

LFC Requester:	Rachel Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/22/2025 *Check all that apply:*
Bill Number: SB 458 Original Correction
 Amendment Substitute

Sponsor: LINDA M. TRUJILLO **Agency Name and Code** AOC 218
Short Title: CYFD SECRETARY **Number:** _____
NOMINATING **Person Writing** Alison B. Pauk
Phone: 505-470-6558 **Email** aocabp@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	Unknown	Recurring	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	Unknown	Unknown	Recurring	

(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	None	Unknown	Unknown	Unknown	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Conflict HB 173

Duplicate in part to HB 343 and SB 42

Duplicate in part to HB 500

Duplicates all sections HB 205

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 458 amends certain sections of the Children, Youth, and Families Department Act, the Children’s Code, and the Citizen Substitute Care Review Act. Throughout the bill, the term “plan of care” has been changed to “plan of *safe* care.”

Chapter 9, Article 2A is amended to read:

- **Section 9-2A-3 NMSA 1978:** new Subsection B: adds the definition of “nominating committee.”
- **Section 9-2A-6 NMSA 1978:** provides that the Secretary of CYFD shall be selected from a list of qualified nominees submitted by the governor to the nominating committee.
- **New Section 9-2A-6.1 NMSA 1978** creates the “Secretary of Children, Youth, and Families Nominating Committee” and lays out membership, terms, appointments, vacancies, meetings.
- **Section 9-2A-8 NMSA 1978:** replaces the word “regulations” with rules, provides language cleanup, and adds a new subsection requiring the development and implementation of requirements under the Families First Prevention Act.

Chapter 32A is amended to read:

- **Section 32A-1-4 NMSA 1978:**
 - Subsection L: expands the definition of guardian to include “a person authorized to care for the child by a parental power of attorney...”
 - new Subsection B: adds the definition of “nominating committee.”
 - Subsection Y: changes the name of “plan of care” to “plan of *safe* care” while also expanding that definition to include providing prenatal support to a pregnant person dealing with a substance use disorder.
- **Section 32A-3A- 13 NMSA 1978:** moves the agency responsible for CARA cases from CYFD to the Health Care Authority. Amends the list of appropriate agencies who can serve as supports and services in a plan of care, requiring home visitation programs and substance use disorder prevention and treatment providers while keeping the other supports permissive. Expands the deadline for developing guidelines from January 1, 2020 to July 1, 2026. Adds to the rules required to guide hospitals and others while also adding a new subsection listing what shall be implemented in a plan safe of care. Requires the Health Care Authority to provide an annual report to the legislative health and human services committee and the department of finance and administration.
- **Section 32A-3A-14 NMSA 1978:** when there is a failure to comply with a plan of care, language is added requiring the health care authority, a Medicaid managed care organization or care coordinator to notify CYFD, and CYFD shall conduct a family assessment. Additionally, language is added requiring the department to proceed with an

investigation if the department determines the services or programs are necessary to address the concerns of potential imminent harm to the child.

- **Section 32A-4-3 NMSA 1978:** adds the provision a written plan of care is for both a substance-exposed newborn but also a pregnant person who agrees to creating a plan of care. This section also adds the health care authority to whom shall be notified of a substance exposed newborn. Finally, the bill makes the HCA responsible for ensuring compliance with federal reporting requirements related to the plan of safe care.
- **Section 32A-4-4.1 NMSA 1978:** changes reporting and requirements for multi-level response.
- **Section 32A-4-21 NMSA 1978:** adds language about the Families First Act to neglect of abuse predisposition studies and reports.
- **Section 32A-4-33 NMSA 1978:** cleans up the language of Subsection B(6) regarding the Substitute Care Advisory Counsel.
- **Section 32A-8-2 NMSA 1978:** changes the language for the purpose of the Citizen Substitute Care Review Act by changing the target of objective monitoring from the children placed in custody to CYFD, while also including language regarding the need to meet federal requirements under the federal Child Abuse Prevention and Treatment Act.
- **New Section** providing definitions used in the Substitute Care Review Act.
- **Section 32A-8-4 NMSA 1978:** removes the Substitute Care Advisory Council (SCAC) from the Regulation and Licensing Department and placing it in the Administrative Office of the Courts, although the Council shall exercise its functions independently and is not under the control of the AOC.
 - In the rest of this section, the membership, reports, meetings, and all other workings of the SCAC are listed.
- **New Section** establishing the SCAC director qualifications and staff.
- **New Section** describing volunteer member participation.
- **New Section** establishing the SCAC Board and case review process.
- **New Section** establishing the SCAC's access to records.
- **New Section** establishing the SCAC's confidentiality of information.

SB 458 also creates a new section of the Children's Code, the Family First Act, that includes:

- **Section 10:** Short title.
- **Section 11:** definitions of "family first services" and families first strategic plan."
- **Section 12:** creates the Families First Strategic Plan, CYFD's duties, timeline, and implementation.
- **Section 13:** requires CYFD to promulgate and adopt rules necessary to carry out the Families First Act.

SB 458 has a temporary provision providing that on July 1, 2025:

- the functions, employees, money, appropriations, records, equipment and other property of the regulation and licensing department that pertains to the SCAC shall be transferred to the AOC;
- contractual obligations shall be deemed contractual obligations of the AOC;
- statutory reference to the SCAC or other functions are transferred from RLD to AOC and shall be deemed to be references to AOC.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

There is no appropriation listed in the bill, but SB 458 requires all the money and appropriations of the Substitute Care Advisory Council (SCAC) to be moved from the Regulation and Licensing Division to the Administrative Office of the Courts on July 1, 2025. The amount to be transferred is unknown at this time, as is the additional cost to AOC.

Regarding other changes proposed in the bill, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced commitment actions and appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Senate Bill 458 transfers the Substitute Care Advisory Council (SCAC) from the Regulation and Licensing Division to the Administrative Office of the Courts. The SCAC is established in the Citizen Substitute Care Review Act.

1. SB 458 amends the purpose of the Citizen Substitute Care Review Act, Section 32A-8-2, to say:

PURPOSE OF ACT.--The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring ~~of children placed in the custody~~ of the department by examining the policies, procedures and practices of the department and, where appropriate, specific cases to evaluate ~~[the extent to which the department is effectively]~~ its effectiveness in discharging its child protection responsibilities and to meet federal requirements for citizen review panels under the federal Child Abuse Prevention and Treatment Act.

These amendments clearly provide for “objective monitoring of the department [CYFD]...” Thus, the SCAC reviews and monitors CYFD, an Executive Branch agency. The Judiciary risks infringing on the separation of powers codified in the Constitution.

2. The bill provides language amending Section 32A-8-4 NMSA 1978 that states, “The council shall exercise its functions independently and not under the control of the administrative office of the courts”, (page 49, lines 20-22). Yet, new Section 19 requires the SCAC to “prepare a budgetary request to be submitted through the administrative office of the courts” (page 56, lines 8-9).
3. Currently, the SCAC is attached to RLD through the Executive Reorganization Act, specifically, Section 9-1-7 NMSA 1978 governs how an agency is “administratively attached” to another executive agency. The Judiciary does not have an equivalent.
 - a. The Judiciary has several quasi-independent entities, however, all of the entities are ultimately governed by the New Mexico Supreme Court and relate back to the Judiciary’s purpose in the administration of justice. The Supreme Court issues rules governing their purpose and operation. For example:

- [Rule Set 24: Rules Governing the New Mexico Bar](#)
- [Rule Set 28: Rules Governing Judicial Performance Evaluation Commission](#)
- [Rule Set JSC: Judicial Standards Commission Rules](#)

4. As an arm of the Supreme Court, the AOC directly represents and assists the Supreme Court and other New Mexico courts. Therefore, it is contrary to the separation of powers that an entity overseen by either the AOC or the Supreme Court monitor an agency of the Executive Branch, as required by the amendments to the Citizen Substitute Care Advisory Act in SB 458.

For the aforementioned reasons, the AOC is not the proper entity to house the Substitute Care Advisory Council.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict HB 173

Duplicate in part to HB 343 and SB 42

Duplicate in part to HB 500

Duplicates all sections HB 205

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS