NMAC <https://www.srca.nm.gov/parts/title08/08.026.0007.html>. Appendix II includes the case review priority criteria for SYF 24.

⁹ For more information on Quality Services Review see past Council reports found at www.scacnm.org.

¹⁰ Notification of opportunity to provide confidential input during a child/youth review is given to known biological/adoptive parents, legal guardians, foster parents, relatives, CYFD staff, legal representatives, service providers and Court Appointed Special Advocates (CASA).

¹¹ Appendix III.

DEMOGRAPHICS AT TIME OF CASE REVIEW

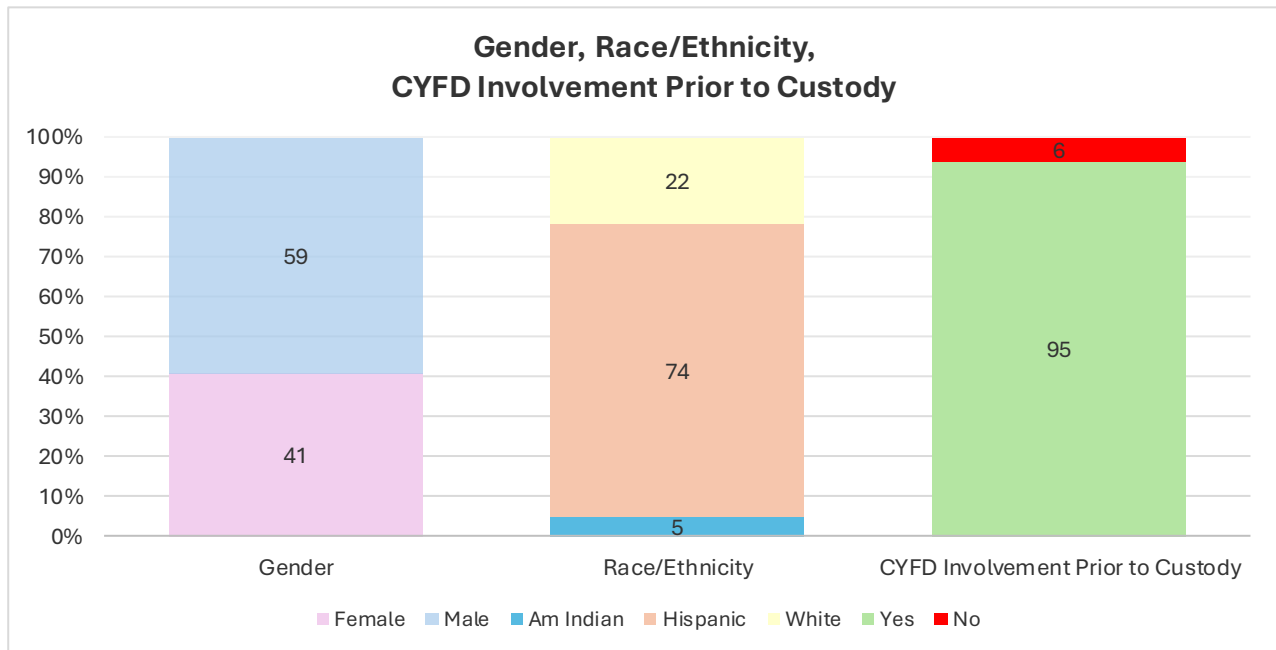
101 Children/Youth

GENDER, RACE/ETHNICITY AND CYFD INVOLVEMENT PRIOR TO CUSTODY

Gender: CYFD provides a monthly list of children/youth in its custody; information provided includes gender as female or male. During this period of review a youth identified as a gender different from the sex assigned at birth. CYFD does not have policy or procedures regarding transgender youth and maintains reporting the sex assigned at birth. For our reporting, this youth is included in the gender category the youth has identified.

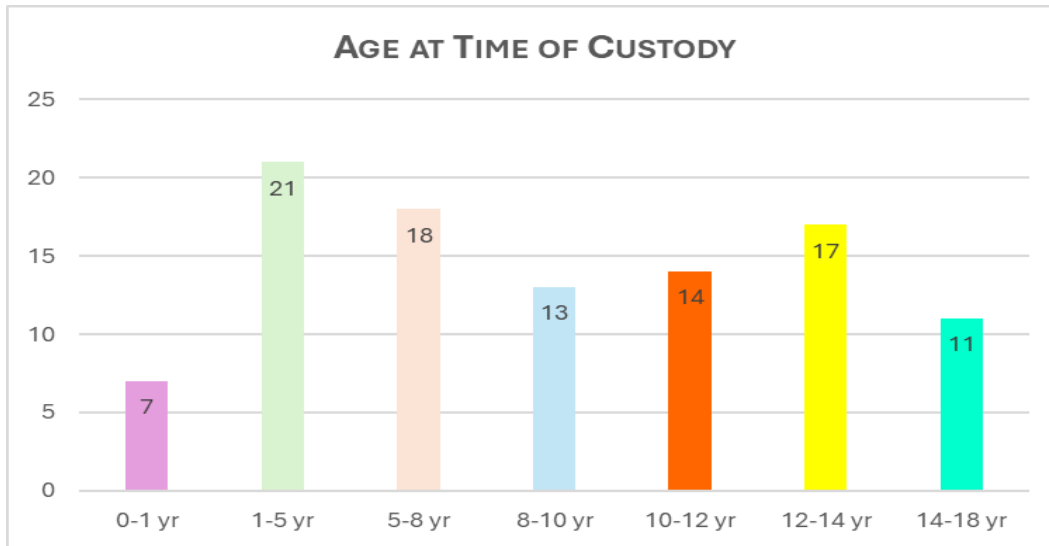
Race/Ethnicity: CYFD provides a monthly list of children/youth in its custody; information provided includes 'race/ethnicity'. It is not clear from the information provided by CYFD that there is a separation of race and ethnicity. Rather in this category one finds AIAN (American Indian/Alaska Native), Asian, Black/AA (African American), Hispanic, Multi-race, Other and White.

CYFD Involvement Prior to This Episode of Custody: The affidavit which accompanies the *Motion for Ex Parte Custody Order* requires a listing of the reasonable efforts made by CYFD to prevent removal from home. Affidavits vary across the state and generally include the past involvement of CYFD, investigations, outcomes, referrals to services, prior custodies. Of the cases reviewed, CYFD reported reasonable efforts of a range of 1 to 34 investigations, 48 hour holds, previous custodies, adoptions and permanent guardianships. As the information in affidavits was not consistent, a simple yes or no is captured for demographics if there was CYFD involvement with the family prior to this episode of custody.



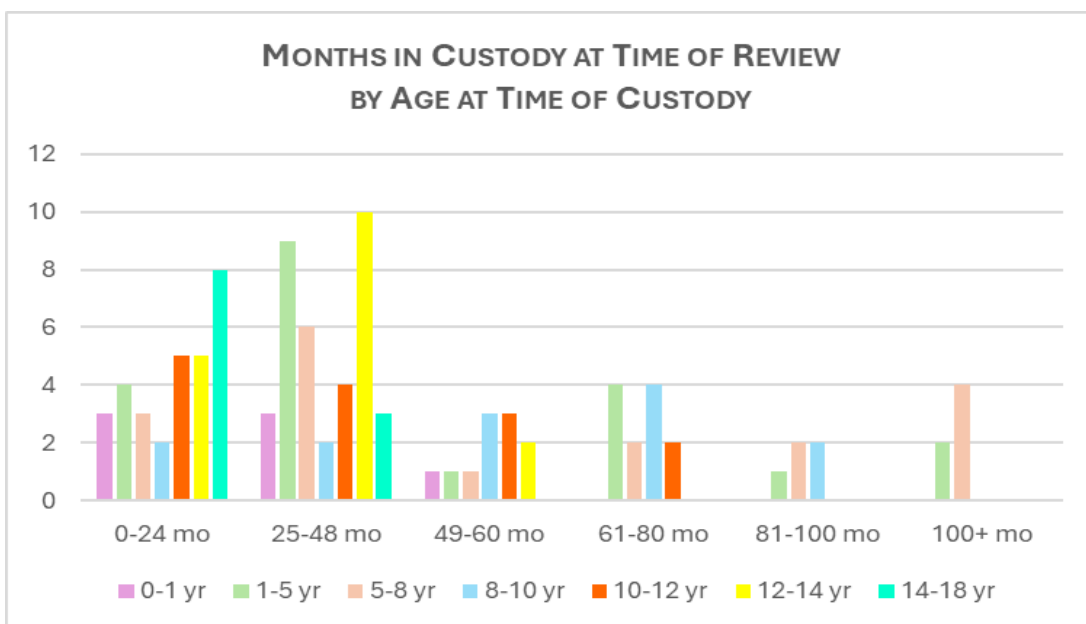
AGE AT TIME OF CUSTODY

The age of the child/youth at time they entered this episode of custody ranged from 3 days to 16 years 11 months. As this chart shows, most of the children/youth (58.5%) reviewed in SFY 24 entered custody by age 10 and of those, 47.5% entered custody by age 5.



NUMBER OF MONTHS IN CUSTODY AT THE TIME OF REVIEW

The number of months the children/youth in the above chart had been in custody at the time of review ranged from 8 months to 154 months. Using the color of age ranges in the above chart, the chart below depicts how long a child/youth had been in the custody of CYFD at the time of review. For example, a child entered custody at age 1 month (0-1 yr purple column), at the time of review this child had been in custody 51 months or 4 years 3 months. Another example is a child entered custody at age 3 years 9 months (1-5 yr green column), at the time of review this child had been in custody for 154 months, or nearly 13 years.



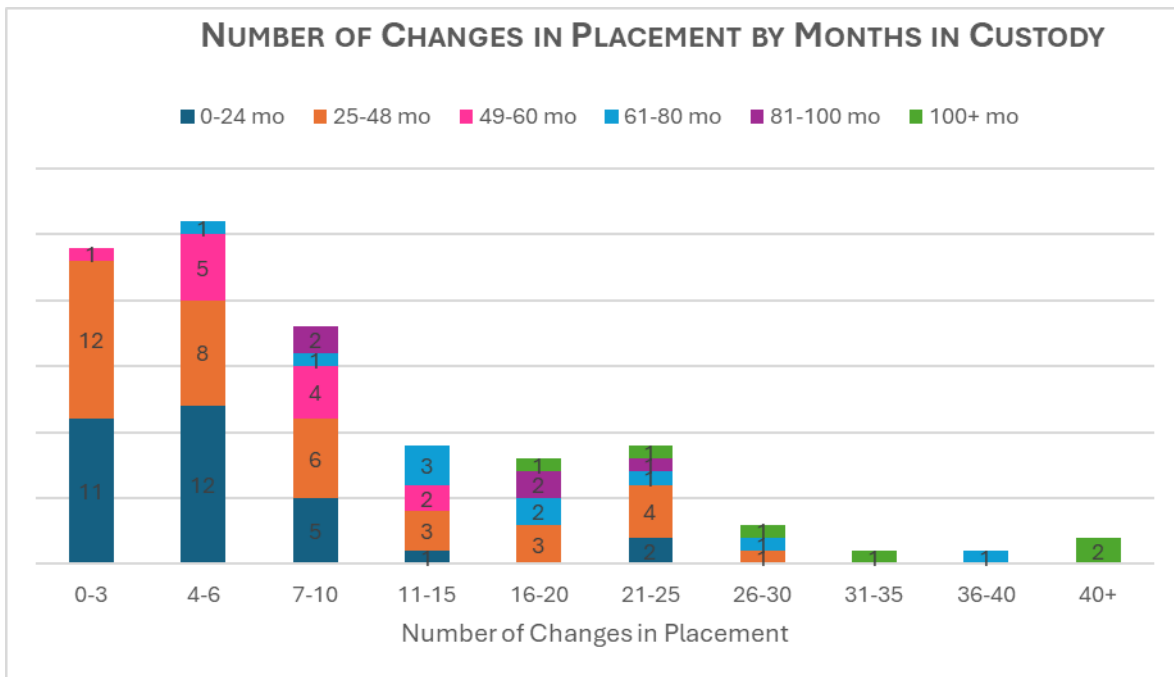
NUMBER OF CHANGES IN PLACEMENT BY MONTHS IN CUSTODY

CYFD provides a monthly list of children/youth in its custody; information provided includes the number of Federal changes in placement a child/youth has experienced while in custody. Temporary absences, such as visitation with a sibling, relative, or other caretaker (i.e., preplacement visits with a subsequent foster care provider or pre-adoptive parents), hospitalization for medical treatment, acute psychiatric episodes or diagnosis, respite care, day or summer camps, trial home visits and runaway episodes should not be counted as a change in placement¹². Past Council reports have noted that the information provided by CYFD contains errors and that notices of changes of placement are not in accordance with NM Stat § 32A-4-14.

For example, CYFD reports a sibling group of four have experienced 22-23 changes in placement although they have been placed together in the same non-relative home in their 44 months in custody with episodes of respite. In this instance a prior case review noted this observation when CYFD reported 13-14 changes in placement; 15 months later CYFD reports these children experienced another 9 changes in placement in 15 months. While CYFD should be commended for keeping a sibling group together in a stable placement, CYFD’s reporting indicates the system has failed these children with having 22-23 changes in placement in 44 months.

In a case reviewed, a sibling group of two were in CYFD custody; one child was removed from the home, while the other child remained at home. CYFD’s monthly list has not included the child at home in its monthly list as a child in its custody although the child had been in custody for 16 months at the time of review.

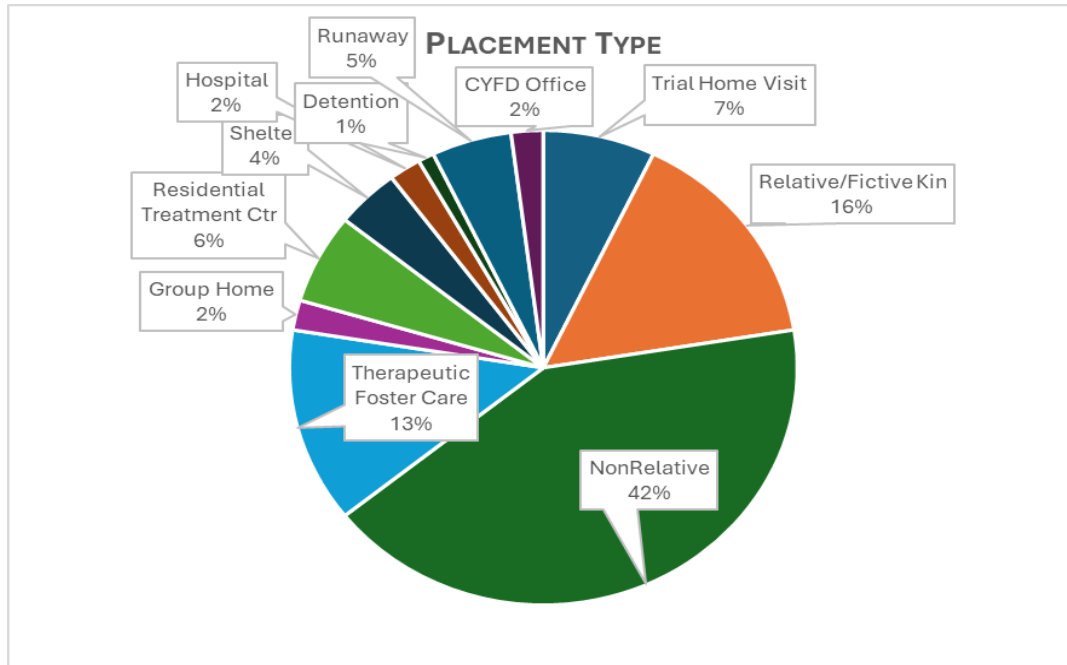
With the caveat that CYFD’s reporting is inaccurate at times, the following chart depicts the number of changes in placement CYFD reported at the time of the review. This ranged from none to 74. While any change in placement can result in additional trauma to a child/youth, of particular note is the number of changes in placement within a given period of time. For example, a 15-year-old experienced 7 changes of placement in 10 months of being in the care of CYFD.



¹² Children’s Bureau Child Welfare Policy Manual Q21
https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=150

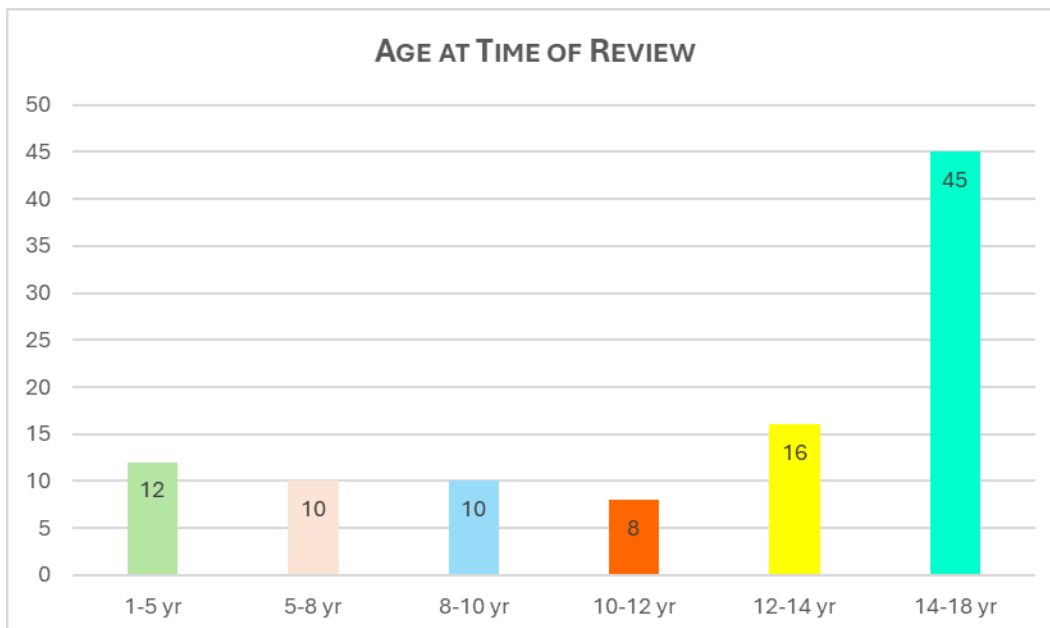
PLACEMENT TYPE

The types of placement children/youth were in at the time of review ranged from Trial Home Visits (THV) to CYFD offices. This chart depicts the placement type of 98 children/youth at the time of review; in one case with a sibling group of three, the placement type was not confirmed.



AGE AT TIME OF REVIEW

As noted in the previous *Age at the Time of Custody* chart, 58.5% of the children/youth reviewed entered custody by age 10. As the chart below depicts, at the time of review 61% of children/youth were aged 12 and older with 74% of these youth aged 14 and older. This indicates children/youth are growing up in the care of CYFD, increasing the risk of negative impacts on their physical, emotional, mental, academic and social development.



TRENDS NOTED IN CASE REVIEWS

The reviews of the children and youth in SFY 24 resulted in the same observations noted in past annual reports. Concerns such as case planning, youth services^{i/ii} and medication oversightⁱⁱⁱ not in accordance with CYFD policy and procedures, written adoption plans^{iv} which provide for the intentional recruitment of resources with capacity to meet the behavioral and emotional needs of the child/youth not provided, written discharge plans^v to include wraparound services when being discharged to a lower level of care not provided, sibling groups split because an adoption resource has been identified for some but not all of the children together^{vi}, evaluation of sibling visitation every 90 days^{vii} not documented, adjudicatory orders not providing findings on all allegations in an abuse and neglect petition^{viii}, notices of changes in placement not provided, CYFD data inaccuracies¹³ and not providing the Substitute Care Advisory Council information pursuant to NM Stat 32A-4^{ix}.

The reviews in SFY 24 also resulted in observations regarding the lack of appointment and clarification of the role of Educational Decision Makers for children/youth, self-reported caseloads of CYFD workers out of alignment with Kevin S Settlement requirements, documentation not identifying substitute care providers at court hearings, court hearings not held timely and court orders not filed timely. In addition, some courts conduct 'status conferences/hearings', however the Children's Code and the Children's Court Rules are silent on when and how these status conferences/hearings are conducted.

The federal Children and Family Services Review (CFSR) requires CYFD to submit a self-assessment as to attaining standards in specific outcomes related to safety, permanency and well-being. To assist CYFD in this assessment, information from some of the case reviews conducted in SFY 24 was provided in the following CFSR outcomes:

- Children protected from abuse/neglect; safely maintained in their own homes whenever possible and appropriate.
- Children have permanency and stability in their living situations.
- Children have continuity of family relationships.
- Children receive appropriate service to meet their educational, physical and mental needs.
- Each child has a written case plan that is developed jointly with the child's parent(s) and includes the required provisions.
- Each child has a periodic review which occurs no less frequently than once every 6 months, either by a court or administrative review.
- Filings of termination of parental rights proceedings occur in accordance with required provisions.
- Foster parents, pre-adoptive parents and relative caregivers receive notification of any review or hearing held with respect to the child.

In SYF 25 case reviews will gather information on these areas.

¹³ On 1 October 2024, CYFD re-issued Directive 2024-005 which requires review of open cases to correct inaccuracies and omissions. It is not known if this effort to prepare for migration to a new data system will address data inaccuracies noted during case reviews.

SFY 25 FOCUS TOPICS FOR REFINEMENTS

As noted in this report's *Executive Summary*, in SFY 24 CYFD and Council Staff have identified a process which supports the sharing of information from case reviews, identifying topics for refinement as well as potential solutions. The topics identified for workplans in SYF 25 include:

- Education Decision Makers Policy and Procedures
- Updating CYFD PR 29 as it pertains to the Substitute Care Review Board
- Youth Services
- Progress Reports to the Courts
- Case Planning

There are some advocates, aware of the purpose of the Act and the results of the case reviews, who believe that more is needed in the independent monitoring of CYFD. Specifically, concern has been raised as to the grievance process for children/youth and foster parents being only internal without a 'third party' as part of the process. The U.S. Ombudsman Association *Governmental Ombudsman Standards*¹⁴ identifies four foundational standards for an ombudsman office:

- Independence
 - Office structure, function and appearance should be free from outside control or influence.
- Impartiality
 - Receive and review each complaint in an objective and fair manner, free from bias, and treat all parties without favor or prejudice.
- Confidentiality
 - Have the privilege and discretion to keep confidential or release any information related to a complaint or investigation.
- Credible Review Process
 - Perform responsibilities in a manner that engenders respect and confidence.

The Citizen Substitute Care Review Act meets the foundational standards of the *Governmental Ombudsman Standards*. What is missing though is the ability for Council Staff to act as a third party reviewer of complaints by children, youth and foster/resource parents¹⁵. At present CYFD has only an internal review of a complaint from a child, youth or foster/resource parent, raising the perception that an internal grievance process may not be objective, fair and a fear of retaliation.

In FY 21, CYFD and Council Staff collaborated on a procedure which included the Council as the final level for unresolved grievances. However, this procedure was changed to the current internal procedure without an opportunity to pilot a third party review in the grievance process.

It is the Council's intent to engage CYFD in discussions to revise its PR 11 *Resource Family Bill of Rights and Grievance Process* to include the Council as the final level in the grievance process to respond to a concern raised by advocates that an independent resource in the child, youth, foster/resource family grievance process doesn't currently exist.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

¹⁴ <https://www.usombusman.org/wp-content/uploads/USOA-STANDARDS1.pdf>

¹⁵ Appendix VI contains the CYFD Foster Child and Youth Bill of Rights and the Resource Parent Bill of Rights.

APPENDIX I

AUTHORITY, ORGANIZATION, AND FUNDING

AUTHORITY

The Substitute Care Advisory Council (Council) is created under Chapter 32 [32], Article 8 NMSA 1978, (Act).

The purpose of the Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the Children, Youth and Families Department (CYFD) by examining the policies, procedures, and practices of CYFD and, where appropriate, specific cases to evaluate the extent to which CYFD is effectively discharging its child protection responsibilities¹⁶.

The general purpose of the Council is to oversee substitute care review boards (SCRB) in their monitoring of children placed in the custody of CYFD to identify systemic policy issues regarding substitute care¹⁷. The Act authorizes the Council to hire staff, contract for services, establish membership requirements for SCRB members¹⁸, designation of, and procedures for cases for SCRB review, appoint a six-member advisory committee and issue an annual report by 1 November to CYFD, the courts and appropriate legislative interim committees regarding statutes, rules, policies and procedures relating to substitute care.

In 1996, the federal Child Abuse Prevention & Treatment Act (CAPTA) required states who receive CAPTA funding to have citizen review panels to evaluate the extent state and local child protection system agencies are effectively discharging their child protection responsibilities. Policy guidance noted *'these panels have the capacity to promote creative problem-solving'* and *'the annual reports have the potential to not only increase resources but better collaboration and system change'*¹⁹. CAPTA allowed states to designate existing entities established under state and federal law to meet this federal requirement. Some states have both a state law similar to the Act as well as separate citizen review panels to meet the CAPTA requirement for citizen review panels to:

- Examine policies, procedures, and practices of State and local agencies and where appropriate, specific cases to evaluate the extent that state and local child protection systems are:
 - effectively discharging their child protection responsibilities, and [are]
 - in compliance with the CAPTA state plan, child protection standards and *'any other criteria the panel considers important to ensure the protection of children'*.
- Provide *'public outreach to assess the impact of current procedures and practices upon children and families in the community'*.
- *'Prepare and make available on an annual basis a report containing a summary of the activities of the panel and recommendations to improve the children protection services system at the State and local levels'*.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

¹⁶ NM Stat § 32A-8-2.

¹⁷ NM Stat § 32A-8-4A.

¹⁸ Citizens interested in becoming a SCRB member undergo an application process which includes background and reference checks, interviews, observations, training and the acknowledgement and adherence to confidentiality agreements and the Member Code of Conduct.

¹⁹ <https://www.acf.hhs.gov/cb/policy-guidance/pi-98-01>.

ORGANIZATION

Council staff consists of a Director, Coordinators and Administrative Assistant²⁰. In FY 20, the Office of the Attorney General assigned an attorney to provide legal representation and advice to the Council. Per the Act, the Council is administratively attached to the Regulation and Licensing Department (RLD) in accordance with NM Stat § 9-1-7²¹. Past Council reports have included concerns with the administratively attached relationship and the need for a Memorandum of Understanding (MOU) between the Council and RLD.

FUNDING

Appropriation legislation available from 1996 to 2016 indicates funding for the Act was a line-item with a state general fund appropriation to the 'citizen review board' and an interagency transfer of funds from CYFD to Department of Finance and Administration (DFA)²². CYFD and DFA entered into a Joint Powers Agreement (JPA) 'to provide for the transfer of federal funds available for the operation of the Citizen Substitute Care Review Act'²³.

Effective 1 July 2016, the Act required DFA to transfer to the Council 'all functions, records, personnel, appropriations, money, furniture, property, equipment and supplies' as well as 'all appropriations, contract funds and funds for contract administration and staff, the cost of council per diem and travel, training and all other costs of the department of finance and administration relating to the Citizen Substitute Care Review Act'²⁴.

Nonetheless, line-item appropriation to the Council was removed in appropriation legislation and funds were provided to the Boards and Commission Division (BCD) of RLD²⁵. Since that time funding to the Council has been unstable; efforts to reinstate line-item appropriation and stabilize funding for the Council have not been successful²⁶.

In the 2024 legislative session, the *General Appropriation Act of 2024* included a state general fund allocation of \$400,000 to the Council for FY 25. Inexplicably however, this funding was made 'contingent on enactment of legislation of the second session of the fifty-sixth legislature transferring the substitute care advisory council to the administrative office of the courts'. Not only was the Council not consulted on its budget, there were not any legislative actions to propose changing the agency to whom the Council is administratively attached. As a result, Governor Lujan-Grisham, rightfully so, line-item vetoed this allocation. In doing so, the Council is without any direct funds.

²⁰ See Appendix III.

²¹ NM Stat § 9-1-7 states that 'A. an agency attached to a department for administrative purposes only shall (1) exercise its functions independently of the department and without approval or control of the department; (2) submit its budget request through the department; and (3) submit reports required of it by law or by the governor through the department. B. The department to which an agency is attached for administrative purposes only shall (1) provide, if mutually agreed, the budgeting, record-keeping and related administrative and clerical assistance to the agency; and (2) include the agency's budgetary requests, as submitted and without changes, in the department budget. C. Unless otherwise provided by law, the agency shall hire its own personnel in accordance with the Personnel Act.'

²² Appropriations Summary compiled by the Council Director available upon request.

²³ Joint Powers Agreement Between Department of Finance and Administration and Children, Youth and Families Department effective upon approval of the Department of Finance and Administration, terminating upon expiration of Title IV-E funds or the transfer of Citizen Substitute Care Review Act administration to another entity; signed by Heather Wilson, CYFD Secretary, David W. Harris DFA Secretary.

²⁴ SB 49, 2016 Regular Session, Chaptered; Section 32-8 *et seq.* NMSA 1978.

²⁵ State of New Mexico Report of the Legislative Finance Committee to the Fifty-Third Legislature January 2017 for Fiscal Year 2018 Volume 2 https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2018RecommendVolIII.pdf. Charles Sallee, LFC Deputy Director for Budget noted 'there used to be a general fund appropriation in DFA specials when it [citizen substitute care review] was attached to DFA. Now it is buried in RLD' (Email from C. Sallee to M. Fischer, LFC Program Evaluation Manager, 22 December 2020, 3:18 p.m.)

²⁶ See previous Council reports available at www.scacnm.org.

APPENDIX II

SUBSTITUTE CARE ADVISORY COUNCIL OCTOBER 2024

The Act in 2016 established a nine-member Council; four members are the Cabinet Secretary or designee of specific state agencies, and five members are appointed by the Governor.

	<i>APPOINTEE</i>	<i>DATE</i>
APPOINTED BY GOVERNOR Public Member with Child Welfare expertise	SEAN SCATES, (COUNCIL CHAIR)	September 2022
Public Member with Child Welfare expertise	Lela Wendell	May 2024
Public Member aged 18-30 previously in substitute care	Vacant	
Public Member aged 18-30 previously in substitute care	Vacant	
Children’s Court Judge	THE HONORABLE ALMA ROBERSON Second Judicial District	November 2022
STATE AGENCY Department of Finance and Administration	RENEE M. WARD Deputy Cabinet Secretary (Council Vice-Chair)	May 2019
Department of Health	MIRANDA DURHAM, M.D. Chief Medical Officer	October 2024
Health Care Authority ²⁷	BETINA MCCRACKEN Director Child Support Services Division	June 2023
Public Education Department	SIMONE VANN At-Risk Intervention Response Director	February 2024

**ADVISORY COMMITTEE TO
THE COUNCIL²⁸
SEPT 2024 – SEPT 2025**

Jack Carpenter, Co-Chair	Taos County
Maria Ortiz Bustos, Co-Chair	Dona Ana County
Mary Carr	Eddy County
Shannon Poynter	Taos County
Yvonne Tallent	San Miguel County
Nancy Treat	Santa Fe County

²⁷ In FY 24 the Human Services Department was renamed Health Care Authority (HCA).

²⁸Pursuant to Chapter 32 [32], Article 8 NMSA 1978, Citizen Substitute Care Review Act the Council appoints by 1 October of each year, a 6-member committee to one-year renewable terms, to advise on matters related to substitute care.

APPENDIX III

COUNCIL STAFF

DIRECTOR: SHELLY A. BUCHER, LMSW

Ms. Bucher serves as the Director for the Council. She has been in this position since October 2016 having previously administered the Department of Finance and Administration's contract for the Citizen Substitute Care Review Act through New Mexico State University September 2013-October 2016. Ms. Bucher holds a Master of Social Work with a concentration in Administration from the University of Kansas and a Bachelor of Social Work, Summa Cum Laude and a BS in Human Development and Family Studies from Kansas State University, Summa Cum Laude.

Ms. Bucher has 35 years of child welfare experience; over 23 years of which are in NM. Past positions include:

Director, Southwest Region National Child Protection Center at NMSU.
Interim Director, School of Social Work NMSU (3 years).
General Inspection Specialist, European Command Headquarters, Stuttgart Germany.
Relocation Readiness Program Manager, Army Community Services, Stuttgart Germany.
Settlement Administrator, Kansas Department of Social and Rehabilitation Services (SRS).
Director, Child Development Center, Saudi Arabia.
Social Worker (Investigations/Foster Care), KS SRS.

COORDINATOR: KIMBERLY ANGUIANO, BSW

Ms. Anguiano joined the Council Staff in July 2018 after completing an academic year of internship assisting Council Staff. Fully bilingual in Spanish, Ms. Anguiano graduated with honors from New Mexico State University with a Bachelor of Social Work and Minors in Counseling and Educational Psychology and Gender and Sexuality Studies.

COORDINATOR: MARY YOUNGER

Ms. Younger joined the Council Staff in October 2016 after serving as contract coordinator of citizen review boards for two years. She has 15 years of experience, including past positions of Volunteer Coordinator for the Eddy County Fifth Judicial District CASA (Court Appointed Special Advocate) program and Detention Officer for the Eddy County Detention Center.

ADMINISTRATIVE ASSISTANT: RAYMUNDO "RAY" VILLEGAS

Mr. Villegas is an Air Force veteran and retired US Postmaster who, since October 2016, has been sharing his knowledge and skills to organize and maintain resources to support the functioning of Council Staff. Mr. Villegas is from Deming, NM and attended Western New Mexico University.

APPENDIX IV

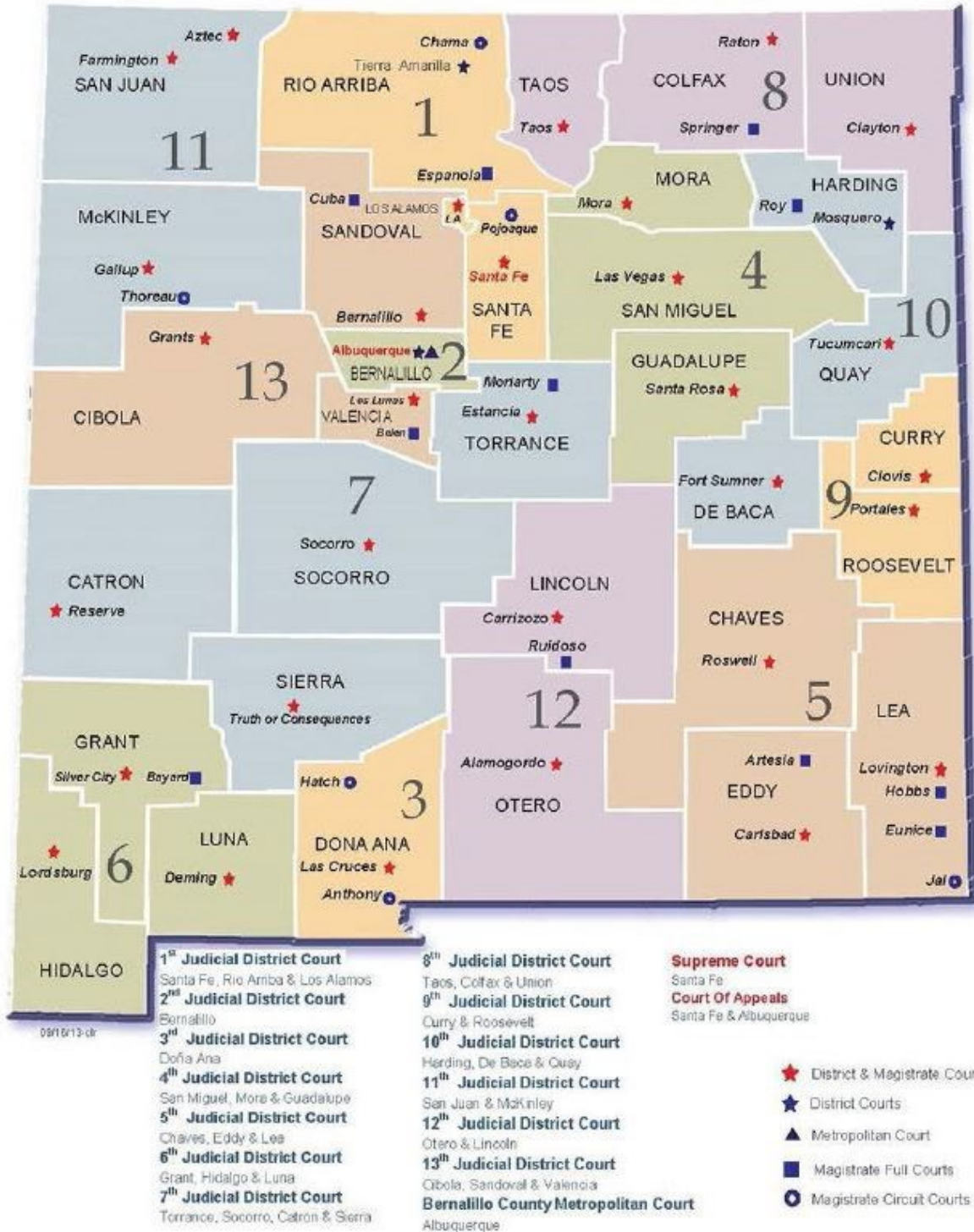
COUNCIL ACTIVITIES SYF 24

Highlights of the activities of the Council and Council Staff include:

- Held meetings in September, October, December 2023 and May 2024.
- Adopted and distributed to CYFD, the courts and legislators a report for SFY 23.
- Facilitated discussions regarding strategic planning.
- Adopted its Open Meetings Act (hereinafter “OMA”) Resolution.
- Appointed its six-member advisory committee.
- Adopted priority criteria for case reviews:
 - Placements in institutions or congregate care.
 - Number of changes in placement.
 - Youth aged 13 – 18.
 - Sibling groups/sibling splits.
 - 3 or more 48-hour holds.
 - Specifically requested by an Interested Party or community member.
 - Follow up of past reviews.
- Adopted training requirements for volunteers.
- Council staff facilitated reviews of 101 children/youth in all thirteen judicial districts and provided reports to the court, CYFD and interested parties.
- Council staff and volunteers participated in the annual Children’s Law Institute.
- The Council Director participated on:
 - Children’s Court Improvement Commission (CCIC).
 - CCIC Data Workgroup.
 - CCIC Enhanced Family Support Workgroup.
 - The NM Child Fatality Review Board.
 - The National Citizen Review Panel Advisory Board.
 - The Children’s Code Reform Taskforce.

APPENDIX V

NEW MEXICO
STATE COURTS



APPENDIX VI



NEW MEXICO FOSTER CHILD AND YOUTH BILL OF RIGHTS

Every child in the foster care system is endowed with the rights inherently belonging to all children. In addition, because of the unique circumstances facing foster children, special safeguards, resources and care are also necessary. Below you will find a list of rights that are to be given to every child and youth in custody of the Children, Youth and Families Department (CYFD). These rights must be explained by the caseworker to every child and youth in a manner in which they can understand. These rights are to be reviewed, in detail, upon entering custody and at a minimum of every three months. Additionally, these rights are to be clearly posted in all CYFD and service provider offices. They are to be provided to all staff working with foster children and youth, and to all foster parents.

- 1 To be informed of your rights in foster care by your caseworker and to receive a list of those rights in written form.
- 2 To have your privacy protected and your right to confidentiality adhered to, as outlined in the New Mexico Children's Code.
- 3 To be explained why you came into foster care and why you are still in foster care by a representative of CYFD.
- 4 To be free from physical, sexual, emotional or other abuse, including corporal punishment.
- 5 To stay safe and avoid exploitation.
- 6 To advocate for yourself and to speak to persons involved with your case without negative repercussions.
- 7 To make a report to Statewide Central Intake (1-800-797-3260) if you feel you are being abused and/or neglected.
- 8 To be represented by a guardian ad litem or youth attorney in all judicial matters (hearings and mandatory meetings) conducted in your abuse/neglect case so that your interests are safeguarded; to attend and participate in all court hearings as coordinated through your attorney.
- 9 To be informed of how to contact your caseworker and other professionals involved in your case.
- 10 To contact your attorney, caseworker and CASA when you want.
- 11 To have a minimum of at least monthly visitation with your caseworker, which includes private time between yourself and the caseworker.
- 12 To receive medical, dental, vision and behavioral health services.
- 13 To refuse medical and behavioral health services and medications, unless court ordered, after age 14.
- 14 To live in a safe, healthy and comfortable home where you are treated with respect.
- 15 To have foster parents who are screened, trained and licensed, and who receive adequate support and supervision from CYFD and/or private agencies.
- 16 To receive adequate and healthy food, adequate clothing and appropriate personal hygiene products.
- 17 To have all your personal belongings secure and transported with you.
- 18 To have a permanent plan for placement, to participate in developing this plan, and to have choice in placement or the right to request a placement change.
- 19 To be placed in a home with your siblings who are in custody unless it is contrary to your safety and/or wellbeing.
- 20 To maintain regular contact with your siblings, whether or not they are in custody, unless it is contrary to your safety and/or well-being.
- 21 To have regular and ongoing contact (by phone, through letters and in person) as soon as possible after entering custody with biological parents, relatives and other important people in your life, unless it is contrary to your safety and/or wellbeing and prohibited by a court order or you choose not to.
- 22 To be informed by a CYFD representative when contact with important people in your life is being monitored or prohibited, and the reasons it is being monitored or prohibited.
- 23 To remain in the same school you were enrolled in before entering into custody and to remain in the same school throughout your stay in custody; to be provided with transportation arrangements to ensure continued enrollment in the same school.
- 24 To attend and participate in school meetings, including parent /teacher conferences, Individual Education Planning (IEP) meetings and Next Step Planning meetings.
- 25 To participate in extra-curricular, cultural, spiritual and personal enrichment activities.
- 26 To be involved in the development of your treatment plan, life skills plan, transition plan and visitation plan; to receive factual information about the treatment decisions made by the agency that affect your life.
- 27 To have a plan for your future, including a life skills plan and transition plan; to be offered services to help you prepare to become a successful adult.
- 28 To an annual credit check from age 14 to 18.
- 29 To initiate a review of any prudent parenting decision made by your foster parents, at 14 and older.

If you feel your rights have been violated, please email CYFD.YouthGrievance@state.nm.us or call or text 505-228-6797.



CYFD RESOURCE FAMILY BILL OF RIGHTS²⁹

<p>1. Resource Families have the right to be treated with dignity, respect and consideration as integral members of the child welfare team.</p> <p>2. Resource Families have the right to be notified of scheduled meetings concerning a child in their care in order to actively participate in the case planning and treatment process, unless the child is 14 and older, at which point, they may make their own decision on who attends and participates in their case plan as described in “Foster Child and Youth Bill of Rights.”</p> <p>3. Resource Families have the right to provide input concerning the plan of services for the children in their care and to have that input given full consideration, in the same manner as information presented by any other member of the team, without fear of retaliation.</p> <p>4. Resource Families have the right to communicate about the child/ren in their care with professionals who work with the child/ren including, but not limited to, their Guardian Ad Litem/Youth Attorney, therapists, physicians and school personnel, without fear of accusation of violating the Confidentiality Code or retaliation.</p> <p>5. Resource Families have the right to receive a written copy of the child’s treatment and service plans, and any subsequent revisions on a timely basis.</p> <p>6. Resource Families have the right to receive the completed Child Specific Placement Agreement within 24-hours of the time the child in care is placed in their home.</p> <p>7. Resource Families have the right to be given pre-service training and appropriate on-going training, including upon request training relevant to the needs of the child in their care.</p> <p>8. Resource Families have the right to be informed of, and have access to, all agency policies and procedures related to their role as Resource Families and related to any child for whom they provide substitute care.</p>	<p>9. Resource Families have the right to a fair, timely and impartial investigation concerning referrals filed against them, and access to a fair and impartial appeal process free from retaliation, pursuant to CYFD policy and procedure. The result of any referral or investigation will be provided to the Resource Family in writing and within 15 days of its conclusion.</p> <p>10. Resource Families have the right to be free from acts of harassment and retaliation by CYFD staff.</p> <p>11. Resource Families have the right to emergency access to CYFD staff on twentyfour hour, seven day-a-week basis. These CYFD staff have access to individual children’s records and are specifically trained to support Resource Families in emergencies.</p> <p>12. Resource Families have the right to report misconduct by CYFD employees, service providers, or contractors and to have such reports investigated and initiated within 10 days of the report. CYFD shall take immediate action to remedy any action taken against a Resource Parent in retaliation for exercising their rights under this section.</p> <p>13. Resource Families have the right to expect and rely upon the fact that CYFD’s decisions regarding them and the children placed in their care will be in compliance with state and federal law.</p> <p>14. Resource Families have the right to be notified when a child in their care has a case scheduled to be reviewed by the Substitute Care Advisory Council (SCAC). Resource Families have the right to participate when a child in their care has a case reviewed by the Substitute Care Advisory Council (SCAC).</p> <p>15. Resource Families have the right to receive adequate prior written notice and an opportunity to be heard at court hearings regarding a child in their care, as provided by law.</p> <p>16. Resource Families have the right to submit factually based written statements to court, as provide by law.</p>	<p>17. Resource Families have the right to be informed of and receive available support services for a child in their care, as provided by CYFD policy and procedure.</p> <p>18. Resource Families have the right to be notified and considered as a placement option when a child formerly in their home reenters the foster care system.</p> <p>19. Resource Families have the right to receive full and timely financial reimbursement commensurate with the care and needs of the child, as provided by CYFD policy and procedure. Timely is defined as within 30 days of the resource families’ request for reimbursement.</p> <p>20. Resource Families have the right to reasonable assistance from CYFD in dealing with loss and separation when a child in their care leaves their home.</p> <p>21. Resource Families of children with a plan of adoption placed in their home have the right to priority consideration as adoptive parents of those children, if relatives have not been identified and are viable placements.</p> <p>22. Resource Families have the right to confidentiality regarding personal issues, as provided by law.</p> <p>23. Resource Families have the right to full disclosure of all medical, psychological and behavioral issues of children in their care, as provided by CYFD policy and procedure, and nothing in the Confidentiality Code shall be understood to require otherwise.</p> <p>24. In matters concerning licensing, Resource Families have the right to be free from discrimination based on religion, race, color, creed, sexual orientation, national origin, age, marital status or physical disabilities.</p>
--	---	---

²⁹ CYFD Foster Care and Adoption Placement Services Procedure (8.26.2) PR 11 6.1 Bill of Rights

ⁱ CYFD Permanency Planning with Youth Aged 13.5-18 checklist.

ⁱⁱ For children aged 14 and older, the case plan shall be developed in consultation with the child and, at the option of the child, with up to two members of the case planning team who are chosen by the child and who are not the child's foster provider or caseworker. 8.10.8 NMAC PR 13.

ⁱⁱⁱ Effective 04 November 2021 per Program Instruction Guideline 11-2021-#20, the report to the court must include responses to 24 questions related to psychotropic medication oversight. The questions are as follows: '1. What other supportive therapeutic interventions are being used? Ask for details, as appropriate. (Were these interventions tried without the medication first?) 2. Who has assessed or evaluated this child? (Was there an evaluation?) 3. How has this child been assessed or evaluated? 4. What medication has been prescribed by a psychiatric prescriber? 5. What other medications or substances have been prescribed by another prescriber or are being used by the child? 6. Why has this child been prescribed a psychotropic and what specific symptom/s is this medication designed to address? 7. How many psychotropics have been prescribed? 8. What dosage? Is this the smallest possible dosage? If not, why? 9. Is it off-label for this particular child (age, symptoms, etc.?) and if so, is it prescribed for a good, defined reason? 10. Was a history of the child gathered from parents and past caretakers for the child? 11. Were the parents asked to provide input on the use of medication, and have they? 12. How has the child 14 years or older, or the guardian for the child under 14, given consent? 13. Was the advisement couched in developmentally appropriate language and in a language the child/youth understood? Was the consent informed? 14. Who gave permission for this child to take this medication? 15. Is this child able to comply with the proper use of this medication? 16. Was there a second opinion, if so, who provided it? 17. Who is monitoring this child? 18. What monitoring for effectiveness is occurring? What benefit, if any, has occurred? 19. What side effects are possible? What side effects have been seen? 20. What monitoring for side effects is occurring? 21. Has this child gained or lost weight? 22. Does this child have involuntary movements? 23. What duration is expected for this treatment and why? 24. When is the child's next psychiatric or medical appointment?'

^{iv} Per CYFD PR 21.6.4, 'the adoption consultant develops an individualized adoption plan for children without an identified resource'.

^v Per the State of New Mexico Kevin S. Settlement Data Validation Plan approved by the Co-Neutrals 16 February 2022: 'A discharge plan is a written course of action for safely and reasonably transitioning an individual out of one placement. This plan addresses logistical, clinical, behavioral, acceptability, and sustainability considerations. The discharge plan must be documented in writing as an attachment to the child's case in FACTS after each meeting for which it is required. In FACTS, IPP staffings will include a flag for "discharge plan created" or "discharge plan reviewed" to allow for easier quantitative metrics'. Further this plan indicates 'Within the first 30 days of the placement, the out-of-state IPP team will develop a discharge plan that includes identification of in-state resources that need to be developed for the child to return to New Mexico. The CYFD caseworker will do so by working with HSD or its designee to secure services that could be funded by Medicaid. IPP meetings, which may take place during scheduled treatment team meetings for children in residential care, will be held every 30 days to support the child and identify steps necessary to promote discharge.'

^{vi} Per CYFD PR 21: Best Interest Adoption Placement: 'PSD makes reasonable efforts to place siblings together in the same adoptive home. If PSD documents that placement together would be contrary to the safety and well-being of any of the children in the sibling group, then the siblings may be placed separately. PSD will not separate siblings solely because an adoptive placement is available for one or more children, but not the entire group. If a sibling separation is recommended, a staffing is held with the child's PPW, the permanency planning supervisor, the adoption consultant and the COM. The final decision and supporting reasons regarding a sibling separation are documented in the case record. When siblings must be placed separately, the PSD worker considers adoptive families willing to maintain contact between the siblings.'

^{vii} Per CYFD PR 10 Out of Home Placement: 'In those circumstances where siblings have been separated, the PPW provides for reasonable visitation or other ongoing interaction for the siblings. The nature of the visitation or other interaction is described in all reports to the court. Ongoing visitation or other interaction should be tailored to meet the emotional and developmental needs of the children involved. The PPW should consider a variety of methods to maintain sibling relationships including, but not limited to, face-to-face visitation, telephone, e-mail, and electronic social networking sites, as well as clubs, classes, or religious or cultural activities in which the siblings jointly participate. In those circumstances where ongoing visitation or other interaction would be contrary to the safety or well-being of any of the siblings, the PPW clearly identifies the threat to safety or well-being that is created by the ongoing contact or visitation. The PPW provides this information to the court at the dispositional hearing and all subsequent judicial reviews and permanency hearings. Recommendations regarding sibling visitation will be re-evaluated every 90 days.'

^{viii} NM Stat § 32A-4-20(G).

^{ix} [NM Stat § 32A-4-25](#) includes: 'Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the council. The staff of the council, or an entity contracting with the council, shall review the case. If the staff or contracting entity determines that the case meets the criteria established in council rules, the staff or contracting entity shall designate the case for review by a substitute care review board. A representative of the substitute care review board, if designated, shall be permitted to attend and comment to the court.' (A); 'Prior to a subsequent periodic judicial review, the department shall submit a progress report to the council or any designated substitute care review board. Prior to any judicial review by the court pursuant to this section, the substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court.' (B); 'The children's court attorney shall give notice of the time, place and purpose of any judicial review hearing held pursuant to Subsection A, B or C of this section to: (4) if designated by the council, the substitute care review board' (D). Per [NM Stat § 32A-4-33](#), 'All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.' (A) and (B) 'The records described in Subsection A of this section shall be disclosed only to the parties and: (6) any local substitute care review board or any agency contracted to implement local substitute care review boards'.