

HOUSE BILL 486

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

INTRODUCED BY

Stefani Lord and Anita Gonzales

AN ACT

RELATING TO CHILDREN; REQUIRING CRIMINAL BACKGROUND CHECKS AND
SEX OFFENDER REGISTRY CHECKS BEFORE RETURNING A CHILD TO A
PERSON, INCLUDING A PARENT, LEGAL GUARDIAN OR CUSTODIAN, IF THE
CHILD IS IN THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES
DEPARTMENT BECAUSE OF ABUSE OR NEGLECT; REQUIRING CRIMINAL
BACKGROUND CHECKS AND SEX OFFENDER REGISTRY CHECKS BEFORE
PLACING A CHILD IN FOSTER CARE WITH A RELATIVE OF THE CHILD IF
THE CHILD IS IN THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES
DEPARTMENT BECAUSE OF ABUSE OR NEGLECT.

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

SECTION 1. Section 32A-4-6 NMSA 1978 (being Laws 1993,
Chapter 77, Section 100, as amended) is amended to read:

"32A-4-6. TAKING INTO CUSTODY--PENALTY.--

A. A child may be held or taken into custody:

.229763.1

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 (1) by a law enforcement officer when the
2 officer has evidence giving rise to reasonable grounds to
3 believe that the child is abused or neglected and that there is
4 an immediate threat to the child's safety; provided that the
5 law enforcement officer contacts the department to enable the
6 department to conduct an on-site safety assessment to determine
7 whether it is appropriate to take the child into immediate
8 custody, except that a child may be taken into custody by a law
9 enforcement officer without a protective services assessment
10 being conducted if:

11 (a) the child's parent, guardian or
12 custodian has attempted, conspired to cause or caused great
13 bodily harm to the child or great bodily harm or death to the
14 child's sibling;

15 (b) the child's parent, guardian or
16 custodian has attempted, conspired to cause or caused great
17 bodily harm or death to another parent, guardian or custodian
18 of the child;

19 (c) the child has been abandoned;

20 (d) the child is in need of emergency
21 medical care;

22 (e) the department is not available to
23 conduct a safety assessment in a timely manner; or

24 (f) the child is in imminent risk of
25 abuse; or

.229763.1

underscored material = new
[bracketed material] = delete

1 (2) by medical personnel when there are
2 reasonable grounds to believe that the child has been injured
3 as a result of abuse or neglect and that the child may be at
4 risk of further injury if returned to the child's parent,
5 guardian or custodian. The medical personnel shall hold the
6 child until a law enforcement officer is available to take
7 custody of the child pursuant to Paragraph (1) of this
8 subsection.

9 B. A child shall not be taken into protective
10 custody solely on the grounds that the child's parent, guardian
11 or custodian refuses to consent to the administration of a
12 psychotropic medication to the child.

13 C. When a child is taken into custody by law
14 enforcement, the department is not compelled to place the child
15 in an out-of-home placement and may release the child to the
16 child's parent, guardian or custodian; provided that if a child
17 that is taken into custody pursuant to Subsection A of this
18 section because of evidence that the child has been subjected
19 to abuse or neglect, before the child is released to a person,
20 including the child's parent, guardian or custodian, that
21 person shall submit to a criminal background check provided for
22 by the department, and the department shall conduct a search in
23 the department of public safety's central registry of sex
24 offenders or the Dru Sjodin national sex offender public
25 website regarding that person; and provided further that the

.229763.1

underscored material = new
[bracketed material] = delete

1 department shall determine the release of the child based on
2 the results of the background check and sex offender registry
3 check.

4 D. When a child is taken into custody, the
5 department shall make active efforts to determine whether the
6 child is an Indian child as required pursuant to the Indian
7 Family Protection Act.

8 E. Any person who intentionally interferes with
9 protection of a child, as provided by Subsection A of this
10 section, is guilty of a petty misdemeanor."

11 SECTION 2. Section 32A-4-7 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 101, as amended) is amended to read:

13 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

14 A. A person taking a child into custody shall, with
15 all reasonable speed:

16 (1) release the child to the child's parent,
17 guardian or custodian and issue verbal counsel or warning as
18 may be appropriate; or

19 (2) deliver the child to the department or, in
20 the case of a child who is believed to be suffering from a
21 serious physical or mental condition or illness that requires
22 prompt treatment or diagnosis, deliver the child to a medical
23 facility. If a law enforcement officer delivers a child to a
24 medical facility, the officer shall immediately notify the
25 department that the child has been placed in the department's

.229763.1

1 legal custody.

2 B. When an alleged neglected or abused child is
3 delivered to the department, a department caseworker shall
4 review the need for placing the child in custody and shall
5 release the child from custody unless custody is appropriate or
6 has been ordered by the court. When a child is delivered to a
7 medical facility, a department caseworker shall review the need
8 for retention of custody within a reasonable time after
9 delivery of the child to the facility and shall release the
10 child from custody unless custody is appropriate or has been
11 ordered by the court.

12 C. If a child is placed in the legal custody of the
13 department and is not released to the child's parent, guardian
14 or custodian, the department shall give written notice thereof
15 as soon as possible, and in no case later than twenty-four
16 hours, to the child's parent, guardian or custodian together
17 with a statement of the reason for taking the child into
18 custody.

19 D. Reasonable efforts shall be made to prevent or
20 eliminate the need for removing the child from the child's
21 home, with the paramount concern being the child's health and
22 safety. In all cases when a child is taken into custody, the
23 child shall be released to the child's parent, guardian or
24 custodian, unless the department files a petition within three
25 days from the date that the child was taken into custody.

.229763.1

underscoring material = new
~~[bracketed material]~~ = delete

1 E. The department may release the child at any time
2 within the three-day period after the child was taken into
3 custody:

4 (1) if it is determined by the department that
5 release is appropriate; provided that if a child in the custody
6 of the department was taken into custody pursuant to Subsection
7 B of this section, before releasing the child to a person,
8 including the child's parent, legal guardian or custodian, that
9 person shall submit to a criminal background check provided by
10 the department, and the department shall conduct a search of
11 the department of public safety's central registry of sex
12 offenders or the Dru Sjodin national sex offender public
13 website regarding that person; and provided further that the
14 department shall determine the release of the child based on
15 the results of the background check and the sex offender
16 registry check; or

17 (2) if release has been ordered by the court.

18 F. If a child that has been taken into custody and
19 released to the child's parent, guardian or custodian is taken
20 into custody again within one year of having been taken into
21 custody, the child shall not be released from custody until a
22 department review is conducted, in consultation with the
23 children's court managing attorney, to review the child's case
24 and documents and determine whether the child should be
25 released to the child's parent, guardian or custodian or if it

.229763.1

underscored material = new
[bracketed material] = delete

1 is in the best interest of the child to file a petition
2 alleging neglect or abuse. The department's review shall be
3 conducted by a person above the level of supervisor who has
4 been authorized by the secretary of children, youth and
5 families to review such cases. If the secretary has not
6 authorized anyone to review such cases, the department's review
7 shall be conducted by the director of the protective services
8 division of the department. The three-day deadline for filing
9 the petition pursuant to Subsections D and E of this section is
10 extended to five days when the child's case is reviewed
11 pursuant to this subsection."

12 SECTION 3. Section 32A-4-8 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 102, as amended) is amended to read:

14 "32A-4-8. PLACE OF TEMPORARY CUSTODY.--

15 A. Unless a child alleged to be neglected or abused
16 is also alleged or adjudicated delinquent:

17 (1) the child shall not be held in a jail or
18 other facility intended or used for the incarceration of adults
19 charged with criminal offenses or for the detention of children
20 alleged to be delinquent children; and

21 (2) there shall be a preference that the child
22 be placed in the home of a relative of the child when a
23 relative is available to provide foster care; provided that:

24 (a) before the child is released to a
25 person, including a relative of the child, that person shall

.229763.1

1 submit to a criminal background check provided by the
2 department, and the department shall conduct a search of the
3 department of public safety's central registry of sex offenders
4 or the Dru Sjodin national sex offender public website
5 regarding that person; and provided further that the department
6 shall determine the release of the child based on the results
7 of the background check and the sex offender registry check;

8 [~~(a)~~] (b) placement with a relative is
9 in the best interest of the child;

10 [~~(b)~~] (c) the relative signs a sworn
11 statement that the relative will not return the child to or
12 allow unsupervised visits with the parent, guardian or
13 custodian who is alleged to have committed the abuse or
14 neglect, unless otherwise directed by the department or the
15 court; and

16 [~~(e)~~] (d) within three days of accepting
17 custody of the child, the relative completes an application
18 form for licensure to operate a foster home pursuant to the
19 Children's Code.

20 B. The department shall make reasonable efforts to
21 locate a relative of the child to provide foster care. If a
22 relative is not available to provide foster care, the child may
23 be placed in:

24 (1) a licensed foster home or any home
25 authorized under the law for the provision of foster care or

.229763.1

underscoring material = new
~~[bracketed material] = delete~~

1 group care or use as a protective residence;

2 (2) a facility operated by a licensed child
3 welfare services agency; or

4 (3) a facility provided for in the Children's
5 Shelter Care Act."

6 - 9 -

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25