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SENATE BILL 20

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO CHILDREN; PROVIDING THAT CHILDREN PLACED IN OUT-OF-HOME CARE SHALL BE PERMITTED TO PARTICIPATE IN AGE-APPROPRIATE ACTIVITIES; AMENDING THE ABUSE AND NEGLECT ACT TO PROVIDE THAT A CHILD SHALL BE PERMITTED TO PARTICIPATE IN DEVELOPMENT OF THE CHILD'S CASE AND TRANSITION PLAN AS DEVELOPMENTALLY APPROPRIATE.

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

SECTION 1. 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. "caregiver" means a person with whom the child is placed in out-of-home care, including a foster parent,

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1 treatment foster parent or designated official for a group  
2 home, shelter care facility or other facility licensed by the  
3 department pursuant to the Public Health Act;

4 ~~[B-]~~ C. "child" means a person who is less than  
5 eighteen years old;

6 ~~[G-]~~ D. "council" means the substitute care  
7 advisory council established pursuant to Section 32A-8-4 NMSA  
8 1978;

9 ~~[D-]~~ E. "court", when used without further  
10 qualification, means the children's court division of the  
11 district court and includes the judge, special master or  
12 commissioner appointed pursuant to the provisions of the  
13 Children's Code or supreme court rule;

14 ~~[E-]~~ F. "court-appointed special advocate" means a  
15 person appointed pursuant to the provisions of the Children's  
16 Court Rules to assist the court in determining the best  
17 interests of the child by investigating the case and submitting  
18 a report to the court;

19 ~~[F-]~~ G. "custodian" means an adult with whom the  
20 child lives who is not a parent or guardian of the child;

21 ~~[G-]~~ H. "department" means the children, youth and  
22 families department, unless otherwise specified;

23 ~~[H-]~~ I. "disproportionate minority contact" means  
24 the involvement of a racial or ethnic group with the criminal  
25 or juvenile justice system at a proportion either higher or

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1 lower than that group's proportion in the general population;

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

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

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

15 [~~L.~~] M. "Indian child" means an unmarried person  
16 who is:

- 17 (1) less than eighteen years old;
- 18 (2) a member of an Indian tribe or is eligible  
19 for membership in an Indian tribe; and
- 20 (3) the biological child of a member of an  
21 Indian tribe;

22 [~~M.~~] N. "Indian child's tribe" means:

- 23 (1) the Indian tribe in which an Indian child  
24 is a member or eligible for membership; or
- 25 (2) in the case of an Indian child who is a

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1 member or eligible for membership in more than one tribe, the  
2 Indian tribe with which the Indian child has more significant  
3 contacts;

4 ~~[N-]~~ O. "Indian tribe" means a federally recognized  
5 Indian tribe, community or group pursuant to 25 U.S.C. Section  
6 1903(1);

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

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

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

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

3                   (1) reunification;

4                   (2) placement for adoption after the parents'  
5 rights have been relinquished or terminated or after a motion  
6 has been filed to terminate parental rights;

7                   (3) placement with a person who will be the  
8 child's permanent guardian;

9                   (4) placement in the legal custody of the  
10 department with the child placed in the home of a fit and  
11 willing relative; or

12                   (5) placement in the legal custody of the  
13 department under a planned permanent living arrangement;

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

16           [F-] U. "preadoptive parent" means a person with  
17 whom a child has been placed for adoption;

18           [H-] V. "protective supervision" means the right to  
19 visit the child in the home where the child is residing,  
20 inspect the home, transport the child to court-ordered  
21 diagnostic examinations and evaluations and obtain information  
22 and records concerning the child;

23                   W. "reasonable and prudent parent standard" means  
24 the standard of care characterized by careful, nurturing and  
25 thoughtful parental decision-making that maintains a child's

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1 health, safety, culture and best interests while encouraging  
2 the child's emotional, social and developmental growth;

3 [V.] X. "relative" means a person related to  
4 another person by blood within the fifth degree of  
5 consanguinity or through marriage by the fifth degree of  
6 affinity;

7 [W.] Y. "reunification" means either a return of  
8 the child to the parent or to the home from which the child was  
9 removed or a return to the noncustodial parent;

10 [~~X.~~] Z. "tribal court" means:

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

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

15 [~~Y.~~] AA. "tribal court order" means a document  
16 issued by a tribal court that is signed by an appropriate  
17 authority, including a judge, governor or tribal council  
18 member, and that orders an action that is within the tribal  
19 court's jurisdiction; and

20 [~~Z.~~] BB. "tribunal" means any judicial forum other  
21 than the court."

22 SECTION 2. A new section of the Children's Code is  
23 enacted to read:

24 "[NEW MATERIAL] OUT-OF-HOME PLACEMENT--ACCESS TO AGE-  
25 APPROPRIATE ACTIVITIES.--

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1           A. A child who has been placed in out-of-home care  
2 pursuant to the provisions of the Abuse and Neglect Act, the  
3 Family Services Act or the Family in Need of Court-Ordered  
4 Services Act shall be permitted to participate in age-  
5 appropriate activities when such activities are approved by a  
6 caregiver pursuant to Subsection D of this section, unless such  
7 activities are limited in the child's court-ordered treatment  
8 plan after an individualized determination of the factors in  
9 Subsection D of this section.

10           B. The department shall make efforts to normalize  
11 the lives of children in the department's custody and to  
12 empower caregivers to approve a child's participation in  
13 activities, based on the caregiver's own assessment using a  
14 reasonable and prudent parent standard, without prior approval  
15 of the department.

16           C. If a child is placed in an aggregate care  
17 setting, the department shall designate an individual to make  
18 decisions concerning participation in age-appropriate  
19 activities. An individual designated by the department  
20 pursuant to this subsection shall have the same rights and  
21 responsibilities as a caregiver for the purpose of this  
22 section.

23           D. A caregiver shall use a reasonable and prudent  
24 parent standard in determining whether to permit a child to  
25 participate in an activity. The caregiver may consider:

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- 1 (1) the desires of the child;
- 2 (2) the child's age, maturity and
- 3 developmental level to maintain the overall health and safety
- 4 of the child;
- 5 (3) potential risk factors and the
- 6 appropriateness of the activity;
- 7 (4) the best interest of the child based on
- 8 the caregiver's knowledge of the child;
- 9 (5) the importance of encouraging the child's
- 10 emotional and developmental growth;
- 11 (6) the importance of providing the child with
- 12 the most safe and affirming family-like and culturally relevant
- 13 living experience possible;
- 14 (7) the behavior of the child and the child's
- 15 ability to safely participate in the proposed activity; and
- 16 (8) the preferences of the child's biological
- 17 parent or parents.

18 E. The department shall verify that caregivers:

- 19 (1) promote and protect the ability of a child
- 20 to participate in age-appropriate activities; and
- 21 (2) implement policies consistent with this
- 22 section.

23 F. The department may promulgate rules to implement

24 this section.

25 G. For the purpose of this section, "age-



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1 appropriate activity" means an activity that is generally  
2 accepted as suitable for a child of the same age or level of  
3 maturity based on the development of cognitive, emotional,  
4 physical, social and behavioral capacity typical for the  
5 child's age or age group. "Age-appropriate activity" may  
6 include:

7 (1) a cultural, social or enrichment activity;

8 (2) a single-night sleepover at the home of a  
9 friend;

10 (3) participation in a camp where the child  
11 spends one or more nights in an organized camp setting;

12 (4) participation in a school or  
13 extracurricular activity, including an activity that may  
14 involve supervised overnight stays or trips;

15 (5) for an adolescent child, an activity that  
16 fosters appropriate freedom, responsibility and decision-  
17 making; or

18 (6) any other activity deemed appropriate by a  
19 caregiver acting in accordance with a reasonable and prudent  
20 parent standard."

21 **SECTION 3.** Section 32A-4-21 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 115, as amended) is amended to read:

23 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,  
24 REPORTS AND EXAMINATIONS.--

25 A. Prior to holding a dispositional hearing, the

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1 court shall direct that a predisposition study and report be  
2 submitted in writing to the court by the department.

3 B. The predisposition study required pursuant to  
4 Subsection A of this section shall contain the following  
5 information:

6 (1) a statement of the specific reasons for  
7 intervention by the department or for placing the child in the  
8 department's custody and a statement of the parent's ability to  
9 care for the child in the parent's home without causing harm to  
10 the child;

11 (2) a statement of how an intervention plan is  
12 designed to achieve placement of the child in the least  
13 restrictive setting available, consistent with the best  
14 interests and special needs of the child, including a statement  
15 of the likely harm the child may suffer as a result of being  
16 removed from the parent's home, including emotional harm that  
17 may result due to separation from the child's parents, and a  
18 statement of how the intervention plan is designed to place the  
19 child in close proximity to the parent's home without causing  
20 harm to the child due to separation from parents, siblings or  
21 any other person who may significantly affect the child's best  
22 interest;

23 (3) the wishes of the child as to the child's  
24 custodian;

25 (4) a statement of the efforts the department

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1 has made to identify and locate all grandparents and other  
2 relatives and to conduct home studies on any appropriate  
3 relative expressing an interest in providing care for the  
4 child, and a statement as to whether the child has a family  
5 member who, subsequent to study by the department, is  
6 determined to be qualified to care for the child;

7 (5) a description of services offered to the  
8 child, the child's family and the child's foster care family  
9 and a summary of reasonable efforts made to prevent removal of  
10 the child from the child's family or reasonable efforts made to  
11 reunite the child with the child's family;

12 (6) a description of the home or facility in  
13 which the child is placed and the appropriateness of the  
14 child's placement;

15 (7) the results of any diagnostic examination  
16 or evaluation ordered at the custody hearing;

17 (8) a statement of the child's medical and  
18 educational background;

19 (9) if the child is an Indian child, whether  
20 the placement preferences set forth in the federal Indian Child  
21 Welfare Act of 1978 or the placement preferences of the child's  
22 Indian tribe were followed and whether the child's case plan  
23 provides for maintaining the child's cultural ties;

24 (10) a case plan that sets forth steps to  
25 ensure that the child's physical, medical, psychological and

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1 educational needs are met and that sets forth services to be  
2 provided to the child and the child's parents to facilitate  
3 permanent placement of the child in the parent's home;

4 (11) for children sixteen years of age and  
5 older, a plan for developing the specific skills the child  
6 requires for successful transition into independent living as  
7 an adult, regardless of whether the child is returned to the  
8 child's parent's home;

9 (12) a case plan that sets forth steps to  
10 ensure that the child's educational needs are met and, for a  
11 child fourteen years of age or older, a case plan that  
12 specifically sets forth the child's educational and post-  
13 secondary goals; ~~and~~

14 (13) whether the child is participating in  
15 age-appropriate activities, as defined in Section 2 of this  
16 2017 act, and, if the child has any limitations on  
17 participating in age-appropriate activities, an explanation of  
18 those limitations; and

19 [~~(13)~~] (14) a description of the child's  
20 foster care placement and whether it is appropriate in terms of  
21 the educational setting and proximity to the school the child  
22 was enrolled in at the time of the placement, including plans  
23 for travel for the child to remain in the school in which the  
24 child was enrolled at the time of placement, if reasonable and  
25 in the child's best interest.

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1 C. A copy of the predisposition report shall be  
2 provided by the department to counsel for all parties five days  
3 before the dispositional hearing.

4 D. If the child is an adjudicated abused child, any  
5 temporary custody orders shall remain in effect until the court  
6 has received and considered the predispositional study at the  
7 dispositional hearing."

8 SECTION 4. Section 32A-4-25.2 NMSA 1978 (being Laws 2009,  
9 Chapter 239, Section 47) is amended to read:

10 "32A-4-25.2. TRANSITION SERVICES.--

11 A. Prior to the first permanency hearing after the  
12 child turns fourteen years of age, the department shall request  
13 and review the child's next-step plan or individualized  
14 education plan addressing the child's educational transition  
15 services. If the child does not have a next-step plan or an  
16 individualized education plan, the department shall request a  
17 meeting with the child's school to identify the child's  
18 post-secondary goals and to obtain information about classes  
19 and services available to assist the child in attaining the  
20 child's post-secondary goals. The department shall invite the  
21 child, the child's attorney and the adult who is making  
22 educational decisions, and may invite the child's court-  
23 appointed special advocate, to the meeting with the school.

24 B. The treatment plan filed by the department prior  
25 to each hearing after the child turns fourteen years of age

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1 shall set forth the child's post-secondary goals and report the  
2 child's educational progress toward those goals.

3 ~~[A.]~~ C. Prior to a child's reaching ~~[seventeen]~~  
4 sixteen years of age, the department shall meet with the child,  
5 the child's attorney and others of the child's choosing,  
6 including biological family members, and may meet with the  
7 child's court-appointed special advocate, to develop a  
8 transition plan. The department shall assist the child in  
9 identifying and planning to meet the child's needs after the  
10 child's eighteenth birthday, including housing, education,  
11 employment or income, health and mental health, local  
12 opportunities for mentors and continuing support services.

13 ~~[B.]~~ D. The department shall present the child's  
14 proposed transition plan to the court at the first hearing  
15 scheduled after the child's ~~[seventeenth]~~ sixteenth birthday.

16 ~~[G.]~~ E. At the first hearing scheduled after the  
17 child's sixteenth birthday, the court shall order a transition  
18 plan for the child. The transition plan approved by the court  
19 shall be reviewed at every subsequent review and permanency  
20 hearing."

21 SECTION 5. A new section of the Abuse and Neglect Act is  
22 enacted to read:

23 "[NEW MATERIAL] RIGHT OF CHILD TO PARTICIPATE IN  
24 DEVELOPMENT OF CASE AND TRANSITION PLAN.--

25 A. Each child shall have the right to participate

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1 in the development of the child's case and transition plan.

2 B. A child under fourteen years of age shall have  
3 the right to participate in the development of the case and  
4 transition plan as developmentally appropriate.

5 C. For a child fourteen years of age or older, the  
6 case and transition plan shall:

7 (1) be developed in consultation with the  
8 child and, at the option of the child, with up to two members  
9 of the case or transition planning team who are chosen by the  
10 child and who are not a foster parent of, or a caseworker for,  
11 the child. One individual selected by the child to be a member  
12 of the child's case or transition planning team may be  
13 designated as the child's advisor and, as necessary, advocate,  
14 with respect to the child's participation in age-appropriate  
15 activities pursuant to Section 2 of this 2017 act. The child's  
16 court-appointed special advocate may participate in the  
17 development of the child's case and transition plan;

18 (2) include a list of the child's rights with  
19 respect to education, health, visitation, safety, court  
20 participation, participation in age-appropriate activities and  
21 access to documents as required pursuant to Paragraph (2) of  
22 Subsection B of Section 32A-4-25.3 NMSA 1978; and

23 (3) include a signed acknowledgment by the  
24 child that the child has been provided a copy of the list of  
25 the child's rights, that the rights contained in the list have

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1       been explained to the child and that the child has had an  
2       opportunity to ask questions about and understands the rights  
3       contained in the list."

4               **SECTION 6. EFFECTIVE DATE.**--The effective date of the  
5       provisions of this act is October 1, 2017.

6                               - 16 -