

<b>LFC Requester:</b>	<b>Mercer-Garcia</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto: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:** 2/24/2025 *Check all that apply:*  
**Bill Number:** SB 489 Original  Correction   
 Amendment  Substitute

**Sponsor:** Linda M. Lopez **Agency Name and Code** AOC 218  
**Short Title:** Behavioral Health for Abused Children **Person Writing Analysis:** Stacey Boone  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected

<b>Total</b>						
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(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Potential conflict with Senate Memorial 6

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

The bill proposes to require children who have been adjudicated as abused or neglected and under the jurisdiction of the children’s court to undergo behavioral health treatment and services as ordered by the court.

**FISCAL IMPLICATIONS**

None identified

**SIGNIFICANT ISSUES**

1) In New Mexico, a child may be civilly committed for involuntary residential treatment pursuant to Section 32A-6A-22 NMSA 1978. Alternatively, “a child fourteen years of age or older is presumed to have the capacity to consent to treatment without the child’s legal guardian...” pursuant to Subsection A of Section 32A-6A-15 NMSA 1978. Senate Bill 489 attempts to carve out an exception to the consent requirement when a child is adjudicated as abused or neglected. Under SB 489, an adjudicated child could be required to participate in court-ordered behavioral health treatment if the court finds that the proposed services are in the best interest of the child.

- a) It could be argued that SB 489’s new Subsection D of Section 32A-6A-15 conflicts with the existing Subsection A of the same statute. Subsection A provides that “a child fourteen years of age or older is presumed to have the capacity to consent to treatment without the child’s legal guardian...” For children in CYFD custody (i.e. foster care), CYFD is the child’s legal guardian. Subsection D challenges Subsection A in that it provides that a court may order a child who has been adjudicated as abused or neglected into treatment the child does not consent to do.
- b) Furthermore, SB 489 does not clarify whether the services sought are inpatient or outpatient services. If inpatient services are being sought under Section 32A-6A-15 and the child is 14 years of age or older and does not consent, this could be considered an attempt at an involuntary civil commitment to a residential treatment center. In this instance, Section 32A-6A-15 could be considered in conflict with Section 32A-6A-22 (entitled Involuntary Residential Treatment).

2) In 2019, the Center for Adolescent Health & the Law published, *Adolescent & Young Adult Health Care in New Mexico A Guide to Understanding Consent & Confidentiality Laws* by Abigail English, JD, where it stated:

When adolescents are in foster care, special rules may determine who can give consent for their health care—their parents, the court, their social worker, or another

adult. In New Mexico, these rules vary depending on specific circumstances. For example, in certain situations, caregivers other than parents may be able to execute a “caregiver’s authorization affidavit” that allows them to secure medical care for the minor child.<sup>28</sup> However, foster children also should be able to consent for their own health care on the same basis as other youth.

[https://nahic.ucsf.edu/wp-content/uploads/2019/01/New-Mexico-AYAH-Confidentiality-Guide\\_FINAL.pdf](https://nahic.ucsf.edu/wp-content/uploads/2019/01/New-Mexico-AYAH-Confidentiality-Guide_FINAL.pdf)

SB 489 would treat adjudicated children in foster care differently than those who are not adjudicated nor in care of CYFD.

3) The bill is silent on the requirements for the court hearing. The proposal does not limit or specify the type, or duration of the court ordered behavioral health services and treatment. The proposal does not outline the process, mechanism or timeline to re-assess the child to determine if the ordered treatment remains the appropriate level of care based on clinical assessment and evaluation.

4) SB 489 does not require the court to consider or require the least restrictive means principle as identified in the Children's Code Section 32A-6A-4 (2024) that establishes the following:

- "least restrictive means principle" means the conditions of habilitation or treatment for the child, separately and in combination that:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child;

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

(3) are conducted at the suitable available facility closest to the child's place of residence

6) A child fourteen years or older is presumed to have the capacity to consent under the Children’s Code. Per the Children’s Code, “The determination that a child fourteen years of age or older lacks or has recovered capacity shall be made by two clinicians, one of whom shall be a person who works with children in the ordinary course of that clinician's practice”. This creates a disparity in the rights between a child fourteen years or older who is under court jurisdiction and a child who is not under the jurisdiction of the children’s court. SB 439 proposes to limit the rights of children who have been adjudicated “abused” or “neglected” without requiring the same process to determine their lack of capacity as outlined in the Children’s Code.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

See significant issues above

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**