

1 SENATE BILL 441

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Antoinette Sedillo Lopez and Angel M. Charley and Cindy Nava

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10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; REQUIRING CHILD ABUSE AND
12 DOMESTIC VIOLENCE ABUSE TRAINING FOR JUDGES AND COURT
13 PERSONNEL; BROADENING THE STANDARDS FOR THE DETERMINATION OF
14 CHILD CUSTODY TO INCLUDE EVIDENCE OF CHILD ABUSE OR DOMESTIC
15 ABUSE; PROHIBITING COURTS FROM ORDERING REUNIFICATION TREATMENT
16 IN CASES WHERE CUSTODY OR PARENTING PLANS ARE CONTESTED AND
17 THERE IS EVIDENCE OF CHILD ABUSE OR DOMESTIC ABUSE; PROHIBITING
18 COURTS FROM ORDERING A PROFESSIONAL EVALUATION IN CASES WHERE
19 CUSTODY OR PARENTING PLANS ARE CONTESTED AND THERE IS EVIDENCE
20 OF CHILD ABUSE OR DOMESTIC ABUSE, UNLESS THE PERSON CONDUCTING
21 THE PROFESSIONAL EVALUATION POSSESSES CERTAIN QUALIFICATIONS
22 AND EXPERIENCE.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. A new section of Chapter 40 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] FAMILY VIOLENCE TRAINING FOR JUDGES AND
3 COURT PERSONNEL.--

4 A. Beginning January 1 2026, and at least annually
5 thereafter, the administrative office of the courts shall
6 provide evidence-based ongoing training to judges and court
7 personnel on domestic abuse.

8 B. For purposes of this section, "domestic abuse"
9 means an incident by a household member against another
10 household member resulting in:

- 11 (1) physical harm;
- 12 (2) severe emotional distress;
- 13 (3) a threat causing imminent fear of physical
14 harm by any household member;
- 15 (4) criminal trespass;
- 16 (5) criminal damage to property;
- 17 (6) stalking or aggravated stalking, as
18 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or
19 (7) harassment, as provided in Section 30-3A-2
20 NMSA 1978."

21 SECTION 2. Section 40-4-9 NMSA 1978 (being Laws 1977,
22 Chapter 172, Section 1) is amended to read:

23 "40-4-9. STANDARDS FOR THE DETERMINATION OF CHILD
24 CUSTODY--HEARING.--

25 A. In any case in which a judgment or decree will
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1 be entered awarding the custody of a minor, the district court
2 shall, if the minor is under the age of fourteen, determine
3 custody in accordance with the best interests of the child.
4 The court shall consider all relevant factors, including but
5 not limited to:

6 (1) the wishes of the child's parent or
7 parents as to [~~his~~] the child's custody;

8 (2) the wishes of the child as to [~~his~~] the
9 child's custodian;

10 (3) the interaction and interrelationship of
11 the child with [~~his~~] the child's parents [~~his~~] and siblings and
12 any other person who may significantly affect the child's best
13 interest;

14 (4) the child's adjustment to [~~his~~] the
15 child's home, school and community; [~~and~~]

16 (5) the mental and physical health of all
17 individuals involved; and

18 (6) evidence of child abuse or domestic abuse,
19 including protection orders, arrests or convictions.

20 B. If the minor is fourteen years of age or older,
21 the court shall consider the desires of the minor as to with
22 whom [~~he~~] the minor wishes to live before awarding custody of
23 [~~such~~] the minor.

24 C. Whenever testimony is taken from the minor
25 concerning [~~his~~] the minor's choice of custodian, the [~~court~~]

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1 judge shall hold a private hearing in [~~his~~] the judge's
2 chambers. The judge shall have a court reporter in [~~his~~] the
3 judge's chambers who shall transcribe the hearing; however, the
4 court reporter shall not file a transcript unless an appeal is
5 taken.

6 D. For purposes of this section:

7 (1) "child abuse" means:

8 (a) that a child has been physically,
9 emotionally or psychologically abused by a parent;

10 (b) that a child has been: 1) sexually
11 abused by a parent through criminal sexual penetration, incest
12 or criminal sexual contact of a minor as those acts are defined
13 by state law; or 2) sexually exploited by a parent through
14 allowing, permitting or encouraging the child to engage in
15 prostitution and allowing, permitting, encouraging or engaging
16 the child in obscene or pornographic photographing or filming
17 or depicting a child for commercial purposes as those acts are
18 defined by state law;

19 (c) that a child has been knowingly,
20 intentionally or negligently placed in a situation that may
21 endanger the child's life or health; or

22 (d) that a child has been knowingly or
23 intentionally tortured, cruelly confined or cruelly punished;
24 provided that nothing in this subparagraph shall be construed
25 to imply that a child who is or has been provided with

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1 treatment by spiritual means alone through prayer, in
2 accordance with the tenets and practices of a recognized church
3 or religious denomination, by a duly accredited practitioner of
4 the church or denomination, is for that reason alone a victim
5 of child abuse within the meaning of this subparagraph; and

6 (2) "domestic abuse" means an incident by a
7 household member against another household member resulting in:

- 8 (a) physical harm;
9 (b) severe emotional distress;
10 (c) a threat causing imminent fear of
11 physical harm by any household member;
12 (d) criminal trespass;
13 (e) criminal damage to property;
14 (f) stalking or aggravated stalking, as
15 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or
16 (g) harassment, as provided in Section
17 30-3A-2 NMSA 1978."

18 SECTION 3. Section 40-4-9.1 NMSA 1978 (being Laws 1986,
19 Chapter 41, Section 1, as amended) is amended to read:

20 "40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION--
21 PARENTING PLAN.--

22 A. There shall be a presumption that joint custody
23 is in the best interests of a child in an initial custody
24 determination. An award of joint custody does not imply an
25 equal division of financial responsibility for the child.

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1 Joint custody shall not be awarded as a substitute for an
2 existing custody arrangement unless there has been a
3 substantial and material change in circumstances since the
4 entry of the prior custody order or decree, which change
5 affects the welfare of the child such that joint custody is
6 presently in the best interests of the child. With respect to
7 any proceeding in which it is proposed that joint custody be
8 terminated, the court shall not terminate joint custody unless
9 there has been a substantial and material change in
10 circumstances affecting the welfare of the child, since entry
11 of the joint custody order, such that joint custody is no
12 longer in the best interests of the child.

13 B. In determining whether a joint custody order is
14 in the best interests of the child, in addition to the factors
15 provided in Section 40-4-9 NMSA 1978, the court shall consider
16 the following factors:

17 (1) whether the child has established a close
18 relationship with each parent;

19 (2) whether each parent is capable of
20 providing adequate care for the child throughout each period of
21 responsibility, including arranging for the child's care by
22 others as needed;

23 (3) whether each parent is willing to accept
24 all responsibilities of parenting, including a willingness to
25 accept care of the child at specified times and to relinquish

1 care to the other parent at specified times;

2 (4) whether the child can best maintain and
3 strengthen a relationship with both parents through
4 predictable, frequent contact and whether the child's
5 development will profit from such involvement and influence
6 from both parents;

7 (5) whether each parent is able to allow the
8 other to provide care without intrusion, that is, to respect
9 the other's parental rights and responsibilities and right to
10 privacy;

11 (6) the suitability of a parenting plan for
12 the implementation of joint custody, preferably, although not
13 necessarily, one arrived at through parental agreement;

14 (7) geographic distance between the parents'
15 residences;

16 (8) willingness or ability of the parents to
17 communicate, cooperate or agree on issues regarding the child's
18 needs; and

19 (9) whether a judicial adjudication has been
20 made in a prior or the present proceeding that either parent or
21 other person seeking custody has engaged in one or more acts of
22 domestic abuse against the child, a parent of the child or
23 other household member. If a determination is made that
24 domestic abuse has occurred, the court shall set forth findings
25 that the custody or visitation ordered by the court adequately

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1 protects the child, the abused parent or other household
2 member.

3 C. In any proceeding in which the custody of a
4 child is at issue, the court shall not prefer one parent as a
5 custodian solely because of gender.

6 D. In any case in which the parents agree to a form
7 of custody, the court should award custody consistent with the
8 agreement unless the court determines that such agreement is
9 not in the best interests of the child.

10 E. In making an order of joint custody, the court
11 may specify the circumstances, if any, under which the consent
12 of both legal custodians is required to be obtained in order to
13 exercise legal control of the child and the consequences of the
14 failure to obtain mutual consent.

15 F. When joint custody is awarded, the court shall
16 approve a parenting plan for the implementation of the
17 prospective custody arrangement prior to the award of joint
18 custody. The parenting plan shall include a division of a
19 child's time and care into periods of responsibility for each
20 parent. It may also include:

21 (1) statements regarding the child's religion,
22 education, child care, recreational activities and medical and
23 dental care;

24 (2) designation of specific decision-making
25 responsibilities;

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1 (3) methods of communicating information about
2 the child, transporting the child, exchanging care for the
3 child and maintaining telephone and mail contact between parent
4 and child;

5 (4) procedures for future decision-making,
6 including procedures for dispute resolution; and

7 (5) other statements regarding the welfare of
8 the child or designed to clarify and facilitate parenting under
9 joint custody arrangements.

10 G. In a case where joint custody is not agreed to
11 or necessary aspects of the parenting plan are contested, the
12 parties shall each submit parenting plans. The court may
13 accept the plan proposed by either party or it may combine or
14 revise these plans as it deems necessary in the child's best
15 interests. The time of filing of parenting plans shall be set
16 by local rule. A plan adopted by the court shall be entered as
17 an order of the court.

18 [~~G.~~] H. Where custody is contested, the court shall
19 refer that issue to mediation if feasible. The court may also
20 use auxiliary services such as professional evaluation by
21 application of Rule 706 of the New Mexico Rules of Evidence or
22 Rule 53 of the Rules of Civil Procedure for the District
23 Courts. However, in a case where there is evidence of child
24 abuse or domestic abuse, a person shall not perform an
25 evaluation or testify as an expert witness regarding an

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1 evaluation performed pursuant to this section unless the court
2 finds that the person is qualified as competent, by training
3 and experience, in the areas of the effects of domestic abuse
4 on children, adults and families, including the connection
5 between domestic abuse and trauma on children. The person's
6 training and experience shall be provided by recognized sources
7 with expertise in child abuse or domestic abuse and the
8 traumatic effects of domestic abuse.

9 I. In a case where child custody or necessary
10 aspects of a parenting plan are contested, in which a claim of
11 domestic abuse has been made to the court, or the court has
12 reason to believe that a party has committed domestic abuse,
13 the court shall not order reunification treatment unless there
14 is generally accepted and scientifically valid proof of the
15 safety, effectiveness and therapeutic value of the
16 reunification treatment.

17 [~~H.~~] J. Notwithstanding any other provisions of
18 law, access to records and information pertaining to a minor
19 child, including medical, dental and school records, shall not
20 be denied to a parent because that parent is not the child's
21 physical custodial parent or because that parent is not a joint
22 custodial parent.

23 [~~H.~~] K. Whenever a request for joint custody is
24 granted or denied, the court shall state in its decision its
25 basis for granting or denying the request for joint custody. A

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1 statement that joint custody is or is not in the best interests
2 of the child is not sufficient to meet the requirements of this
3 subsection.

4 [~~J~~] L. An award of joint custody means that:

5 (1) each parent shall have significant, well-
6 defined periods of responsibility for the child;

7 (2) each parent shall have, and be allowed and
8 expected to carry out, responsibility for the child's
9 financial, physical, emotional and developmental needs during
10 that parent's periods of responsibility;

11 (3) the parents shall consult with each other
12 on major decisions involving the child before implementing
13 those decisions; that is, neither parent shall make a decision
14 or take an action [~~which~~] that results in a major change in a
15 child's life until the matter has been discussed with the other
16 parent and the parents agree. If the parents, after
17 discussion, cannot agree and if one parent wishes to effect a
18 major change while the other does not wish the major change to
19 occur, then no change shall occur until the issue has been
20 resolved as provided in this subsection;

21 (4) the following guidelines apply to major
22 changes in a child's life:

23 (a) if either parent plans to change
24 [~~his~~] the parent's home city or state of residence, [~~he~~] that
25 parent shall provide to the other parent thirty days' notice in

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1 writing stating the date and destination of move;

2 (b) the religious denomination and
3 religious activities, or lack thereof, ~~[which]~~ that were being
4 practiced during the marriage should not be changed unless the
5 parties agree or it has been otherwise resolved as provided in
6 this subsection;

7 (c) both parents shall have access to
8 school records, teachers and activities. The type of
9 education, public or private, ~~[which]~~ that was in place during
10 the marriage should continue, whenever possible, and school
11 districts should not be changed unless the parties agree or it
12 has been otherwise resolved as provided in this subsection;

13 (d) both parents shall have access to
14 medical and dental treatment providers and records. Each
15 parent has authority to make emergency medical decisions.
16 Neither parent may contract for major elective medical or
17 dental treatment unless both parents agree or it has been
18 otherwise resolved as provided in this subsection; and

19 (e) both parents may attend the child's
20 public activities and both parents should know the necessary
21 schedules. Whatever recreational activities the child
22 participated in during the marriage should continue with the
23 child's agreement, regardless of which of the parents has
24 physical custody. Also, neither parent may enroll the child in
25 a new recreational activity unless the parties agree or it has

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1 been otherwise resolved as provided in this subsection; and

2 (5) decisions regarding major changes in a
3 child's life may be decided by:

4 (a) agreement between the joint
5 custodial parents;

6 (b) requiring that the parents seek
7 family counseling, conciliation or mediation service to assist
8 in resolving their differences;

9 (c) agreement by the parents to submit
10 the dispute to binding arbitration;

11 (d) allocating ultimate responsibility
12 for a particular major decision area to one legal custodian;

13 (e) terminating joint custody and
14 awarding sole custody to one person;

15 (f) reference to a master pursuant to
16 Rule 53 of the Rules of Civil Procedure for the District
17 Courts; or

18 (g) the district court.

19 ~~[K.]~~ M. When ~~[any]~~ a person other than a natural or
20 adoptive parent seeks custody of a child, no such person shall
21 be awarded custody absent a showing of unfitness of the natural
22 or adoptive parent.

23 ~~[E.]~~ N. As used in this section:

24 (1) "child" means a person under the age of
25 eighteen;

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1 (2) "child abuse" means:

2 (a) that a child has been physically,
3 emotionally or psychologically abused by a parent;

4 (b) that a child has been: 1) sexually
5 abused by a parent through criminal sexual penetration, incest
6 or criminal sexual contact of a minor as those acts are defined
7 by state law; or 2) sexually exploited by a parent through
8 allowing, permitting or encouraging the child to engage in
9 prostitution and allowing, permitting, encouraging or engaging
10 the child in obscene or pornographic photographing or filming
11 or depicting a child for commercial purposes as those acts are
12 defined by state law;

13 (c) that a child has been knowingly,
14 intentionally or negligently placed in a situation that may
15 endanger the child's life or health; or

16 (d) that a child has been knowingly or
17 intentionally tortured, cruelly confined or cruelly punished;
18 provided that nothing in this subparagraph shall be construed
19 to imply that a child who is or has been provided with
20 treatment by spiritual means alone through prayer, in
21 accordance with the tenets and practices of a recognized church
22 or religious denomination, by a duly accredited practitioner of
23 the church or denomination, is for that reason alone a victim
24 of child abuse within the meaning of this subparagraph;

25 [+2] (3) "custody" means the authority and

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1 responsibility to make major decisions in a child's best
2 interests in the areas of residence, medical and dental
3 treatment, education or child care, religion and recreation;

4 ~~[(3)]~~ (4) "domestic abuse" means any incident
5 by a household member against another household member
6 resulting in:

- 7 (a) physical harm;
- 8 (b) severe emotional distress;
- 9 (c) a threat causing imminent fear of
10 physical harm by any household member;
- 11 (d) criminal trespass;
- 12 (e) criminal damage to property;
- 13 (f) stalking or aggravated stalking, as
14 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or
- 15 (g) harassment, as provided in Section
16 30-3A-2 NMSA 1978;

17 ~~[(4)]~~ (5) "joint custody" means an order of
18 the court awarding custody of a child to two parents. Joint
19 custody does not imply an equal division of the child's time
20 between the parents or an equal division of financial
21 responsibility for the child;

22 ~~[(5)]~~ (6) "parent" means a natural parent,
23 adoptive parent or person who is acting as a parent who has or
24 shares legal custody of a child or who claims a right to have
25 or share legal custody;

1 [~~6~~] (7) "parenting plan" means a document
2 submitted for approval of the court setting forth the
3 responsibilities of each parent individually and the parents
4 jointly in a joint custody arrangement;

5 [~~7~~] (8) "period of responsibility" means a
6 specified period of time during which a parent is responsible
7 for providing for a child's physical, developmental and
8 emotional needs, including the decision-making required in
9 daily living. Specified periods of responsibility shall not be
10 changed in an instance or more permanently except by the
11 methods of decision-making described under Subsection [~~E~~] J of
12 this section;

13 (9) "reunification treatment" means a
14 treatment or therapy aimed at reuniting or reestablishing a
15 relationship between a child and an estranged or rejected
16 parent or other family member of the child;

17 [~~8~~] (10) "sole custody" means an order of
18 the court awarding custody of a child to one parent; and

19 [~~9~~] (11) "visitation" means a period of time
20 available to a noncustodial parent, under a sole custody
21 arrangement, during which a child resides with or is under the
22 care and control of the noncustodial parent."