SENATE BILL 97

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING AND CHANGING THE NAME OF
THE FAMILY SERVICES ACT; AMENDING THE KINSHIP GUARDIANSHIP ACT;
PROVIDING FOR VOLUNTARY PLACEMENT OF CHILDREN; PROVIDING FOR
FINANCIAL SUBSIDIES; AMENDING, REPEALING AND ENACTING SECTIONS

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

SECTION 1. Section 22-12A-14 NMSA 1978 (being Laws 2019,
Chapter 223, Section 14, as amended) is amended to read:

"22-12A-14. TIMELY GRADUATION AND SUPPORT FOR STUDENTS
WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has
experienced a disruption in the student's education" means a
student who experiences one or more changes in public school or
school district enrollment during a single school year as the
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result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Voluntary Placement and Family Services Act; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving public school or school district shall communicate with the sending public school or school district within two days of the student's enrollment. The sending public school or school district shall provide the receiving public school or school district with any requested records within two days of having received the receiving public
school's or school district's communication.

C. A student who has experienced a disruption in the student's education because of transferring to a new public school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous public school or schools as soon as the public school or school district receives verification from the student's records.

D. For a student who has experienced a disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career.
readiness; and

(4) that the student receives all special
education services to which the student is entitled.

E. A student who has experienced a disruption in
the student's education and has transferred between public
schools in different school districts or between public schools
within the same school district shall receive credit for any
work completed prior to the transfer, regardless of whether the
transfer occurred at the end of a grading period. The
department shall promulgate and adopt a rule to determine how
credit shall be awarded for courses that are partially
completed, and school districts shall follow the department
rule."

SECTION 2. Section 32A-1-4 NMSA 1978 (being Laws 1993,
Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means a person who is eighteen years of
age or older;

B. "child" means a person who is less than eighteen
years old;

C. "council" means the substitute care advisory
council established pursuant to Section 32A-8-4 NMSA 1978;

D. "court", when used without further
qualification, means the children's court division of the
district court and includes the judge, special master or
commissioner appointed pursuant to the provisions of the
Children's Code or supreme court rule;

E. "court-appointed special advocate" means a
person appointed pursuant to the provisions of the Children's
Court Rules to assist the court in determining the best
interests of the child by investigating the case and submitting
a report to the court;

F. "custodian" means an adult with whom the child
lives who is not a parent or guardian of the child;

G. "department" means the children, youth and
families department, unless otherwise specified;

H. "disproportionate minority contact" means the
involvement of a racial or ethnic group with the criminal or
juvenile justice system at a proportion either higher or lower
than that group's proportion in the general population;

I. "fictive kin" means a non-relative who has a
significant and family-like relationship with a child or a
child's family that existed prior to the child entering foster
care or a non-relative who is the current foster parent of a
child in the legal custody of the department if the child has
been placed in the home for at least one year and has
established a significant and family-like relationship with the
foster parent and the foster parent has been identified by the
department as the child's permanent connection. "Fictive kin"
may also be a person chosen by a child fourteen years of age or
older, without regard to when the relationship was established
or for how long, or a person defined according to tribal or
pueblo law, custom or tradition;

[J] "foster parent" means a person, including a
relative of the child, licensed or certified by the department
or a child placement agency to provide care for children in the
custody of the department or agency;

[K] "guardian" means a person appointed as a
guardian by a court or Indian tribal authority [or a person
authorized to care for the child by a parental power of
attorney as permitted by law];

[L] "guardian ad litem" means an attorney
appointed by the children's court to represent and protect the
best interests of the child in a case; provided that no party
or employee or representative of a party to the case shall be
appointed to serve as a guardian ad litem;

[M] "Indian child" means an unmarried person
who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible
for membership in an Indian tribe; and

(3) the biological child of a member of an
Indian tribe;

[N] "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child
is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

[N. O.] "Indian tribe" means a federally recognized Indian tribe, community or group pursuant to 25 U.S.C. Section 1903(1);

[O. P.] "judge", when used without further qualification, means the judge of the court;

[O. Q.] "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

[Q. R.] "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a
constitutionally protected liberty interest in the care and custody of the child;

[R.] S. "permanency plan" means a determination by the court that the child's interest will be served best by:

1. reunification;
2. placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;
3. placement with a person who will be the child's permanent guardian;
4. placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or
5. placement in the legal custody of the department under a planned permanent living arrangement;

[S.] T. "person" means an individual or any other form of entity recognized by law;

[T.] U. "plan of care" means a plan created by a health care professional intended to ensure the safety and well-being of a substance-exposed newborn by addressing the treatment needs of the child and any of the child's parents, relatives, guardians, family members or caregivers to the extent those treatment needs are relevant to the safety of the child;

[U.] V. "preadoptive parent" means a person with
whom a child has been placed for adoption;

   [\textit{V.}] W. "protective supervision" means the right to
visit the child in the home where the child is residing, 
inspect the home, transport the child to court-ordered

diagnostic examinations and evaluations and obtain information
and records concerning the child;

   [\textit{W.}] X. "relative" means a person related to
another person by blood within the fifth degree of
consanguinity or through marriage by the fifth degree of
affinity;

   [\textit{X.}] Y. "reunification" means either a return of
the child to the parent or to the home from which the child was
removed or a return to the noncustodial parent;

   [\textit{Y.}] Z. "tribal court" means:

   (1) a court established and operated pursuant 
to a code or custom of an Indian tribe; or

   (2) any administrative body of an Indian tribe
that is vested with judicial authority;

   [\textit{Z.}] AA. "tribal court order" means a document
issued by a tribal court that is signed by an appropriate
authority, including a judge, governor or tribal council
member, and that orders an action that is within the tribal
court's jurisdiction; and

   [\textit{AA.}] BB. "tribunal" means any judicial forum other
than the court."
SECTION 3. Section 32A-1-14 NMSA 1978 (being Laws 1993,
Chapter 77, Section 23, as amended) is amended to read:

"32A-1-14. NOTICE TO INDIAN TRIBES.--

[A. In a case involving a family in need of court-
ordered services, if the child is an Indian child, the Indian
echild's tribe shall be notified when the petition is filed.
The form of the notice shall comply with the provisions of the

B. In abuse, neglect or adoption proceedings, if
the child is an Indian child, the Indian child's tribe shall be
notified. The form of the notice shall comply with the

C. In a delinquency proceeding, if the child is an
Indian child, the Indian child's tribe shall be notified of the
filing of the petition via certified mail.] In a case involving
an Indian child or where there is reason to know that a child
is an Indian child, the Indian child's tribe shall be notified
in proceedings initiated pursuant to the provisions of the
Voluntary Placement and Family Services Act, Family in Need of
Court-Ordered Services Act, Abuse and Neglect Act and Adoption
Act. The form of the notice shall comply with the provisions
of the federal Indian Child Welfare Act of 1978. In a
proceeding pursuant to Article 2 of the Children's Code, if the
child is an Indian child, the Indian child's tribe shall be
notified in accordance with that article."

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- 10 -
SECTION 4. Section 32A-3A-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 63, as amended) is amended to read:

"32A-3A-1. SHORT TITLE--PURPOSE.--

A. Chapter 32A, Article 3A NMSA 1978 may be cited as the "Voluntary Placement and Family Services Act".

B. The Voluntary Placement and Family Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:

(1) to recognize that many instances of a child's behavior are symptomatic of a family in need of family services; [and]

(2) to provide prevention, diversion and intervention services for a child or family; and

(3) to provide for voluntary placement of a child with the department."

SECTION 5. Section 32A-3A-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 64, as amended) is amended to read:

"32A-3A-2. DEFINITIONS.--As used in the Voluntary Placement and Family Services Act:

A. "child or family in need of family services" means a family:

(1) whose child's behavior endangers the child's health, safety, education or well-being;

(2) whose child is excessively absent from public school as defined in the Attendance for Success Act;
(3) whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;

(4) in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or

(5) in which the child refuses to live with the child's parent, guardian or custodian; [and]

B. "designated tribal agent" means the agent, agency or entity designated by an Indian tribe to receive notices of child custody proceedings subject to the federal Indian Child Welfare Act of 1978;

C. "family services" means services that address specific needs of the child or family;

D. "guardian" means a person appointed as a guardian by a court or Indian tribal authority;

E. "guardianship assistance agreement" means a written agreement entered into by the prospective kinship guardian and the department or Indian tribe prior to the establishment of the guardianship by a court;

F. "guardianship assistance payments" means payments made by the department to a kinship guardian or successor guardian on behalf of a child pursuant to the terms of a guardianship assistance agreement;

G. "guardianship assistance program" means the
financial subsidy program provided for in the Voluntary Placement and Family Services Act;

H. "Indian custodian" means an Indian person who has legal custody of an Indian child pursuant to tribal law or custom or pursuant to state law or to whom temporary physical care, custody and control has been transferred by the parent of such child;

I. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond; and

J. "voluntary placement agreement" means a written agreement between the department or Indian tribe that has entered into a joint powers agreement and the parent, guardian or Indian custodian of a child."

SECTION 6. Section 32A-3A-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 68) is amended to read:

"32A-3A-6. VOLUNTARY PLACEMENT [OF CHILD OUTSIDE HOME--DOCUMENTATION]--VOLUNTARY PLACEMENT AGREEMENT."

A. [Upon written application by] A parent, guardian or Indian custodian and, if good cause is shown, the department may accept legal custody of a minor child for temporary voluntary placement outside the home.

[B. Prior to accepting any child for voluntary placement, the department shall document the following:

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the efforts made by the department to provide or arrange for services by other public or private agencies that would be affordable to the family and that would alleviate the conditions leading to the placement request;

(2) any determination that the services are not available;

(3) any refusal by the parent, guardian or custodian to accept the services; and

(4) the fact that conditions leading to the placement request could not be alleviated by services aimed at keeping the child in the home.

C. If the department accepts custody of a child, the department shall provide the child with shelter in an appropriate facility, pursuant to the provisions of Section 32-3B-6 NMSA 1978, that is located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children.

B. Prior to signing a voluntary placement agreement, and through the duration of the voluntary placement agreement, legal counsel shall be provided to the parent, guardian or Indian custodian. Counsel shall explain to the parent, guardian or Indian custodian in detail the terms and
consequences of the consent to the voluntary placement agreement and that the parent, guardian or Indian custodian can withdraw consent at any time and the child shall be returned within seventy-two hours of when the written or verbal demand was made, but before the expiration of the seventy-two hours, the department may prevent the immediate return of the child by filing a petition alleging neglect or abuse and by obtaining a court order granting the department temporary custody of the child."

SECTION 7. Section 32A-3A-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 69, as amended) is amended to read:

"32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

[A. No child shall remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court after the filing of a petition by the department for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.]

A. A child may remain in voluntary placement for up to one hundred eighty consecutive days.

B. Prior to the expiration of the voluntary placement agreement, if the parent or guardian agrees in
writing that the child is to remain in voluntary placement for up to an additional one hundred eighty days, the department shall file a petition to extend the voluntary placement. The department shall provide notice of the hearing on the petition for extension to the parent or guardian.

C. The court shall hold a hearing and enter a written final order within thirty days of the filing of the petition. If the court grants an extension of up to one hundred eighty days, the order shall contain findings that proper notice was given, the parent or guardian consents to the extension of the voluntary placement and the voluntary placement agreement is in the child's best interest. If an extension is denied, the court shall enter a written order denying the extension and directing the department to immediately return the child to the parent or guardian.

D. In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

E. Any placement described in this section shall not be considered abandonment by a parent, guardian or custodian [or other family member]."

SECTION 8. Section 32A-3A-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 70, as amended) is amended to read:

"32A-3A-8. [DUTY TO FILE A PETITION] VOLUNTARY PLACEMENT--DEPARTMENT DUTY UPON PARENT REFUSAL TO REGAIN
CUSTODY.--If any child has remained in voluntary placement for longer than three hundred sixty-five days in any two-year period and the parent, guardian or Indian custodian of the child refuses to or cannot accept the child back into the parent's, guardian's or Indian custodian's custody, the department shall immediately file a petition alleging that the child is a neglected child or that the child's family needs court-ordered family services."

SECTION 9. Section 32A-3A-9 NMSA 1978 (being Laws 1993, Chapter 77, Section 71) is amended to read:

"32A-3A-9. [RIGHT TO REGAIN CUSTODY] VOLUNTARY PLACEMENT--RETURN OF CHILD TO PARENT.--At any time, a parent, guardian or Indian custodian may [at any time] demand and obtain the return of a child voluntarily placed outside the home without seeking or obtaining court approval. The child shall be returned within seventy-two hours of [the demand; however] when the written or verbal demand was made. However, before the expiration of seventy-two hours, the department may prevent the immediate return of the child by [requesting the children's court attorney to file] filing a petition alleging neglect or abuse and by obtaining a court order granting the department temporary custody of the child [before the expiration of the seventy-two hours]."

SECTION 10. Section 32A-3A-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 72) is amended to read:
"32A-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--Any parent, guardian or Indian custodian whose child is in voluntary placement shall have the following rights with respect to the child:

A. the right of reasonable visitation with the child;

B. the right to be informed of changes in the child's school or of changes in the child's placement by the department; [and

C. the right of decision as to all nonemergency and nonroutine medical care provided for the child]

C. the right to serve as the educational decision maker unless the department determines that doing so would be contrary to the best interests of the child, in which case the foster parent or other substitute care provider will serve as the educational decision maker;

D. the right to authorize decisions regarding medical and dental care and behavioral health services, including decisions that affect the daily care and support and safety and well-being of the child, subject to the provisions of Subsection A of Section 24-7A-6.2 NMSA 1978 and Sections 24-1-9, 24-1-13.1, 24-8-5, 32A-6A-14, 32A-6A-15 and 32A-6A-16 NMSA 1978; and

E. the right to make decisions regarding participation and attendance in traditional, cultural and .218795.3
religious events, including traditional and cultural events offered by the Indian child's tribe."

SECTION 11. Section 32A-3A-15 NMSA 1978 (being Laws 2019, Chapter 247, Section 14) is amended to read:

"32A-3A-15. MEDICAL CANNABIS PROGRAM--REMOVAL OF CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--MEDICAL CARE.--

A. An individual's participation in the state's medical cannabis program established pursuant to the Lynn and Erin Compassionate Use Act shall not in itself constitute grounds for:

(1) intervention, removal or placement into state custody of a child in that individual's care pursuant to the Abuse and Neglect Act; or

(2) the provision of state prevention, diversion or intervention services to that individual's family pursuant to the Voluntary Placement and Family Services Act.

B. A person shall not be denied custody of or visitation or parenting time with a child, and there is no presumption of neglect or child endangerment, for conduct allowed under the Lynn and Erin Compassionate Use Act.

C. A school shall not refuse to enroll or otherwise penalize a person solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act, unless failing to do so would cause the school to lose a monetary or licensing-related.
benefit under federal law or regulation.

D. For the purposes of medical care, including an organ transplant, a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care."

SECTION 12. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY.--

A. All records or information concerning a party to a voluntary placement proceeding shall be confidential and closed to the public.

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act.

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to the following; provided that the agency, person or institution receiving information shall not re-release the information without proper consent or as otherwise provided by law:

(1) court personnel and persons authorized by contract with the court to review, inspect or otherwise have
access to records or information in the court's possession;

(2) department personnel and persons
authorized by contract with the department to review, inspect
or otherwise have access to records or information in the
department's possession;

(3) state government social services agencies
in a state or, when in the opinion of the department it is in
the best interest of the child, a governmental social services
agency of another country;

(4) persons of an Indian tribe specifically
authorized to inspect the records pursuant to the federal
Indian Child Welfare Act of 1978 or any regulations promulgated
thereunder;

(5) a foster parent, if the records are those
of a child currently placed with that foster parent or of a
child being considered for placement with that foster parent
and the records concern the social, medical, psychological or
educational needs of the child;

(6) school personnel involved with the child
if the records concern the child's social or educational needs;

(7) a grandparent, parent of a sibling,
relative or fictive kin, if the records or information pertain
to a child being considered for placement with that
grandparent, parent of a sibling, relative or fictive kin and
the records or information concern the social, medical,
psychological or educational needs of the child;

(8) health care or mental health professionals involved in the evaluation or treatment of the child or of the child's parents, guardian, custodian or other family members;

(9) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(10) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department;

(11) representatives of the federal government or their contractors authorized by federal statute or regulation to review, inspect, audit or otherwise have access to records and information pertaining to neglect or abuse proceedings;

(12) a person attending a meeting arranged by the department to discuss the safety, well-being and permanency of a child when the parent or child, or parent or legal custodian on behalf of a child younger than fourteen years of age, has consented to the disclosure;

(13) a person, pursuant to an order of a court, deemed to have a legitimate interest in the case or the work of the court; and

(14) the child, if fourteen years of age or
older.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Voluntary Placement and Family Services Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

SECTION 13. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] CONDUCT OF HEARINGS.--

A. All hearings held pursuant to the Voluntary Placement and Family Services Act shall be closed to the general public.

B. Only the parties to a proceeding, their counsel and other persons approved by the court may be present at a closed hearing. Other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition they refrain from divulging any information that would identify the child or family involved in the proceedings."

SECTION 14. A new section of the Voluntary Placement and
Family Services Act is enacted to read:

"[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--

SIGNING OF VOLUNTARY PLACEMENT AGREEMENT.--

A. Prior to the department accepting legal custody
of an Indian child for voluntary placement:

(1) the department shall file a petition for
the voluntary placement agreement to be reviewed with and
signed by the parent, guardian or Indian custodian before the
court;

(2) the department shall provide notice to the
parent, guardian or Indian custodian and designated tribal
agent of the Indian child's tribe, and the form of the notice
shall comply with the provisions of the federal Indian Child
Welfare Act of 1978;

(3) the judge shall:

(a) ask the participants to state on the
record whether the child is an Indian child or whether there is
reason to believe the child is an Indian child and that the
consent was not given prior to or within ten days of the birth
of the Indian child;

(b) explain to the parent, guardian or
Indian custodian in detail the terms and consequences of the
consent to the voluntary placement agreement and that the
parent, guardian or Indian custodian can withdraw consent at
any time and the child shall be returned within seventy-two
hours of when the written or verbal demand was made, but before
the expiration of the seventy-two hours, the department may
prevent the immediate return of the child by filing a petition
alleging neglect or abuse and by obtaining a court order
granting the department temporary custody of the child; and

(c) determine that the parent, guardian
or Indian custodian fully understood the consent to the
voluntary placement agreement and that either the parent,
guardian or Indian custodian fully understood the explanation
in English or that it was interpreted into a language that the
parent, guardian or Indian custodian understood;

(4) if the court determines that the parent,
guardian or Indian custodian voluntarily agrees to the
placement of the child in the legal custody of the department,
the department and Indian child's parent, guardian or Indian
custodian shall sign the written voluntary placement agreement
before the court in accordance with the federal Indian Child
Welfare Act of 1978; and

(5) at the completion of the hearing, the
decision of the court shall be made by entry on the voluntary
placement agreement of the judge's certificate certifying that
the terms and consequences of the consent were fully explained
in detail and were fully understood by the parent, guardian or
Indian custodian and that either the parent, guardian or Indian
custodian fully understood the explanation in English or that
it was interpreted into a language that the parent, guardian or Indian custodian understood. The voluntary placement agreement with the judge's certificate shall be filed with the clerk of the court at the earliest practicable time.

B. At any time, a parent, guardian or Indian custodian may demand and obtain the return of a child pursuant to Section 32A-3A-9 NMSA 1978."

SECTION 15. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--TIME LIMITATION.--

A. An Indian child may remain in voluntary placement for up to one hundred eighty consecutive days.

B. Prior to the expiration of the voluntary placement agreement, if the parent, guardian or Indian custodian agrees in writing that the child is to remain in voluntary placement for up to an additional one hundred eighty days, the department shall file a petition to extend the voluntary placement. The department shall provide notice on the petition for extension to the parent, guardian or Indian custodian and designated tribal agent of the Indian child's tribe, and the form of the notice shall comply with the provisions of the federal Indian Child Welfare Act of 1978.

C. The court shall hold a hearing and enter a written final order within thirty days of the filing of the
petition. If the court grants the extension of up to one
hundred eighty days, the order shall contain findings that
proper notice was given, the parent, guardian or Indian
custodian consents to the extension of the voluntary placement
and the voluntary placement agreement is in the child's best
interest. If the extension is denied, the court shall enter a
written order denying the extension and directing the
department to immediately return the child to the parent,
guardian or Indian custodian.

D. In no event shall an Indian child remain in
voluntary placement for a period in excess of three hundred
sixty-five days in any two-year period.

E. A placement described in this section shall not
be considered abandonment by a parent, guardian or Indian
custodian."

SECTION 16. A new section of the Voluntary Placement and
Family Services Act is enacted to read:

"[NEW MATERIAL] VOLUNTARY PLACEMENT--PLACEMENT.--

A. If the department accepts legal custody of a
child, the child shall be placed in the least restrictive
setting that most closely approximates a family in which the
child's special needs, if any, may be met. The child shall be
placed within reasonable proximity to the child's home, taking
into account any special needs of the child. Preference shall
be given to placement with:

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(1) a relative of the child; 

(2) a licensed foster home or any home 
authorized by law for the provision of foster care or group 
care or use as a protective residence; 

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

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

B. The department shall provide the child with 
shelter in an appropriate facility, pursuant to the provisions 
of Section 32-3B-6 NMSA 1978, that is located as close as 
possible to the child's residence. The child shall not be held 
in a jail or other facility intended or used for the 
incarceration of adults charged or convicted of criminal 
offenses or a facility for the detention of children alleged to 
be or adjudicated as delinquent children. 

C. If the child is placed in an evaluation facility 
or out-of-home treatment or rehabilitation program, the child 
shall be admitted pursuant to the provisions of Sections 

D. The department shall make reasonable efforts to 
place siblings in custody by court order or voluntary placement 
agreement together, unless such joint placement would be 
contrary to the safety or well-being of any of the siblings in 
custody, and whether any siblings not jointly placed have been
provided reasonable visitation or other ongoing interaction,
unless visitation or other ongoing interaction would be
contrary to the safety or well-being of any of the siblings."

SECTION 17. A new section of the Voluntary Placement and
Family Services Act is enacted to read:

"[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--

A. If the department accepts legal custody of an
Indian child, the child shall be placed in the least
restrictive setting that most closely approximates a family in
which the child's special needs, if any, may be met. The
Indian child shall be placed within reasonable proximity to the
child's home, taking into account any special needs of the
child. Preference shall be given to placement with:

(1) a member of the Indian child's extended
family;

(2) a foster care home licensed, approved and
specified by the Indian child's tribe;

(3) an Indian foster care home licensed or
approved by an authorized non-Indian licensing authority; or

(4) an institution for children approved by
the Indian child's tribe or operated by an Indian organization
that has a program suitable to meet the Indian child's needs.

B. If the child is placed in an evaluation facility
or out-of-home treatment or rehabilitation program, the child
shall be admitted pursuant to the provisions of Sections 32A-6A-19 through 32A-6A-22 NMSA 1978.

C. When the placement preferences set forth in this section are not followed or if the Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural ties are protected and fostered."

SECTION 18. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--ELIGIBILITY.--

A. Prior to a guardianship being granted pursuant to the Kinship Guardianship Act or the Abuse and Neglect Act and in order to be eligible for guardianship assistance payments, the following conditions shall be satisfied:

(1) the child shall have been removed from the child's home:

   (a) pursuant to a voluntary placement agreement; or

   (b) as a result of a judicial determination that the placement and care of the child should be vested in the department;

(2) the child shall be eligible for foster care maintenance payments while in the home of the prospective guardian;

(3) the child shall have lived with the prospective guardian for at least six consecutive months
pursuant to a court order or a voluntary placement agreement;

(4) the child has a strong attachment to the prospective guardian and the prospective guardian is a relative or fictive kin of the child;

(5) the prospective guardian has a strong commitment to caring permanently for the child, documented via a meeting between the prospective guardian and the department discussing the prospective guardian's long-term commitment;

(6) if the child is fourteen years of age or older, the child has been consulted by the department regarding the guardianship arrangement; and

(7) the child is the subject of a fully executed guardianship assistance agreement approved by the department; or

(8) the child is a sibling of a child who meets the eligibility criteria set forth in this subsection.

B. The department shall promulgate rules for guardianship assistance payments and payment of nonrecurring expenses."

SECTION 19. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--NONRECURRING EXPENSES.--Nonrecurring expenses incurred by a prospective guardian associated with establishing a subsidized guardianship may be reimbursed for each eligible child, up to an amount .218795.3

- 31 -
established by the department, and also for any of an eligible child's siblings."

SECTION 20. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--GUARDIANSHIP ASSISTANCE AGREEMENT.--

A. In order for a prospective guardian to receive guardianship assistance payments, the department shall negotiate and enter into a written guardianship assistance agreement with the prospective guardian of an eligible child. The agreement shall specify the following:

(1) the amount of and manner in which guardianship assistance payments will be provided;

(2) additional services and assistance for which the child and prospective guardian will be eligible;

(3) a procedure by which the prospective guardian may apply for additional services;

(4) the responsibility of the prospective guardian to report changes in the needs of the child or the circumstances of the prospective guardian that affect guardianship assistance payments;

(5) reasonable and verified nonrecurring expenses associated with establishing a subsidized guardianship pursuant to the provisions of Section 32A-3A-12 NMSA 1978; and

(6) terms by which the guardianship assistance
agreement may be terminated and the ability of the department
to recoup funds received due to improper payment.

B. A copy of the fully executed guardianship
assistance agreement shall be given to the prospective guardian
and to the department."

SECTION 21. A new section of the Voluntary Placement and
Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--SUCCESSOR
GUARDIANS.--

A. In order for a successor guardian to be eligible
for guardianship assistance payments if the successor guardian
serves as guardian in the event the guardian dies or is
incapacitated, the successor guardian shall be named in the
guardianship assistance agreement and any amendments thereto.

B. The department may pay the cost of nonrecurring
expenses associated with the successor guardian obtaining a
subsidized guardianship of the child, up to an amount
established by the department.

C. The successor guardian does not need to be a
relative and does not need to be licensed as a foster parent to
receive guardianship assistance payments."

SECTION 22. A new section of the Voluntary Placement and
Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--DISCONTINUANCE OF
GUARDIANSHIP ASSISTANCE PAYMENTS.--
A. The department shall immediately discontinue guardianship assistance payments when the department is advised or determines a child or guardian no longer meets the criteria to be eligible for guardianship assistance payments.

B. The department shall notify the guardian in writing of a discontinuation of guardianship assistance payments and the reasons for discontinuation.

C. The discontinuance of guardianship assistance payments does not terminate a guardianship that has been established by a court."

SECTION 23. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--ADMINISTRATIVE APPEAL OF DECISIONS.--A child or prospective guardian may appeal a decision by the department to establish, deny, reduce or discontinue guardianship assistance payments within thirty days of the department's decision."

SECTION 24. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or
(2) left the child with others, including the
other parent or an agency, without provision for support and
without communication for a period of:

(a) three months if the child was under
six years of age at the commencement of the three-month period;
or

(b) six months if the child was over six
years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who has suffered or who is at risk of
suffering serious harm because of the action or inaction of the
child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional
abuse or psychological abuse inflicted or caused by the child's
parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual
exploitation inflicted by the child's parent, guardian or
custodian;

(4) whose parent, guardian or custodian has
knowingly, intentionally or negligently placed the child in a
situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has
knowingly or intentionally tortured, cruelly confined or
cruelly punished the child;

C. "aggravated circumstances" includes those
circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused
great bodily harm to the child or great bodily harm or death to
the child's sibling;

(2) attempted, conspired to cause or caused
great bodily harm or death to another parent, guardian or
custodian of the child;

(3) attempted, conspired to subject or has
subjected the child to torture, chronic abuse or sexual abuse;

or

(4) had parental rights over a sibling of the
child terminated involuntarily;

D. "educational decision maker" means an individual
appointed by the children's court to attend school meetings and
to make decisions about the child's education that a parent
could make under law, including decisions about the child's
educational setting, and the development and implementation of
an individual education plan for the child;

[E. "fictive kin" means a person not related by
birth, adoption or marriage with whom a child has an
emotionally significant relationship;

F.] E. "great bodily harm" means an injury to a
person that creates a high probability of death, that causes
serious disfigurement or that results in permanent or
protracted loss or impairment of the function of a member or
organ of the body;

[G-] F.  "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a
neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

[H.] "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

1. There is not a justifiable explanation for the condition or death;
2. The explanation given for the condition is at variance with the degree or nature of the condition;
3. The explanation given for the death is at variance with the nature of the death; or
4. Circumstances indicate that the condition or death may not be the product of an accidental occurrence;

[I.] "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity;

[J.] "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

[K.] "sexual exploitation" includes:

1. Allowing, permitting or encouraging a child to engage in prostitution;
(2) allowing, permitting, encouraging or
engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene
or pornographic commercial purposes, as those acts are defined
by state law;

[K.] "sibling" means a brother or sister having
one or both parents in common by birth or adoption;

[L.] "strangulation" has the same meaning as set
forth in Section 30-3-11 NMSA 1978;

[M.] "suffocation" has the same meaning as set
forth in Section 30-3-11 NMSA 1978; and

[N.] "transition plan" means an individualized
written plan for a child, based on the unique needs of the
child, that outlines all appropriate services to be provided to
the child to increase independent living skills. The plan
shall also include responsibilities of the child, and any other
party as appropriate, to enable the child to be self-sufficient
upon emancipation."

SECTION 25. A new section of the Kinship Guardianship Act
is enacted to read:

"[NEW MATERIAL] POLICY--PURPOSE.--

A. It is the policy of the state of New Mexico that
the interests of children are best served when they are raised
by their parents. When neither parent is able or willing to
provide appropriate care, guidance and supervision to a child,
it is the policy of the state that, whenever possible, a child
should be raised by family members or kinship caregivers.

B. The Kinship Guardianship Act is intended to
address cases where a parent has left a child or children in
the care of another for ninety consecutive days and that
arrangement leaves the child or children without appropriate
care, guidance or supervision.

C. The purposes of the Kinship Guardianship Act are
to:

(1) establish procedures to effect a legal
relationship between a child and a kinship caregiver when the
child is not residing with either parent; and

(2) provide a child with a stable and
consistent relationship with a kinship caregiver that will
enable the child to develop physically, mentally and
emotionally to the maximum extent possible when the child's
parents are not willing or able to do so."

SECTION 26. Section 40-10B-3 NMSA 1978 (being Laws 2001,
Chapter 167, Section 3, as amended) is amended to read:

"40-10B-3. DEFINITIONS.—As used in the Kinship
Guardianship Act:

A. "caregiver" means an adult, who is not a parent
of a child, with whom a child resides and who provides that
child with the care, maintenance and supervision consistent
with the duties and responsibilities of a parent of the child;
B. "child" means an individual who is a minor;
C. "department" means the children, youth and families department;
D. "guardian" means a person appointed as a guardian by a court or Indian tribal authority; [or a person authorized to care for the child by a parental power of attorney as permitted by law;
E. "guardianship assistance agreement" means a written agreement entered into by the prospective kinship guardian and the protective services division or juvenile justice division of the department or Indian tribe prior to the establishment of the guardianship by a court;
F. "guardianship assistance payments" means payments made by the department to a kinship guardian or successor guardian on behalf of a child pursuant to the terms of a guardianship assistance agreement;
G. "guardianship assistance program" means the financial subsidy program provided for in the Kinship Guardianship Act;
H. [E. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;
[I. "legal custody" means a legal status that vests in a person, department or agency the rights and obligations
that would otherwise vest by law in a parent;

[J.] F. "parent" means a biological or adoptive
parent of a child whose parental rights have not been
terminated; and

[K.] G. "relative" means an individual related to a
child as a spouse, parent, stepparent, brother, sister,
stepbrother, stepsister, half-brother, half-sister, uncle,
aunt, niece, nephew, first cousin or any person denoted by the
prefix "grand" or "great", or the spouse or former spouse of
the persons specified

[L.] "subsidized guardianship" means a guardianship
that meets subsidy eligibility criteria pursuant to the Kinship
Guardianship Act; and

[M.] "voluntary placement agreement" means a written
agreement between either the protective services division or
juvenile justice division of the department or Indian tribe
that has entered into a joint powers agreement and the parents
or guardians of a child, which agreement shall not exceed one
hundred eighty days unless there has been a judicial
determination that such placement is in the best interests of
the child, in which case the agreement may be extended for an
additional one hundred eighty days, that specifies at least the
following:

(1) whether the parent or guardian agrees to
give legal custody of the child to the department.
(2) the rights and obligations of the parents
or guardians, the child and the department, including that the
parent or guardian has the right to revoke or terminate the
placement agreement and grant of legal custody to the
department at any time; and

(3) such other criteria as set forth by rule
promulgated by the department as necessary to comply with state
and federal law]."

SECTION 27. Section 40-10B-5 NMSA 1978 (being Laws 2001,
Chapter 167, Section 5, as amended) is amended to read:

"40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

A. A petition seeking the appointment of a guardian
pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached the age of
twenty-one, with whom no kinship with the child exists and who
has been nominated to be guardian of the child by the child,
and the child has reached the age of fourteen; [or]

(3) a caregiver designated formally or
informally by a parent in writing if the designation indicates
on its face that the parent signing understands:

(a) the purpose and effect of the

(b) that the parent has the right to be
served with the petition and notices of hearings in the action;
(c) that the parent may appear in court
to contest the guardianship;

(4) a caregiver with whom the department has
placed the child pursuant to the Children's Code and has
obtained the written consent of the department to file the
petition; or

(5) the department when the child is in the
department's custody.

B. A petition seeking the appointment of a guardian
shall be verified by the petitioner and allege the following
with respect to the child:

(1) facts that, if proved, will meet the
requirements of Subsection B of Section 40-10B-8 NMSA 1978;

(2) the date and place of birth of the child,
if known, and if not known, the reason for the lack of
knowledge;

(3) the legal residence of the child and the
place where the child resides, if different from the legal
residence;

(4) the name and address of the petitioner;

(5) the kinship, if any, between the
petitioner and the child;

(6) the names and addresses of the parents of
the child;
(7) the names and addresses of persons having legal custody of the child;

(8) the existence of any matters pending involving the custody of the child;

(9) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;

(10) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the [children, youth and families] department consents to the relief requested in the petition;

(11) whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978 and, if so:

   (a) the tribal affiliations of the child's parents; and

   (b) the specific actions taken by the petitioner to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted, and copies of correspondence with the tribe; and

(12) other facts in support of the guardianship sought."

SECTION 28. Section 40-10B-6 NMSA 1978 (being Laws 2001, Chapter 167, Section 6, as amended) is amended to read:

"40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--
A. The court shall set a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

B. The petition and a notice of the hearing shall be served upon:

(1) the [children, youth and families] department if there is any pending matter relating to the child pursuant to the provisions of [Chapter 32A, Article 4 NMSA 1978] the Children's Code;

(2) the child if the child has reached the age of fourteen;

(3) the parents of the child;

(4) a person having custody of the child or visitation rights pursuant to a court order; and

(5) if the child is an Indian child as defined in the federal Indian Child Welfare Act of 1978, the appropriate Indian tribe and any "Indian custodian", together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

C. Service of process required by Subsection A of this section shall be made in accordance with the requirements for giving notice of a hearing pursuant to Subsection A of Section 45-1-401 NMSA 1978.

D. The persons required to be served pursuant to
Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to Rule 1-024 NMRA.

SECTION 29. Section 40-10B-7 NMSA 1978 (being Laws 2001, Chapter 167, Section 7) is amended to read:

"40-10B-7. TEMPORARY GUARDIANSHIP PENDING HEARING.--

A. After the filing of the petition, upon motion of the petitioner or a person required to be served pursuant to Subsection B of Section [6 of the Kinship Guardianship Act] 40-10B-6 NMSA 1978, or upon its own motion, the court may appoint a temporary guardian to serve for not more than one hundred eighty days or until the case is decided on the merits, whichever occurs first.

B. A motion for temporary guardianship shall be heard within twenty days of the date the motion is filed. The motion and notice of hearing shall be served on all persons required to be served pursuant to Subsection B of Section [6 of the Kinship Guardianship Act] 40-10B-6 NMSA 1978.

C. An order pursuant to Subsection A of this section may be entered ex parte upon good cause shown. If the order is entered ex parte, a copy of the order shall be served on the persons required to be served pursuant to Subsection B of Section [6 of the Kinship Guardianship Act] 40-10B-6 NMSA 1978. If a person files an objection to the order, the court immediately shall schedule a hearing to be held within ten days.
of the date the objection is filed. Notice of the hearing
shall be given to the petitioner and all persons required to be
served pursuant to Subsection B of Section [6 of the Kinship
Guardianship Act] 40-10B-6 NMSA 1978."

SECTION 30. Section 40-10B-8 NMSA 1978 (being Laws 2001,
Chapter 167, Section 8, as amended) is amended to read:

"40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--
JUDGMENT--CHILD SUPPORT.--

A. Upon hearing, if the court finds that a
qualified person seeks appointment, the venue is proper, the
required notices have been given, the requirements of
Subsection B of this section have been proved and the best
interests of the minor will be served by the requested
appointment, it shall make the appointment. In other cases,
the court may dismiss the proceedings or make any other
disposition of the matter that will serve the best interests of
the minor.

B. A guardian may be appointed pursuant to the
Kinship Guardianship Act only if:

(1) a parent of the child is living and has
consented in writing to the appointment of a guardian and the
consent has not been withdrawn;

(2) a parent of the child is living but all
parental rights in regard to the child have been terminated or
suspended by prior court order; or

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(3) the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and

(4) no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code.

C. The burden of proof shall be by clear and convincing evidence.

D. As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. [The court shall consider the potential impact of financial payments pursuant to this subsection on the relationship of the parent and child and on the prospects of family reunification.] The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

E. The court may order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child."

SECTION 31. Section 40-10B-11 NMSA 1978 (being Laws 2001, Chapter 167, Section 11) is amended to read:

"40-10B-11. NOMINATION OBJECTION BY CHILD.--In a
proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act:

   A. the court shall appoint a person nominated by a child who has reached [his fourteenth birthday] the age of fourteen unless the court finds the nomination contrary to the best interests of the child; and

   B. the court shall not appoint a person as guardian if a child who has reached [his fourteenth birthday] the age of fourteen files a written objection in the proceeding before the person accepts appointment as guardian."

SECTION 32. Section 40-10B-12 NMSA 1978 (being Laws 2001, Chapter 167, Section 12) is amended to read:

"40-10B-12. REVOCATION OF GUARDIANSHIP.--

   A. Any person, including a child who has reached [his fourteenth birthday] the age of fourteen, may move for revocation of a guardianship created pursuant to the Kinship Guardianship Act. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A transition plan shall take into consideration the child's age, development and any bond with the guardian.

   B. If the court finds that a preponderance of the evidence proves a change in circumstances and the revocation is in the best interests of the child, it shall grant the motion and:

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(1) adopt a transition plan proposed by a party or the guardian ad litem;

(2) propose and adopt its own transition plan;

or

(3) order the parties to develop a transition plan by consensus if they will agree to do so."

SECTION 33. REPEAL.—Sections 40-10B-16 through 40-10B-21 NMSA 1978 (being Laws 2020, Chapter 51, Sections 4 through 9) are repealed.

SECTION 34. EFFECTIVE DATE.—The effective date of the provisions of this act is July 1, 2021.