

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 209

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

AN ACT

RELATING TO CHILDREN; ENACTING THE STATE INDIAN CHILD WELFARE
ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY
PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE STATE INDIAN
CHILD WELFARE ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING
CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; CREATING
THE OFFICE OF TRIBAL AFFAIRS WITHIN THE CHILDREN, YOUTH AND
FAMILIES DEPARTMENT; REQUIRING A CULTURAL COMPONENT IN CASE
PLANS IN ABUSE AND NEGLECT PROCEEDINGS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Children's Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 30 of
this act may be cited as the "State Indian Child Welfare Act"."

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underscored material = new
[bracketed material] = delete

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

3 "[NEW MATERIAL] DEFINITIONS.--As used in the State Indian
4 Child Welfare Act:

5 A. "active efforts" means efforts that are
6 affirmative, active, thorough and timely and that represent a
7 higher standard of conduct than reasonable efforts;

8 B. "adoptive placement" means a permanent placement
9 of an Indian child for adoption, including an action resulting
10 in a final decree of adoption, but does not include a placement
11 based upon an act that, if committed by an adult, would be
12 deemed a crime or upon award, in a divorce proceeding, of
13 custody to one of the parents;

14 C. "child custody proceeding" means an action for
15 foster care placement, termination of parental rights,
16 guardianship, preadoptive placement or adoptive placement or an
17 action pursuant to Section 32A-3A-8 NMSA 1978 or the Family in
18 Need of Court-Ordered Services Act;

19 D. "cultural compact" means an agreement that
20 documents how an Indian child placed in an adoptive or
21 guardianship home will continue to actively participate in the
22 child's cultural learning and activities and that is entered
23 into among:

24 (1) the adoptive parents or guardians of the
25 Indian child, which parents are not members of the Indian

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1 child's tribe; and

2 (2) the Indian child's tribe;

3 E. "extended family member" means a person who is
4 defined to be an extended family member by law or custom of an
5 Indian child's tribe or, in the absence of such law or custom,
6 means a person who is eighteen years of age or older and who is
7 an Indian child's grandparent, aunt or uncle, brother or
8 sister, brother-in-law or sister-in-law, niece or nephew, first
9 or second cousin, stepparent or godparent;

10 F. "fictive kin" means a person:

11 (1) who is not a relative or extended family
12 of an Indian child and who has a significant, family-like
13 relationship with the child or the child's family, which
14 relationship existed prior to the child's entry into foster
15 care;

16 (2) who meets the definition of "fictive kin"
17 as established by an Indian child's tribe's law, custom or
18 tradition; or

19 (3) chosen by an Indian child who is fourteen
20 years of age or older, regardless of when the relationship
21 between the person and the Indian child was established, when
22 it is in the best interest of the child to identify that person
23 as fictive kin;

24 G. "foster care placement" means:

25 (1) an action pursuant to the Abuse and

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1 Neglect Act removing an Indian child from the child's parent,
2 guardian or Indian custodian for temporary placement in a
3 foster home or institution or the home of a guardian where the
4 parent or Indian custodian cannot have the child returned upon
5 demand, but in which parental rights have not been terminated;
6 or

7 (2) a voluntary agreement pursuant to the
8 Family Services Act between a parent, guardian or Indian
9 custodian and the department placing the Indian child in foster
10 care;

11 H. "Indian" means a person who is a member of or
12 eligible for membership in an Indian tribe, or who is an Alaska
13 Native and a member of or eligible for membership in a regional
14 corporation as defined in 43 U.S.C. Section 1606;

15 I. "Indian child" means an unmarried person who is
16 under age eighteen and who is either:

17 (1) a member of an Indian tribe; or

18 (2) eligible for membership in an Indian
19 tribe;

20 J. "Indian child's tribe" means:

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

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

1 contacts;

2 K. "Indian custodian" means an Indian person:

3 (1) who has legal custody of an Indian child
4 pursuant to tribal law or custom or pursuant to state law; or

5 (2) to whom temporary physical care, custody
6 and control has been transferred by the parent of the child;

7 L. "Indian organization" means a group,
8 association, partnership, corporation or other legal entity
9 owned or controlled by Indians, or a majority of whose members
10 are Indians;

11 M. "Indian tribe" means an Indian tribe, band,
12 nation or other organized group or community of Indians
13 recognized as eligible for the services provided to Indians by
14 the secretary because of their status as Indians, including an
15 Alaska native village as defined in 43 U.S.C. Section 1602(c).
16 For the purposes of notification to and communication with a
17 tribe as required in the State Indian Child Welfare Act,
18 "Indian tribe" also means those tribal officials and staff who
19 are responsible for child welfare and social services matters;

20 N. "member" or "membership" means a determination
21 that only the Indian tribe of which the child is a member or
22 eligible for membership can make;

23 O. "parent" means a biological parent of an Indian
24 child or a person who has lawfully adopted an Indian child
25 pursuant to state law or tribal law or tribal custom;

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1 P. "preadoptive placement" means a temporary
2 placement of an Indian child in a foster home or institution
3 after the termination of parental rights, but prior to or in
4 lieu of an adoptive placement;

5 Q. "relative" means a person related to another
6 person:

7 (1) by blood within the fifth degree of
8 consanguinity or through marriage by the fifth degree of
9 affinity; or

10 (2) with respect to an Indian child, as
11 established or defined by the Indian child's tribe's custom or
12 law;

13 R. "reservation" means "Indian country" as defined
14 in 18 U.S.C. Section 1151 and any lands, not covered by that
15 section, title to which is either held by the United States in
16 trust for the benefit of an Indian tribe or individual or held
17 by an Indian tribe or individual subject to a restriction by
18 the United States against alienation;

19 S. "secretary" means the United States secretary of
20 the interior;

21 T. "state court" means a court of the state or
22 instrumentality of the state;

23 U. "termination procedure" means an action pursuant
24 to the Abuse and Neglect Act or the Adoption Act that results
25 in the termination of a parent-child relationship; and

1 V. "tribal court" means a court with jurisdiction
2 over child custody proceedings and that is either a court of
3 Indian offenses, a court established and operated under the law
4 or custom of an Indian tribe or any other administrative body
5 of an Indian tribe that is vested with authority over child
6 custody proceedings."

7 **SECTION 3.** A new section of the Children's Code is
8 enacted to read:

9 "[NEW MATERIAL] DETERMINATION OF DOMICILE AND RESIDENCE.--
10 In a child custody proceeding involving an Indian child, the
11 state court shall determine and make an order of the domicile
12 and residence of the Indian child and whether the Indian child
13 is a ward of a tribal court. The department shall communicate
14 with any Indian tribe as necessary to make a determination
15 pursuant to this section."

16 **SECTION 4.** A new section of the Children's Code is
17 enacted to read:

18 "[NEW MATERIAL] INDIAN CHILD'S DOMICILE.--For the purposes
19 of the State Indian Child Welfare Act, an Indian child's
20 domicile is, in order of priority, the domicile of the child's:

- 21 A. parents, or, if the parents do not have the same
22 domicile, the parent who has physical custody of the Indian
23 child;
- 24 B. Indian custodian; or
- 25 C. guardian."

1 SECTION 5. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] ACTIVE EFFORTS IN INVESTIGATIONS AND CHILD
4 CUSTODY PROCEEDINGS.--In an investigation or a child custody
5 proceeding pursuant to the State Indian Child Welfare Act:

6 A. active efforts to maintain or reunite an Indian
7 child with the Indian child's family shall:

8 (1) be documented in detail in writing
9 demonstrating the quality and quantity of services and
10 assistance provided, on the court record;

11 (2) include assisting the Indian child's
12 parent or parents or Indian custodian through the steps of a
13 department case plan and with accessing or developing the
14 resources necessary to satisfy the department case plan;

15 (3) include providing assistance in a manner
16 consistent with the prevailing social and cultural standards
17 and way of life of the Indian child's tribe;

18 (4) include conducting a comprehensive
19 assessment of the circumstances of an Indian child's family
20 with a goal of reunification;

21 (5) be conducted in cooperation with the
22 Indian child and the Indian child's parents, extended family
23 members, Indian custodians and Indian tribe; and

24 (6) be tailored to the facts and circumstances
25 of the case; and

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1 B. active efforts to maintain or reunite an Indian
2 child with the Indian child's family may include:

3 (1) identifying and establishing appropriate
4 services and assisting the Indian child's parents to overcome
5 barriers to reunification, including actively assisting the
6 parents in obtaining those services;

7 (2) identifying, notifying and inviting
8 representatives of the Indian child's tribe to participate in
9 providing support and services to the Indian child's family;

10 (3) conducting or causing to be conducted a
11 diligent search for the Indian child's extended family members
12 and contacting and consulting with the Indian child's extended
13 family members and adult relatives to provide family structure
14 and support for the Indian child and the Indian child's
15 parents;

16 (4) offering and employing culturally
17 appropriate family preservation strategies and facilitating the
18 use of remedial and rehabilitative services provided by the
19 Indian child's tribe;

20 (5) taking steps to keep the Indian child and
21 the Indian child's siblings together whenever possible;

22 (6) supporting regular visits with the Indian
23 child's parent or Indian custodian, as well as trial home
24 visits during a period of removal, consistent with the need to
25 ensure the health, safety and welfare of the Indian child;

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1 (7) identifying community resources, including
2 housing, financial assistance, employment training,
3 transportation, mental health, health care, substance abuse
4 prevention and treatment, parent training and peer support
5 services and actively assisting the Indian child's parents or,
6 when appropriate, the Indian child's extended family members,
7 in using and accessing those resources;

8 (8) monitoring process and participation of
9 the Indian child's parents, Indian custodians or extended
10 family members if the services as described in Paragraphs (1),
11 (2), (4) and (7) of this subsection are not available;

12 (9) providing post-reunification services and
13 monitoring for the duration of the state court's jurisdiction;

14 (10) allowing the Indian child to participate
15 in custom and traditions, including attending and participating
16 in traditional ceremonies centered around the Indian child and
17 the Indian child's family; and

18 (11) any other efforts that are appropriate to
19 the Indian child's circumstances."

20 SECTION 6. A new section of the Children's Code is
21 enacted to read:

22 "[NEW MATERIAL] DETERMINATION OF WHETHER A CHILD IS AN
23 INDIAN CHILD--TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--

24 A. If a child is taken into custody by the
25 department, the department shall make active efforts to

1 determine whether the child is an Indian child.

2 B. When an Indian child or a child who the
3 department has reason to know is an Indian child is placed in
4 the custody of the department, the department shall provide
5 records to the parent, Indian custodian or Indian tribe to
6 assist, if necessary, at the request of the parent, Indian
7 custodian or Indian tribe. The Indian tribe shall determine
8 membership and membership eligibility, as defined by the Indian
9 tribe's law, custom, tradition and practice.

10 C. If the department has reason to know that a
11 child is a member of or eligible for membership in an Indian
12 tribe, the department shall confirm that active efforts were
13 used, which shall include:

14 (1) identifying the Indian tribe;
15 (2) working with the Indian tribe to verify
16 whether the child is a member of or is eligible for membership
17 in the Indian tribe or is a biological child of a parent who is
18 a member of or is eligible for membership in the Indian tribe;

19 (3) treating the child as an Indian child,
20 until it is determined that the child is not an Indian child;
21 and

22 (4) conducting any additional investigations
23 into whether there is a reason to know the child is an Indian
24 child."

25 SECTION 7. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] INDIAN CHILD CUSTODY PROCEEDINGS--
3 JURISDICTION--TRANSFER--COMMUNICATIONS.--

4 A. Except as otherwise provided in the State Indian
5 Child Welfare Act, a state court's jurisdiction in a child
6 custody proceeding involving an Indian child is concurrent with
7 the jurisdiction of the Indian child's tribe.

8 B. An Indian tribe has exclusive jurisdiction over
9 a child custody proceeding involving an Indian child who
10 resides or is domiciled within the reservation of the Indian
11 tribe, except when jurisdiction is otherwise vested in the
12 state by federal law or pursuant to a tribal-state agreement.
13 When an Indian child is a ward of the tribal court, the Indian
14 tribe shall retain exclusive jurisdiction, notwithstanding the
15 residence or domicile of the child.

16 C. In a state court proceeding for the foster care
17 placement, preadoptive placement, guardianship placement,
18 adoptive placement or termination of parental rights to an
19 Indian child not domiciled or residing within the reservation
20 of the Indian child's tribe, the state court, in the absence of
21 good cause to the contrary, shall transfer that proceeding to
22 the jurisdiction of the Indian tribe, absent objection by
23 either parent, upon the motion of either parent or the Indian
24 custodian or the Indian child's tribe; provided that the
25 transfer shall be subject to declination by the tribal court of

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1 that Indian tribe. If the state court believes, or any party
2 asserts, that good cause to deny the transfer exists, the
3 reasons for that belief or assertion shall be stated orally on
4 the record or in writing on the record and to the parties of
5 the child custody proceeding. The burden to establish good
6 cause is on the party opposing the transfer. Good cause shall
7 be established by clear and convincing evidence. If the state
8 court denies the transfer, the basis for the decision shall be
9 stated orally on the record or in a written order. For the
10 purpose of transferring a case, a finding of good cause shall
11 not be based on:

12 (1) the advanced stage of each child custody
13 proceeding if the parent, Indian custodian or Indian child's
14 tribe did not receive notice of the proceeding until an
15 advanced stage;

16 (2) whether there have been prior proceedings
17 involving the Indian child for which no petition to transfer
18 was filed;

19 (3) predictions of whether the transfer could
20 result in a change in the placement of the Indian child;

21 (4) the Indian child's perceived cultural
22 connections with the Indian tribe or reservation;

23 (5) consideration of any perceived inadequacy
24 of judicial systems; or

25 (6) consideration of the perceived

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1 socioeconomic conditions within an Indian tribe or reservation.

2 D. If a state court declines to exercise
3 jurisdiction in accordance with this section or a tribal-state
4 agreement, it shall coordinate with the appropriate tribal
5 court to facilitate the tribal court's assumption of
6 jurisdiction.

7 E. A state court shall:

8 (1) hold a hearing on record;

9 (2) allow each parent of the Indian child, the
10 Indian child's custodian and the Indian child's tribe to
11 participate in any communications pertaining to jurisdiction
12 with a tribal court or, if that person is unable to participate
13 in a communication, provide the person with an opportunity to
14 represent facts and legal arguments supporting the person's
15 position before the state court makes a decision regarding
16 jurisdiction;

17 (3) create and maintain a record of any
18 communications made pursuant to this subsection;

19 (4) notify each parent of the Indian child,
20 the Indian child's custodian or the Indian child's tribe in
21 advance of each communication; and

22 (5) provide each parent of the Indian child,
23 the Indian child's custodian or the Indian child's tribe with
24 access to the record of the communication."

25 SECTION 8. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] TRIBAL-STATE AGREEMENTS.--

3 A. The department shall make a good faith effort to
4 enter into a tribal-state agreement with each Indian tribe
5 within the borders of this state.

6 B. The department may enter into a tribal-state
7 agreement with any Indian tribe outside of this state if that
8 Indian tribe has a significant number of children residing in
9 this state who are members of or are eligible to become members
10 of that Indian tribe.

11 C. A tribal-state agreement may include an
12 agreement regarding:

13 (1) default jurisdiction over cases in which
14 the state court and tribal court have concurrent jurisdiction;

15 (2) the transfer of cases between a state
16 court and tribal court;

17 (3) the assessment, removal, placement and
18 custody of Indian children; and

19 (4) any other child welfare services provided
20 to Indian children.

21 D. A tribal-state agreement shall:

22 (1) provide for cooperative delivery of child
23 welfare services to Indian children in this state, including
24 the use, to the extent available, of services provided by the
25 Indian tribe; and

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1 (2) if services provided by the Indian tribe
2 are unavailable, provide for the department's use of community
3 services and resources developed specifically for Indian
4 families and that have demonstrated experience and capacity to
5 provide culturally relevant and effective services to
6 children."

7 **SECTION 9.** A new section of the Children's Code is
8 enacted to read:

9 "[NEW MATERIAL] TRANSFER.--Upon granting a transfer motion
10 for a child custody proceeding involving an Indian child
11 pursuant to Subsection C of Section 7 of the State Indian Child
12 Welfare Act, a state court shall expeditiously:

13 A. notify the tribal court of the pending dismissal
14 of the child custody proceeding;

15 B. transfer all information regarding the child
16 custody proceeding, including pleadings and court records, to
17 the tribal court;

18 C. direct the department to:

19 (1) coordinate with the tribal court and the
20 Indian child's tribe to ensure that the transfer of the child
21 custody proceeding is accomplished with minimal disruption of
22 services to the Indian child and the Indian child's family;

23 (2) provide the Indian child's tribe with
24 documentation related to the Indian child's eligibility for
25 state and federal assistance and information related to the

1 Indian child's social history, treatment diagnosis and services
2 and other relevant case- and service-related data; and

3 (3) provide the Indian child's tribe with
4 original documents in the department's possession, including a
5 birth certificate, social security card, certificate of Indian
6 birth and similar documents; and

7 D. dismiss the proceeding upon confirmation from
8 the tribal court that the tribal court received the transferred
9 information."

10 SECTION 10. A new section of the Children's Code is
11 enacted to read:

12 "[NEW MATERIAL] FULL FAITH AND CREDIT--RIGHT TO
13 SERVICES.--

14 A. Every agency and court of the state or political
15 subdivision of the state shall give full faith and credit to
16 the public acts, records and judicial proceedings of an Indian
17 tribe applicable to an Indian child custody proceeding to the
18 same extent that agency or court gives full faith and credit to
19 the public acts, records and judicial proceedings of any other
20 entity.

21 B. A tribal court order pertaining to an Indian
22 child in an action under the Children's Code shall be
23 recognized and enforced by all state district courts.

24 C. A tribal court order pertaining to an Indian
25 child that accesses state resources shall be recognized and

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1 enforced. An Indian child residing on or off a reservation, as
2 a resident of this state, shall have the same right to services
3 that are available to other children of this state. The cost
4 of the services provided to an Indian child shall be determined
5 and provided for in the same manner as services are made to
6 other children of the state, utilizing tribal, state and
7 federal funds.

8 D. Any state services requiring a tribal-state
9 agreement based on a funding source shall be negotiated and
10 entered into based on good faith to meet the provisions of
11 Subsection C of this section."

12 SECTION 11. A new section of the Children's Code is
13 enacted to read:

14 "[NEW MATERIAL] IMPROPER REMOVAL OF A CHILD FROM CUSTODY--
15 DECLINATION OF JURISDICTION--RETURN OF A CHILD--DANGER
16 EXCEPTION--EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD--
17 APPROPRIATE ACTION.--

18 A. When a petitioner in an Indian child custody
19 proceeding before a state court has improperly removed the
20 child from custody of the parent or Indian custodian or has
21 improperly retained custody after a visit or other temporary
22 relinquishment of custody, the state court shall decline
23 jurisdiction over that petition and shall return the child to
24 the child's parent or Indian custodian unless returning the
25 child to the child's parent or Indian custodian could subject

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1 the child to a substantial and immediate danger or threat of
2 that danger.

3 B. Nothing in the State Indian Child Welfare Act
4 shall be construed to prevent the emergency removal of an
5 Indian child who is a resident of or is domiciled on a
6 reservation, but temporarily located off the reservation, from
7 the Indian child's parent or Indian custodian or the emergency
8 placement of that Indian child in a foster home or institution,
9 pursuant to Sections 32A-1-10, 32A-3B-4 and 32A-4-16 NMSA 1978,
10 in order to prevent imminent physical danger or harm to the
11 Indian child. The department shall expeditiously initiate a
12 child custody proceeding subject to the provisions of the State
13 Indian Child Welfare Act and the federal Indian Child Welfare
14 Act of 1978, transfer the Indian child to the jurisdiction of
15 the appropriate Indian tribe or restore the child to the parent
16 or Indian custodian, as may be appropriate."

17 SECTION 12. A new section of the Children's Code is
18 enacted to read:

19 "[NEW MATERIAL] INVESTIGATIONS--PENDING COURT
20 PROCEEDINGS--NOTICE--STANDARDS OF EVIDENCE--DOCUMENTATION OF
21 APPLICABILITY AND COMPLIANCE.--

22 A. Within forty-eight hours of initiating an
23 investigation that involves a child that the department knows
24 or has reason to know is an Indian child, the department shall
25 notify the Indian child's tribe of:

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- 1 (1) the investigation;
- 2 (2) the involvement of the Indian child or a
3 child the department has reason to know is an Indian child;
- 4 (3) the department's obligation to collaborate
5 with the Indian child's tribe to identify a qualified expert
6 witness to participate in the proceeding if the investigation
7 results in an adjudicatory proceeding; and
- 8 (4) the department's obligation to identify a
9 qualified expert witness no later than thirty days prior to an
10 adjudicatory or termination proceeding.

11 B. During an investigation that involves a child
12 who the department knows or has reason to know is an Indian
13 child, the department shall:

- 14 (1) coordinate services with the Indian
15 child's tribe to prevent taking the child into custody;
- 16 (2) provide culturally appropriate remedial
17 services to the parents; and
- 18 (3) make active efforts to identify extended
19 family and fictive kin able to be alternative care providers or
20 to ensure the safety of the child.

21 C. The department's active efforts to coordinate
22 services to prevent taking the Indian child, or a child who the
23 department knows or has reason to know may be an Indian child,
24 into custody shall be documented in any subsequent action
25 resulting in the child coming into the department's custody.

1 D. At the beginning of every proceeding under the
2 Family Services Act, Family in Need of Court-Ordered Services
3 Act, Abuse and Neglect Act and Adoption Act, the court shall
4 make a written determination as to whether the federal Indian
5 Child Welfare Act of 1978 and the State Indian Child Welfare
6 Act apply to the case.

7 E. Upon initiating a child custody proceeding
8 related to a child that the department knows or has reason to
9 know is an Indian child, the department shall notify the Indian
10 child's tribe of:

- 11 (1) the investigation;
- 12 (2) the involvement of the Indian child;
- 13 (3) active efforts that have been made to
14 provide remedial services and rehabilitative programs designed
15 to prevent the breakup of the Indian family and that these
16 efforts have proved unsuccessful;
- 17 (4) the department's obligation to collaborate
18 with the Indian child's tribe to identify a qualified expert
19 witness to participate in the proceeding if the investigation
20 results in an adjudication or termination of parental rights
21 proceeding; and
- 22 (5) the department's obligation to identify a
23 qualified expert witness no later than thirty days prior to an
24 adjudication or termination proceeding.

25 F. At the conclusion of every proceeding pursuant

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1 to the Children's Code, the court shall make a written
2 determination as to whether the department has made active
3 efforts to provide services and support to preserve and reunify
4 the family.

5 G. With respect to those proceedings to which the
6 federal Indian Child Welfare Act of 1978 and the State Indian
7 Child Welfare Act apply, the record shall include written
8 statements of compliance with those acts regarding notice,
9 evidentiary and other requirements.

10 H. In a child custody proceeding when the state
11 court knows or has reason to know that an Indian child is
12 involved, the department shall notify the parent or Indian
13 custodian and the Indian child's tribe, by certified mail with
14 return receipt requested, of:

15 (1) the pending proceedings;

16 (2) the right of the Indian child's parent,
17 Indian custodian and Indian child's tribe to:

18 (a) intervention; and

19 (b) petition the state court to transfer
20 the proceeding to the tribal court;

21 (3) the right of the Indian child's parent or
22 Indian custodian to court-appointed counsel if the state court
23 determines that person is unable to afford counsel; and

24 (4) the right of the Indian child's tribe to
25 participate in a child custody proceeding whether or not the

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1 Indian child's tribe intervenes.

2 I. The standards of evidence of the following child
3 custody proceedings are as follows:

4 (1) the court shall not order a foster care
5 placement of an Indian child unless clear and convincing
6 evidence is presented, including the testimony of one or more
7 qualified expert witnesses, demonstrating that the child's
8 continued custody by the child's parent or Indian custodian is
9 likely to result in serious emotional or physical damage to the
10 child;

11 (2) the court shall not order a termination of
12 parental rights for an Indian child unless evidence beyond a
13 reasonable doubt is presented, including the testimony of one
14 or more qualified expert witnesses, demonstrating that the
15 child's continued custody by the child's parent or Indian
16 custodian is likely to result in serious emotional or physical
17 damage to the child;

18 (3) for a foster care placement or termination
19 of parental rights, the evidence shall show a causal
20 relationship between the particular conditions in the home and
21 the likelihood that continued custody of the child will result
22 in serious emotional or physical damage to the particular child
23 who is the subject of the child custody proceeding; and

24 (4) without a causal relationship identified
25 in Paragraph (3) of this section, evidence that shows only the

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1 existence of community or family poverty, isolation, single
2 parenthood, custodian age, crowded or inadequate housing,
3 substance abuse or nonconforming social behavior shall not by
4 itself constitute clear and convincing evidence or evidence
5 beyond a reasonable doubt that continued custody is likely to
6 result in serious emotional or physical damage to the child.

7 J. If there is a reason to know that the Indian
8 child's parent or Indian custodian has limited English
9 proficiency and may not understand the contents of the notice
10 pursuant to Subsection H of this section, the state court shall
11 provide language access services as required by Title VI of the
12 federal Civil Rights Act of 1964 and other applicable federal
13 and state laws. If the state court is unable to secure
14 translation or interpretation support, the state court shall
15 contact or direct a party to contact the Indian child's tribe
16 or the local office of the United States department of the
17 interior bureau of Indian affairs for assistance identifying a
18 qualified translator or interpreter.

19 K. If the identity or location of the parent or
20 Indian custodian and the Indian tribe cannot be determined, a
21 notice shall be given to the secretary in the same manner as
22 provided in Subsection H of this section. The secretary shall
23 have fifteen days after receipt of the notice to provide the
24 same notice to the parent or Indian custodian and the Indian
25 tribe.

1 L. A foster care placement or termination of
2 parental rights proceeding shall not be held until at least ten
3 days after receipt of notice by the parent or Indian custodian
4 and the Indian tribe or the secretary pursuant to this section;
5 provided that the parent or Indian custodian or the Indian
6 tribe shall, upon request, be granted up to twenty additional
7 days to prepare for that proceeding.

8 M. Nothing in this section prevents a state court
9 from reviewing a removal of an Indian child from the child's
10 parent or Indian custodian at an emergency custody proceeding
11 before the expiration of the waiting periods provided in
12 Subsections K and L of this section to determine the
13 appropriateness of the removal and potential return of the
14 child."

15 SECTION 13. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] INTERVENTION.--

18 A. An Indian child's tribe has the right to
19 intervene at any point in a child custody proceeding.

20 B. In a state court proceeding for the foster care
21 placement or preadoptive placement, guardianship placement,
22 adoptive placement of or termination of parental rights to an
23 Indian child, the Indian child's relative or extended family
24 member or the Indian custodian may intervene at any point in
25 the proceeding.

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1 C. When determining whether a person described in
2 Subsection B of this section should be permitted to intervene,
3 the court shall consider:

4 (1) the person's rationale for the proposed
5 intervention; and

6 (2) whether intervention is in the best
7 interest of the Indian child."

8 SECTION 14. A new section of the Children's Code is
9 enacted to read:

10 "NEW MATERIAL PETITION--FORM AND CONTENT.--

11 A. A petition initiating a child custody proceeding
12 shall include a statement as to whether the child who is the
13 subject of the child custody proceeding is an Indian child or a
14 child the department has reason to know is an Indian child.

15 B. A party that files a petition, motion or other
16 document in a state court that seeks to effect a child custody
17 proceeding of an Indian child shall include in that petition,
18 motion or document:

19 (1) the Indian child's tribe or that the
20 department has reason to know that the child is an Indian
21 child;

22 (2) the tribal affiliations of the Indian
23 child's parents;

24 (3) the active efforts taken by the petitioner
25 to notify the Indian child's tribe pursuant to the State Indian

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1 Child Welfare Act and the federal Indian Child Welfare Act of
2 1978;

3 (4) a statement of and clear and convincing
4 evidence that active efforts have been made to provide remedial
5 services and rehabilitative programs designed to prevent the
6 breakup of the Indian family and that these efforts have proved
7 unsuccessful and the reasons these efforts were unsuccessful,
8 if known;

9 (5) the active efforts that were made to
10 comply with the notice requirements pursuant to the State
11 Indian Child Welfare Act and the federal Indian Child Welfare
12 Act of 1978, including results of the contact and the names,
13 addresses, titles and telephone numbers of the persons
14 contacted. Copies of any correspondence with the Indian
15 child's tribe shall be attached as exhibits to the petition;
16 and

17 (6) the active efforts that were made to
18 comply with the placement preferences set forth in the State
19 Indian Child Welfare Act, the federal Indian Child Welfare Act
20 of 1978 or the placement preferences of the Indian child's
21 tribe."

22 SECTION 15. A new section of the Children's Code is
23 enacted to read:

24 "[NEW MATERIAL] STATE COURT RECORD OF INDIAN CHILD'S
25 TRIBE.--

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1 A. Solely for the purposes of a child custody
2 proceeding involving an Indian child or a child that there is
3 reason to know is an Indian child, a state court shall make a
4 record of:

5 (1) an Indian tribe of which the Indian child
6 is a member or eligible for membership, as determined by the
7 Indian child's tribe;

8 (2) an Indian tribe of which an Indian child
9 is a member if the Indian child is a member of one Indian
10 tribe, but is eligible for membership in one or more other
11 Indian tribes;

12 (3) the Indian tribe designated by agreement
13 between one or more Indian tribes if the Indian child is not a
14 member of each of those Indian tribes, but is eligible for
15 membership with each of those Indian tribes; or

16 (4) the Indian tribe recorded by the state
17 court pursuant to Subsection B of this section if the Indian
18 child is eligible for membership with each of those Indian
19 tribes and the Indian tribes cannot agree on the designation of
20 the Indian child's tribe.

21 B. When recording an Indian child's tribe pursuant
22 to Paragraph (4) of Subsection A of this section, a state court
23 shall, after a hearing, record the Indian tribe with which the
24 Indian child has the more significant contacts, taking into
25 consideration:

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- 1 (1) the preference of each of the Indian
2 child's parents;
- 3 (2) the duration of the Indian child's current
4 or prior domicile or residence on or near the reservation of
5 each Indian tribe;
- 6 (3) the tribal membership of the Indian
7 child's custodial parent or Indian custodian;
- 8 (4) the interests asserted by each Indian
9 tribe;
- 10 (5) whether the Indian tribe has previously
11 adjudicated a case involving an Indian child;
- 12 (6) the Indian tribe's custom and tradition;
13 and
- 14 (7) if the court determines that the Indian
15 child is of sufficient age and capacity to meaningfully self-
16 identify the Indian child's tribe, the self-identification of
17 the Indian child.

18 C. If an Indian child is a member of or is eligible
19 for membership in more than one Indian tribe, the state court
20 shall permit an Indian tribe, in addition to the Indian child's
21 tribe as determined pursuant to Subsection A of this section,
22 to participate in the child custody proceeding in an advisory
23 capacity or as a party."

24 SECTION 16. A new section of the Children's Code is
25 enacted to read:

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1 "[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--
2 RIGHT TO COUNSEL.--

3 A. At the commencement of any hearing in a child
4 custody proceeding, the state court shall determine whether the
5 child is an Indian child by asking, on the record, each
6 individual present on the matter whether the individual knows
7 or has reason to know that the child is an Indian child. If no
8 individual present at the hearing knows or has reason to know
9 that the child is an Indian child, the state court shall
10 instruct each party to inform the court immediately if the
11 individual later receives information that provides reason to
12 know that the child is an Indian child.

13 B. A state court has reason to know that a child is
14 an Indian child if:

15 (1) an individual present in the proceeding,
16 officer of the court involved in the proceeding, Indian tribe,
17 Indian organization or agency informs the court that the child
18 is an Indian child;

19 (2) an individual present at the hearing,
20 officer of the court present at the hearing, Indian tribe or
21 Indian organization or agency informs the court that
22 information has been discovered indicating that the child is an
23 Indian child;

24 (3) the child indicates to the court that the
25 child is an Indian child;

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1 (4) the court is informed that the domicile or
2 residence of the child, the child's parent or the child's
3 Indian custodian is on a reservation or in an Alaska native
4 village;

5 (5) the court is informed that the child is or
6 has been a ward of a tribal court;

7 (6) the court is informed that the child or
8 the child's parent possesses an identification card or other
9 record indicating membership in an Indian tribe;

10 (7) testimony or documents presented to the
11 court indicate that the child may be an Indian child; or

12 (8) any other indicia provided to the court or
13 within the court's knowledge, indicating that the child is an
14 Indian child.

15 C. If a state court has reason to know that a child
16 is an Indian child but does not have sufficient evidence to
17 determine whether the child is an Indian child, the court
18 shall:

19 (1) treat the child as an Indian child until
20 the court determines, on the record, that the child is not an
21 Indian child; and

22 (2) require the department or another party to
23 submit a report, declaration or testimony on the record that
24 the department or other party used active efforts to identify
25 and work with all of the Indian tribes of which there is reason

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1 to know the child may be a member or be eligible for membership
2 to verify whether:

3 (a) the child is a member of an Indian
4 tribe; or

5 (b) the child is eligible for membership
6 of an Indian tribe or is the biological child of a member of an
7 Indian tribe.

8 D. In a case in which a state court determines
9 indigency, the parent or Indian custodian shall have the right
10 to court-appointed counsel in any removal, placement or
11 termination proceeding. The state court may appoint counsel
12 for the child upon a finding that the appointment is in the
13 best interest of the child. To the extent appropriations from
14 the state are insufficient to provide for the appointment of
15 counsel in the proceeding, the state court shall promptly
16 notify the secretary upon appointment of counsel so that the
17 secretary may pay for reasonable fees and expenses as provided
18 pursuant to 25 U.S.C. Section 1912 upon certification of the
19 presiding judge.

20 E. Each party, including the Indian child's tribe,
21 whether or not the Indian child's tribe has intervened, in a
22 foster care placement or termination of parental rights
23 proceeding pursuant to the Abuse and Neglect Act or the
24 Adoption Act involving an Indian child shall have the right to
25 examine all reports or other documents filed with the state

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1 court upon which a decision with respect to the action may be
2 based.

3 F. In a child custody proceeding involving an
4 Indian child or a child who the court or the department has
5 reason to know is an Indian child, the Indian child's tribe may
6 be present and may participate at a closed hearing, regardless
7 of whether the Indian child's tribe has intervened."

8 SECTION 17. A new section of the Children's Code is
9 enacted to read:

10 "[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

11 A. The court shall receive testimony from a
12 qualified expert witness in all adjudicatory proceedings
13 pursuant to the Abuse and Neglect Act and all proceedings to
14 terminate parental rights.

15 B. When the department notifies an Indian child's
16 tribe of the pendency of an investigation involving an Indian
17 child from that Indian tribe, the department shall have the
18 burden of collaborating, informing and identifying to the
19 Indian tribe the qualified expert witness to testify in any
20 adjudicatory or termination proceeding that results from the
21 investigation. The department shall request in writing that
22 the Indian child's tribe designate a qualified expert witness.
23 The qualified expert witness shall be a person who is:

24 (1) familiar with the Indian child's case and
25 has communicated with the Indian child's tribe about the case;

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1 (2) knowledgeable about the prevailing social
2 and cultural standards of the tribe and is familiar with the
3 family and child-rearing practices of the Indian child's tribe;
4 and

5 (3) a member of the Indian child's tribe; or

6 (4) a person recommended by the Indian child's
7 tribe.

8 C. If, after active efforts and in no case later
9 than forty-five days after requesting a designation in writing
10 from the Indian child's tribe, the department does not receive
11 a designation from the Indian tribe or if the department, after
12 good faith efforts, is unable to retain the Indian tribe's
13 designated qualified expert witness, the department may
14 identify a qualified expert witness who meets the requirements
15 provided in Paragraphs (1) and (2) of Subsection B of this
16 section from a list of qualified expert witnesses compiled
17 through cooperation among the Indian tribes in the state and
18 the department.

19 D. If, sixty days following the initiation of an
20 investigation, the department has not identified a qualified
21 expert witness to testify as required by the State Indian Child
22 Welfare Act and the federal Indian Child Welfare Act of 1978,
23 in considering a motion by the department for a continuance,
24 the court shall consider whether it is in the best interest of
25 the Indian child to remain in the department's custody for

1 additional time.

2 E. At least thirty days prior to an adjudicatory
3 proceeding, the department shall disclose to the Indian child's
4 tribe the name of the qualified expert witness who will testify
5 at all adjudicatory hearings pursuant to the Abuse and Neglect
6 Act and all proceedings to terminate parental rights.

7 F. An Indian child's tribe shall have the
8 opportunity to question a qualified expert witness in all
9 hearings involving an Indian child in which the qualified
10 expert witness testifies, regardless of whether the Indian
11 child's tribe has intervened.

12 G. An employee of the department shall not serve as
13 a qualified expert witness pursuant to this section."

14 SECTION 18. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] PARENTAL RIGHTS--VOLUNTARY TERMINATION--
17 CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

18 A. When a parent or Indian custodian voluntarily
19 consents to a foster care placement or to termination of
20 parental rights, that consent is not valid unless executed in
21 writing and recorded before a judge of competent jurisdiction
22 and accompanied by the presiding judge's certificate that the
23 terms and consequences of the consent were fully explained in
24 detail and were fully understood by the parent or Indian
25 custodian. The state court shall also certify that either the

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1 parent or the Indian custodian fully understood the explanation
2 in English or that it was interpreted into a language that the
3 parent or Indian custodian understood. Any consent to a foster
4 care placement or termination of parental rights that is given
5 prior to or within ten days after birth of an Indian child is
6 not valid.

7 B. A parent or Indian custodian may withdraw
8 consent to a voluntary foster care placement of an Indian child
9 pursuant to the Children's Code at any time and, upon receipt
10 of the request to withdraw, the Indian child shall be
11 immediately returned to the parent or Indian custodian.

12 C. In a voluntary proceeding for termination of
13 parental rights or adoptive placement of an Indian child
14 pursuant to the Children's Code, the consent of the parent may
15 be withdrawn for any reason at any time prior to the entry of a
16 final decree of termination or adoption as the case may be, and
17 the Indian child shall be returned to the parent.

18 D. After the entry of a final decree of adoption of
19 an Indian child in a state court that is made pursuant to the
20 Adoption Act, the parent may withdraw consent to the adoption
21 upon the grounds that consent was obtained through fraud or
22 duress and may petition the court to vacate the decree. Upon a
23 finding that the consent was obtained through fraud or duress,
24 the court shall vacate the decree and return the child to the
25 parent. An adoption that has been in effect for at least two

1 years shall not be invalidated except as otherwise provided by
2 law.

3 E. In any voluntary foster care placement or
4 termination of parental rights proceeding in state court, when
5 the court knows or has reason to know that an Indian child is
6 involved, the party seeking to effectuate the foster care
7 placement or termination of parental rights shall notify the
8 Indian child's tribe, by certified mail, with return receipt
9 requested, of the pending proceedings and of its right of
10 intervention."

11 SECTION 19. A new section of the Children's Code is
12 enacted to read:

13 "[NEW MATERIAL] PETITION TO COURT OF COMPETENT
14 JURISDICTION TO INVALIDATE ACTION.--An Indian child who is the
15 subject of an action for foster care placement, preadoptive
16 placement, guardianship, adoptive placement or termination of
17 parental rights pursuant to the Children's Code, a parent or
18 Indian custodian from whose custody the child was removed or
19 the Indian child's tribe may petition any court of competent
20 jurisdiction to invalidate that action upon a showing that the
21 action violated any provision of Section 7, 12, 13, 16, 17, 18,
22 20, 21 or 23 of the State Indian Child Welfare Act."

23 SECTION 20. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] PLACEMENT PREFERENCES--ADOPTION--PLACEMENT

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1 OF INDIAN CHILDREN--REQUIRED TRAINING.--

2 A. In the case of a foster care placement,
3 preadoptive placement, adoptive placement or guardianship of an
4 Indian child or a child the court knows or has reason to know
5 is an Indian child, except as provided in Subsection C of this
6 section, the child shall be placed in the least restrictive
7 setting that:

8 (1) most closely approximates a family, taking
9 into consideration the Indian child's sibling attachment;

10 (2) allows the Indian child's special needs,
11 if any, to be met;

12 (3) is in reasonable geographic proximity to
13 the Indian child's home, extended family or siblings; and

14 (4) is in accordance with the order of
15 preference established by the Indian child's tribe by any
16 means, or, if that Indian tribe has not established placement
17 preferences, is in accordance with the following order of
18 preference:

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

21 (b) a foster home licensed, approved or
22 specified by the Indian child's tribe; or

23 (c) a foster home licensed or approved
24 by a licensing authority in New Mexico and in which one or more
25 of the licensed or approved foster parents is an Indian.

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1 B. A placement shall not depart from the
2 preferences based on:

3 (1) the socioeconomic status of any placement;

4 (2) a home environment that does not impact
5 the safety and well-being of the Indian child; or

6 (3) ordinary bonding or attachment that
7 occurred from time spent in a non-preferred placement that was
8 made in violation of the State Indian Child Welfare Act or the
9 federal Indian Child Welfare Act of 1978.

10 C. If an Indian child is placed in a placement that
11 is contrary to the placement preferences provided in this
12 section, a secondary permanency plan shall not be
13 simultaneously permitted, and the department shall:

14 (1) conduct monitoring at least every thirty
15 days to determine whether a placement that comports with the
16 placement preferences provided in this section is available;

17 (2) undertake active efforts to identify a
18 placement that aligns with the placement preferences as soon as
19 practicable; and

20 (3) document all active efforts undertaken to
21 identify a placement that aligns with the placement
22 preferences. At minimum, this shall include:

23 (a) contacting the Indian child's tribe;

24 (b) conducting a relative search;

25 (c) interviewing relatives throughout

1 the case;

2 (d) continually assessing and
3 reevaluating relatives;

4 (e) providing the Indian child's tribe
5 with all information in regard to family members;

6 (f) offering relatives an expedited
7 foster care license;

8 (g) assisting relatives through the
9 licensing process and making the licensing process more
10 accessible;

11 (h) conducting timely home studies when
12 identifying a placement that aligns with the placement
13 preference;

14 (i) continued contact, including
15 visitation; and

16 (j) providing culturally appropriate
17 interventions.

18 D. In the case of a foster care placement,
19 preadoptive placement, adoptive placement or guardianship of an
20 Indian child pursuant to the Children's Code, if the Indian
21 child's tribe establishes a different order of preference, the
22 adoption agency or state court effecting the placement shall
23 follow that order of preference so long as the placement is the
24 least restrictive setting appropriate to the particular needs
25 of the Indian child, as provided in Subsection A of this

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1 section. When appropriate, the preference of the Indian child
2 or parent may be considered.

3 E. In the case of a child who is an Indian child or
4 a child who the department or the court has reason to know is
5 an Indian child, the court-ordered mediation pursuant to
6 Section 32A-4-29 NMSA 1978 shall not be waived and the Indian
7 child's tribe shall be allowed to participate, whether or not
8 it intervenes.

9 F. If an Indian child is placed in a household that
10 does not include a parent or guardian who is a member of the
11 Indian child's tribe, upon placement and at least annually
12 thereafter, the department shall provide mandatory training to
13 the foster or preadoptive parent that includes information on
14 the Indian child's tribal culture and language, created in
15 conjunction with, and at the discretion of, the Indian tribe,
16 tribal experts and relatives.

17 G. The administrative office of the courts in
18 collaboration with the department shall develop and deliver
19 annual mandatory training to all children's court judges,
20 district court judges, attorneys, guardians ad litem and youth
21 attorneys who are court appointed. The training shall include
22 information on:

23 (1) the federal Indian Child Welfare Act of
24 1978;

25 (2) the State Indian Child Welfare Act,

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1 including cultural compacts; and

2 (3) the Indian tribes geographically located
3 within the state.

4 H. A judge, attorney, guardian ad litem or youth
5 attorney required to be trained in accordance with Subsection G
6 of this section shall attend the required training at least
7 once every twelve months.

8 I. An Indian child shall be placed in accordance
9 with the placement preferences unless there is good cause to
10 the contrary; provided that:

11 (1) if any party asserts that good cause not
12 to follow the placement preferences exists, the reasons for
13 this belief or assertion shall be stated orally on the record
14 or provided in writing to the parties to the child custody
15 proceeding and the court;

16 (2) the party seeking the departure from the
17 placement preferences has the burden of proving by clear and
18 convincing evidence that there is good cause to depart from the
19 preferences; and

20 (3) a court's determination of good cause to
21 depart from the placement preferences shall be made on the
22 record or in writing and may be based on the considerations set
23 forth by the State Indian Child Welfare Act and the federal
24 Indian Child Welfare Act of 1978."

25 SECTION 21. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] CHANGE IN PLACEMENT--PLACEMENT
3 PREFERENCE--DEPARTMENT DUTIES.--If an Indian child is placed in
4 a foster placement that was contrary to the placement
5 preferences provided in Section 20 of the State Indian Child
6 Welfare Act, and regardless of the length of time that the
7 child was in the foster placement, the department shall conduct
8 a reassessment of placement preferences for the child, in
9 accordance with Section 20 of that act, before the child's
10 placement may be changed to an adoptive or other permanent
11 placement. The reassessment shall include consultation with
12 the Indian child's tribe."

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

15 "[NEW MATERIAL] PREADOPTIVE, ADOPTIVE AND GUARDIANSHIP
16 PLACEMENTS--MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To
17 ensure that the federal Indian Child Welfare Act of 1978 and
18 the State Indian Child Welfare Act are fully implemented and
19 that all Indian children have the opportunity to maintain
20 strong connections to their culture, if the household into
21 which an Indian child is placed for pre-adoption, adoption or
22 guardianship does not include a parent who is a member of the
23 Indian child's tribe, the court shall require the parties to
24 the adoption to enter a cultural compact, at the discretion of
25 the Indian child's tribe, that documents the parties' agreement

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1 regarding how the Indian child will continue to actively
2 participate in the Indian child's cultural learning and
3 activities and engagement with family members. Each cultural
4 compact shall be specific to the Indian child and shall
5 articulate the Indian child's understanding as the Indian child
6 grows and matures. The cultural compact shall become part of
7 the court record, shall be enforced by the court and shall be
8 included in the adoption decree."

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

11 "[NEW MATERIAL] DISPOSITIONAL JUDGMENTS.--

12 A. At the conclusion of a dispositional hearing in
13 a child custody proceeding involving an Indian child, in
14 addition to other requirements for a state court's findings
15 pursuant to the Children's Code, a state court shall include:

16 (1) when the judgment is made in a child
17 custody proceeding held pursuant to the Family in Need of
18 Court-Ordered Services Act or the Abuse and Neglect Act,
19 findings of:

20 (a) whether the placement preferences
21 set forth in the State Indian Child Welfare Act and the federal
22 Indian Child Welfare Act of 1978 have been incorporated into a
23 plan for family services made pursuant to Section 32A-3B-15
24 NMSA 1978 or in a case plan as described in Section 32A-4-21
25 NMSA 1978; provided that if those placement preferences are not

1 incorporated into the plan for family services or the case
2 plan, good cause for noncompliance shall be clearly stated and
3 supported by clear and convincing evidence;

4 (b) whether the plan for family services
5 or the case plan provides for maintenance of the Indian child's
6 cultural ties; and

7 (c) how the Indian child's cultural
8 needs are considered and how, when reasonable, access to
9 cultural practices and traditional treatment will be provided
10 to the child; and

11 (2) in a termination of parental rights
12 proceeding pursuant to the Abuse and Neglect Act or the
13 Adoption Act, findings that the requirements of the State
14 Indian Child Welfare Act and the federal Indian Child Welfare
15 Act of 1978 have been met.

16 B. The state court shall determine during a review
17 of a dispositional judgment involving an Indian child pursuant
18 to Section 32A-4-25 NMSA 1978 whether the judgment complies
19 with the placement preferences set forth in the State Indian
20 Child Welfare Act and the federal Indian Child Welfare Act of
21 1978 or the placement preferences of the Indian child's tribe
22 and whether the child's case plan as described in Section
23 32A-4-21 NMSA 1978 provides for maintaining the Indian child's
24 cultural ties. When placement preferences are not followed,
25 good cause for noncompliance shall be clearly stated and

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1 supported by clear and convincing evidence. A court's
2 determination of good cause shall be made on the record or in
3 writing and shall be based on the considerations set forth in
4 the federal regulations or other factors authorized by federal
5 and state law."

6 SECTION 24. A new section of the Children's Code is
7 enacted to read:

8 "[NEW MATERIAL] RETURN OF CUSTODY.--

9 A. Whenever a final decree of adoption of an Indian
10 child has been vacated or set aside or the adoptive parents
11 voluntarily consent to the termination of their parental rights
12 to the child, a biological parent or prior Indian custodian may
13 petition for return of custody, and the state court shall grant
14 that petition unless there is a showing, in a proceeding
15 subject to the provisions of Section 12 of the State Indian
16 Child Welfare Act, that the return of custody is not in the
17 best interests of the Indian child.

18 B. Whenever an Indian child is removed from a
19 foster care home or institution for the purpose of further
20 foster care, preadoptive or adoptive placement, that placement
21 shall be in accordance with the provisions of the State Indian
22 Child Welfare Act and the federal Indian Child Welfare Act of
23 1978, except in the case where an Indian child is being
24 returned to the parent or Indian custodian from whose custody
25 the child was originally removed."

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1 SECTION 25. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When
4 making a determination regarding the best interests of an
5 Indian child pursuant to the State Indian Child Welfare Act and
6 the federal Indian Child Welfare Act of 1978, a state court
7 shall, in consultation with the Indian child's tribe, consider
8 the following relevant factors:

9 A. the protection, safety and well-being of the
10 Indian child;

11 B. the prevention of unnecessary out-of-home
12 placement of the Indian child;

13 C. the prioritization of placement of the Indian
14 child in accordance with the placement preferences provided
15 pursuant to Section 20 of the State Indian Child Welfare Act
16 and the federal Indian Child Welfare Act of 1978;

17 D. the critical importance to the Indian child of
18 establishing, developing or maintaining a political, cultural,
19 social and spiritual relationship with the Indian child's tribe
20 and tribal community and with familial ties such as clanship
21 and family with unique cultural characteristics; and

22 E. the importance to the Indian child of the
23 ability of the Indian child's tribe to maintain its existence
24 and integrity in promotion of the stability and security of
25 Indian children and families."

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1 SECTION 26. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] ACCESS TO POST-DECREE ADOPTION
4 RECORDS--TRIBAL AFFILIATION AND OTHER INFORMATION.--

5 A. Upon application by an Indian individual who has
6 reached the age of eighteen and who was the subject of an
7 adoptive placement, the state court that entered the final
8 decree shall inform that individual of the tribal affiliation,
9 if any, of the individual's biological parents and provide any
10 other information necessary to protect any rights flowing from
11 the individual's tribal relationship.

12 B. An individual adopted pursuant to the Adoption
13 Act shall have the right, for the purpose of obtaining
14 information or membership in that individual's Indian tribe of
15 origin, to access information kept from the department.

16 Information needed by that individual to obtain membership in
17 that individual's Indian tribe of origin may be requested from
18 the department. Information needed by an individual to obtain
19 membership in the individual's Indian tribe of origin shall be
20 provided to the following:

21 (1) the individual, after the individual
22 reaches eighteen years of age;

23 (2) when the individual is a child, the
24 individual's adoptive parent or guardian;

25 (3) the individual's descendant or, if the

1 individual's descendant is a child, an adult representative for
2 the descendant; or

3 (4) the individual's tribe or tribes of
4 origin.

5 C. When the department receives a request for
6 information regarding an individual's Indian tribe of origin
7 when that individual was adopted pursuant to the Adoption Act,
8 the department shall:

9 (1) provide the requester with the tribal
10 affiliation of the individual's biological parents;

11 (2) provide the requester any additional
12 information necessary to establish tribal membership for the
13 individual and to protect any rights flowing from the
14 individual's tribal relationship, pursuant to the
15 confidentiality provisions of the Children's Code; and

16 (3) provide notice to the requester of the
17 department's submission of information to the individual's
18 tribe."

19 SECTION 27. A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] ADOPTION DECREES--INFORMATION
22 AVAILABILITY.--

23 A. The clerk of a state court entering a final
24 decree or order in an adoptive placement of an Indian child
25 shall provide the secretary with a copy of that decree,

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1 adoptive placement order and any other information as necessary
2 to show:

3 (1) the name and tribal membership or
4 eligibility of membership of the child;

5 (2) the names and addresses of the biological
6 parents; and

7 (3) the identity of any agency having files or
8 information relating to the adoptive placement.

9 B. The attorney for the petitioner shall provide to
10 the clerk of the state court a copy of the decree of adoption,
11 an adoptive placement order or any other information required
12 by the State Indian Child Welfare Act or the federal Indian
13 Child Welfare Act of 1978 and a stamped envelope addressed to
14 the secretary."

15 SECTION 28. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] STATE INDIAN CHILD WELFARE ACT
18 SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--

19 A. The provisions of the State Indian Child Welfare
20 Act govern child custody proceedings involving Indian children.
21 The provisions of the Children's Code and the Kinship
22 Guardianship Act are in addition to the State Indian Child
23 Welfare Act. To the extent the provisions of those acts or any
24 provision of New Mexico state law conflicts with the provisions
25 of the State Indian Child Welfare Act, the provisions of the

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1 State Indian Child Welfare Act shall apply.

2 B. To the extent a provision of the State Indian
3 Child Welfare Act conflicts with a provision of the federal
4 Indian Child Welfare Act of 1978, the provision of law that
5 provides the most protection to the interests of a parent or
6 Indian custodian shall be deemed to apply, as required pursuant
7 to 25 U.S.C. 1921. Regardless of whether state or federal law
8 is applied, the best interests of the Indian child shall be
9 considered."

10 SECTION 29. A new section of Children's Code is enacted
11 to read:

12 "[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The
13 "office of tribal affairs" is created in the department. The
14 office shall be dedicated to ensuring the department's
15 compliance with and full implementation of the federal Indian
16 Child Welfare Act of 1978 and the State Indian Child Welfare
17 Act."

18 SECTION 30. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The
21 department, through meaningful consultation with the Indian
22 nations, tribes and pueblos of the state, shall promulgate
23 rules to implement the provisions of the State Indian Child
24 Welfare Act pursuant to the State-Tribal Collaboration Act and
25 other applicable law and policy. The department shall also

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1 consult with the Indian nations, tribes and pueblos of the
2 state to recommend court rules for potential adoption by the
3 courts of the state."

4 SECTION 31. Section 32A-1-4 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 13, as amended) is amended to read:

6 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

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

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

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

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

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

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

25 G. "department" means the children, youth and

1 families department, unless otherwise specified;

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

6 I. "federal Indian Child Welfare Act of 1978" means
7 the federal Indian Child Welfare Act of 1978, as that act may
8 be amended or its sections renumbered;

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

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

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

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

- 24 (1) less than eighteen years old;
25 (2) a member of an Indian tribe or is eligible

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1 for membership in an Indian tribe; and

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

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

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

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

11 ~~[N.]~~ O. "Indian tribe" means a federally recognized
12 Indian tribe, community or group pursuant to 25 U.S.C. Section
13 1903(1);

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

16 ~~[P.]~~ Q. "legal custody" means a legal status
17 created by order of the court or other court of competent
18 jurisdiction or by operation of statute that vests in a person,
19 department or agency the right to determine where and with whom
20 a child shall live; the right and duty to protect, train and
21 discipline the child and to provide the child with food,
22 shelter, personal care, education and ordinary and emergency
23 medical care; the right to consent to major medical,
24 psychiatric, psychological and surgical treatment and to the
25 administration of legally prescribed psychotropic medications

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1 pursuant to the Children's Mental Health and Developmental
2 Disabilities Act; and the right to consent to the child's
3 enlistment in the armed forces of the United States;

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

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

10 (1) reunification;

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

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

16 (4) placement in the legal custody of the
17 department with the child placed in the home of a fit and
18 willing relative; or

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

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

23 [F.] U. "plan of care" means a plan created by a
24 health care professional intended to ensure the safety and
25 well-being of a substance-exposed newborn by addressing the

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1 treatment needs of the child and any of the child's parents,
2 relatives, guardians, family members or caregivers to the
3 extent those treatment needs are relevant to the safety of the
4 child;

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

7 [V-] W. "protective supervision" means the right to
8 visit the child in the home where the child is residing,
9 inspect the home, transport the child to court-ordered
10 diagnostic examinations and evaluations and obtain information
11 and records concerning the child;

12 [W-] X. "relative" means a person related to
13 another person by blood within the fifth degree of
14 consanguinity or through marriage by the fifth degree of
15 affinity;

16 [X-] Y. "reunification" means either a return of
17 the child to the parent or to the home from which the child was
18 removed or a return to the noncustodial parent;

19 [Y-] Z. "tribal court" means:

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

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

24 [Z-] AA. "tribal court order" means a document
25 issued by a tribal court that is signed by an appropriate

1 authority, including a judge, governor or tribal council
2 member, and that orders an action that is within the tribal
3 court's jurisdiction; and

4 ~~[AA-]~~ BB. "tribunal" means any judicial forum other
5 than the court."

6 **SECTION 32.** Section 32A-1-8 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 17, as amended) is amended to read:

8 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
9 JURISDICTION.--

10 A. The court has exclusive original jurisdiction of
11 all proceedings under the Children's Code in which a person is
12 eighteen years of age or older and was a child at the time the
13 alleged act in question was committed or is a child alleged to
14 be:

15 (1) a delinquent child;

16 (2) a child of a family in need of
17 court-ordered services or a child in need of services pursuant
18 to the Family in Need of Court-Ordered Services Act;

19 (3) a neglected child;

20 (4) an abused child;

21 (5) a child subject to adoption; or

22 (6) a child subject to placement for a
23 developmental disability or a mental disorder.

24 B. The court has exclusive original jurisdiction to
25 emancipate a minor.

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1 C. During abuse or neglect proceedings in which New
2 Mexico is the home state, pursuant to the provisions of the
3 Uniform Child-Custody Jurisdiction and Enforcement Act, the
4 court shall have jurisdiction over both parents to determine
5 the best interest of the child and to decide all matters
6 incident to the court proceedings.

7 D. Nothing in this section shall be construed to in
8 any way abridge the rights of any Indian tribe to exercise
9 jurisdiction over child custody matters as defined by and in
10 accordance with the federal Indian Child Welfare Act of 1978
11 and the State Indian Child Welfare Act.

12 ~~[E. A tribal court order pertaining to an Indian
13 child in an action under the Children's Code shall be
14 recognized and enforced by the district court for the judicial
15 district in which the tribal court is located. A tribal court
16 order pertaining to an Indian child that accesses state
17 resources shall be recognized and enforced pursuant to the
18 provisions of intergovernmental agreements entered into by the
19 Indian child's tribe and the department or another state
20 agency. An Indian child residing on or off a reservation, as a
21 citizen of this state, shall have the same right to services
22 that are available to other children of the state, pursuant to
23 intergovernmental agreements. The cost of the services
24 provided to an Indian child shall be determined and provided
25 for in the same manner as services are made available to other~~

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1 ~~children of the state, utilizing tribal, state and federal~~
2 ~~funds and pursuant to intergovernmental agreements. The tribal~~
3 ~~court, as the court of original jurisdiction, shall retain~~
4 ~~jurisdiction and authority over the Indian child.~~

5 F.] E. The court may acquire jurisdiction over a
6 Motor Vehicle Code or municipal traffic code violation as set
7 forth in Section 32A-2-29 NMSA 1978."

8 SECTION 33. Section 32A-1-11 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 20, as amended) is amended to read:

10 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
11 initiating proceedings pursuant to the provisions of Chapter
12 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the
13 Matter of, a child", and shall set forth with
14 specificity:

15 A. the facts necessary to invoke the jurisdiction
16 of the court;

17 B. if violation of a criminal statute or other law
18 or ordinance is alleged, the citation to the appropriate law;

19 C. the name, birth date and residence address of
20 the child;

21 D. the name and residence address of the parents,
22 guardian, custodian or spouse, if any, of the child; and if no
23 parent, guardian, custodian or spouse, if any, resides or can
24 be found within the state or if a residence address is unknown,
25 the name of any known adult relative residing within the state

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1 or, if there be none, the known adult relative residing nearest
2 to the court;

3 E. whether the child is in custody or detention
4 pursuant to the Delinquency Act and, if so, the place of
5 custody or detention and the time the child was taken into
6 custody;

7 F. whether the child is an Indian child and, if so,
8 any additional information required pursuant to the State
9 Indian Child Welfare Act and the federal Indian Child Welfare
10 Act of 1978; and

11 G. if any of the matters required to be set forth
12 by this section are not known, a statement of those matters and
13 the fact that they are not known."

14 SECTION 34. Section 32A-3B-16 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 88, as amended) is amended to read:

16 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

17 A. At the conclusion of the dispositional hearing,
18 the court shall set forth its findings on the following issues
19 in the dispositional judgment:

20 (1) the ability of the parent and child to
21 share a residence;

22 (2) the interaction and interrelationship of
23 the child with the child's parent, siblings and any other
24 person who may significantly affect the child's best interest;

25 (3) the child's adjustment to home, school and

1 community;

2 (4) whether the child's educational needs are
3 being met;

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

6 (6) the wishes of the child as to the child's
7 custodian;

8 (7) the wishes of the child's parent, guardian
9 or custodian as to the child's custody;

10 (8) whether there exists a relative of the
11 child or any other individual who, after study by the
12 department, is found to be qualified to receive and care for
13 the child;

14 (9) the availability of services recommended
15 in the treatment plan;

16 (10) the department's efforts to work with the
17 parent and child in the home and a description of the in-home
18 treatment programs that the department has considered and
19 rejected;

20 [~~(11) whether the placement preferences set~~
21 ~~forth in the federal Indian Child Welfare Act of 1978 or the~~
22 ~~placement preferences of the child's Indian tribe have been~~
23 ~~incorporated into the plan. When placement preferences have~~
24 ~~not been incorporated into the plan, an explanation shall be~~
25 ~~clearly stated and supported;~~

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1 ~~(12) when the child is an Indian child,~~
2 ~~whether the plan provides for maintaining the Indian child's~~
3 ~~cultural ties]~~

4 (11) if the child is an Indian child or there
5 is reason to know the child is an Indian child, any other
6 findings required for a dispositional judgment pursuant to the
7 State Indian Child Welfare Act and the federal Indian Child
8 Welfare Act of 1978; and

9 ~~(13)~~ (12) when the child is an undocumented
10 immigrant child, whether the family services plan included
11 referral to nongovernmental agencies that may be able to assist
12 the child, and family when appropriate, in addressing
13 immigration status.

14 B. When there is an adjudication regarding a family
15 in need of court-ordered services, the court shall enter
16 judgment and make any of the following dispositions:

17 (1) permit the child to remain with the
18 child's parent, guardian or custodian, subject to conditions
19 and limitations the court may prescribe;

20 (2) place the child under the protective
21 supervision of the department;

22 (3) transfer legal custody of the child to:

23 (a) the department;

24 (b) an agency responsible for the care
25 of neglected or abused children; or

1 (c) the child's noncustodial parent, if
2 that is found to be in the child's best interests; or

3 (4) if the evidence indicates that the child's
4 educational needs are not being met, the local education agency
5 may be joined as a party and directed to assess the child's
6 needs within forty-five days, attempt to meet the child's
7 educational needs and document its efforts to meet the child's
8 educational needs.

9 C. Unless a child of an adjudicated family in need
10 of court-ordered services is also found to be a delinquent
11 child, the child shall not be confined in an institution
12 established for the long-term care and rehabilitation of
13 delinquent children or in a facility for the detention of
14 alleged delinquent children.

15 ~~[D. When the child is an Indian child, the child's~~
16 ~~cultural needs shall be considered during dispositional~~
17 ~~judgment and, when reasonable, access to cultural practices and~~
18 ~~traditional treatment shall be provided to the Indian child.]"~~

19 SECTION 35. Section 32A-4-6 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 100, as amended) is amended to read:

21 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

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

23 (1) by a law enforcement officer when the
24 officer has evidence giving rise to reasonable grounds to
25 believe that the child is abused or neglected and that there is

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1 an immediate threat to the child's safety; provided that the
2 law enforcement officer contacts the department to enable the
3 department to conduct an on-site safety assessment to determine
4 whether it is appropriate to take the child into immediate
5 custody, except that a child may be taken into custody by a law
6 enforcement officer without a protective services assessment
7 being conducted if:

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

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

16 (c) the child has been abandoned;

17 (d) the child is in need of emergency
18 medical care;

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

21 (f) the child is in imminent risk of
22 abuse; or

23 (2) by medical personnel when there are
24 reasonable grounds to believe that the child has been injured
25 as a result of abuse or neglect and that the child may be at

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1 risk of further injury if returned to the child's parent,
2 guardian or custodian. The medical personnel shall hold the
3 child until a law enforcement officer is available to take
4 custody of the child pursuant to Paragraph (1) of this
5 subsection.

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

10 C. When a child is taken into custody by law
11 enforcement, the department is not compelled to place the child
12 in an out-of-home placement and may release the child to the
13 child's parent, guardian or custodian.

14 D. When a child is taken into custody, the
15 department shall make [~~reasonable~~] active efforts to determine
16 whether the child is an Indian child as required pursuant to
17 the State Indian Child Welfare Act and the federal Indian Child
18 Welfare Act of 1978.

19 E. If a child taken into custody is an Indian child
20 and is alleged to be neglected or abused, the department shall
21 give notice to the [~~agent of the Indian child's tribe~~]
22 appropriate parties in accordance with the federal Indian Child
23 Welfare Act of 1978 and the State Indian Child Welfare Act.

24 F. Any person who intentionally interferes with
25 protection of a child, as provided by Subsection A of this

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1 section, is guilty of a petty misdemeanor."

2 SECTION 36. Section 32A-4-18 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 112, as amended) is amended to read:

4 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
5 PROBABLE CAUSE.--

6 A. When a child alleged to be neglected or abused
7 has been placed in the legal custody of the department or the
8 department has petitioned the court for temporary custody, a
9 custody hearing shall be held within ten days from the date the
10 petition is filed to determine if the child should remain in or
11 be placed in the department's custody pending adjudication.
12 Upon written request of the respondent, the hearing may be held
13 earlier, but in no event shall the hearing be held sooner than
14 two days after the date the petition was filed.

15 B. The parent, guardian or custodian of the child
16 alleged to be abused or neglected shall be given reasonable
17 notice of the time and place of the custody hearing.

18 C. At the custody hearing, the court shall return
19 legal custody of the child to the child's parent, guardian or
20 custodian unless probable cause exists to believe that:

21 (1) the child is suffering from an illness or
22 injury, and the parent, guardian or custodian is not providing
23 adequate care for the child;

24 (2) the child is in immediate danger from the
25 child's surroundings and removal from those surroundings is

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1 necessary for the child's safety or well-being;

2 (3) the child will be subject to injury by
3 others if not placed in the custody of the department;

4 (4) there has been an abandonment of the child
5 by the child's parent, guardian or custodian; or

6 (5) the parent, guardian or custodian is not
7 able or willing to provide adequate supervision and care for
8 the child.

9 D. At the conclusion of the custody hearing, if the
10 court determines that probable cause exists pursuant to
11 Subsection C of this section, the court may:

12 (1) return legal custody of the child to the
13 child's parent, guardian or custodian upon such conditions as
14 will reasonably ensure the safety and well-being of the child,
15 including protective supervision or maintenance at home by the
16 department or participation in programs or services aimed at
17 addressing the underlying causative factors that impact the
18 safety or well-being of the child; or

19 (2) award legal custody of the child to the
20 department.

21 E. Reasonable efforts shall be made to preserve and
22 reunify the family, with the paramount concern being the
23 child's health and safety. When the department determines that
24 the home of an adult relative of the child meets all relevant
25 child protection and licensing standards and placement in the

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1 home would be in the best interest of the child, the department
2 shall give a preference to placement of the child in that home.
3 The department shall make reasonable efforts to conduct home
4 studies on appropriate relatives who express an interest in
5 providing placement for the child. If the child is an Indian
6 child, the person shall meet the standards set forth in the
7 federal Indian Child Welfare Act of 1978 and the State Indian
8 Child Welfare Act.

9 F. At the conclusion of the custody hearing, if the
10 court determines that probable cause does not exist pursuant to
11 Subsection C of this section, the court shall:

12 (1) retain jurisdiction and, unless the court
13 permits otherwise, order that the respondent and child remain
14 in the jurisdiction of the court pending the adjudication;

15 (2) return legal custody of the child to the
16 child's parent, guardian or custodian with conditions to
17 provide for the safety and well-being of the child; and

18 (3) order that the child's parent, guardian or
19 custodian allow the child necessary contact with the child's
20 guardian ad litem or attorney.

21 G. At the conclusion of the custody hearing, the
22 court may order the respondent or the child alleged to be
23 neglected or abused, or both, to undergo appropriate diagnostic
24 examinations or evaluations. If the court determines that
25 probable cause does not exist, the court may order the

1 respondent or the child alleged to be neglected or abused, or
2 both, to undergo appropriate diagnostic examinations or
3 evaluations as necessary to protect the child's best interests,
4 based upon the allegations in the petition and the evidence
5 presented at the custody hearing. Copies of any diagnostic or
6 evaluation reports ordered by the court shall be provided to
7 the parties at least five days before the adjudicatory hearing
8 is scheduled. The reports shall not be sent to the court.

9 H. The Rules of Evidence shall not apply to custody
10 hearings.

11 I. Notwithstanding any other provision of law, a
12 party aggrieved by an order entered pursuant to this section
13 shall be permitted to file an immediate appeal as a matter of
14 right. If the order appealed from grants the legal custody of
15 the child to or withholds it from one or more of the parties to
16 the appeal, the appeal shall be expedited and shall be heard at
17 the earliest practicable time. While an appeal pursuant to
18 this section is pending, the court shall have jurisdiction to
19 take further action in the case pursuant to Subsection B of
20 Section 32A-1-17 NMSA 1978.

21 J. Nothing in this section shall be construed to
22 abridge the rights of Indian children pursuant to the federal
23 Indian Child Welfare Act of 1978 and the State Indian Child
24 Welfare Act."

25 SECTION 37. Section 32A-4-20 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 114, as amended) is amended to read:

2 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
3 DISPOSITIONAL MATTERS--PENALTY.--

4 A. The proceedings shall be recorded by
5 stenographic notes or by electronic, mechanical or other
6 appropriate means.

7 B. All abuse and neglect hearings shall be closed
8 to the general public.

9 C. Only the parties, their counsel, witnesses and
10 other persons approved by the court may be present at a closed
11 hearing. The foster parent, preadoptive parent or relative
12 providing care for the child, and an Indian child's tribe,
13 pursuant to the State Indian Child Welfare Act and the federal
14 Indian Child Welfare Act of 1978, if applicable, shall be given
15 notice and an opportunity to be heard at the dispositional
16 phase. Those other persons the court finds to have a proper
17 interest in the case or in the work of the court may be
18 admitted by the court to closed hearings on the condition that
19 they refrain from divulging any information that would identify
20 the child or family involved in the proceedings.

21 D. Accredited representatives of the news media
22 shall be allowed to be present at closed hearings, subject to
23 the condition that they refrain from divulging information that
24 would identify any child involved in the proceedings or the
25 parent, guardian or custodian of that child and subject to

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1 enabling regulations as the court finds necessary for the
2 maintenance of order and decorum and for the furtherance of the
3 purposes of the Children's Code. A child who is the subject of
4 an abuse and neglect proceeding and is present at a hearing may
5 object to the presence of the media. The court may exclude the
6 media if it finds that the presence of the media is contrary to
7 the best interests of the child.

8 E. If the court finds that it is in the best
9 interest of a child under fourteen years of age, the child may
10 be excluded from a hearing under the Abuse and Neglect Act. A
11 child fourteen years of age or older may be excluded from a
12 hearing only if the court makes a finding that there is a
13 compelling reason to exclude the child and states the factual
14 basis for the finding.

15 F. Those persons or parties granted admission to a
16 closed hearing who intentionally divulge information in
17 violation of this section are guilty of a petty misdemeanor.

18 G. The court shall determine if the allegations of
19 the petition are admitted or denied. If the allegations are
20 denied, the court shall proceed to hear evidence on the
21 petition. The court, after hearing all of the evidence bearing
22 on the allegations of neglect or abuse, shall make and record
23 its findings on whether the child is a neglected child, an
24 abused child or both. Except in the case of a petition that
25 relates to an Indian child, if the petition alleges that the

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1 parent, guardian or custodian has subjected the child to
2 aggravated circumstances, then the court shall also make and
3 record its findings on whether the aggravated circumstances
4 have been proven. If the petition relates to an Indian child,
5 aggravated circumstances shall not be considered by the court
6 and shall not be recorded in the court's findings on the
7 petition, pursuant to the State Indian Child Welfare Act.

8 H. If the court finds on the basis of a valid
9 admission of the allegations of the petition or on the basis of
10 clear and convincing evidence, competent, material and relevant
11 in nature, that the child is neglected or abused, the court
12 shall enter an order finding that the child is neglected or
13 abused and may proceed immediately or at a postponed hearing to
14 make disposition of the case. If the court does not find that
15 the child is neglected or abused, the court shall dismiss the
16 petition and may refer the family to the department for
17 appropriate services.

18 I. A party aggrieved by an order entered pursuant
19 to Subsection H of this section may file an immediate appeal to
20 the court of appeals.

21 J. In that part of the hearings held under the
22 Children's Code on dispositional issues, all relevant and
23 material evidence helpful in determining the questions
24 presented, including oral and written reports, may be received
25 by the court and may be relied upon to the extent of its

1 probative value even though not competent had it been offered
2 during the part of the hearings on adjudicatory issues.

3 K. On the court's motion or that of a party, the
4 court may continue the hearing on the petition for a period not
5 to exceed thirty days to receive reports and other evidence in
6 connection with disposition. The court shall continue the
7 hearing pending the receipt of the predisposition study and
8 report if that document has not been prepared and received.
9 During any continuances under this subsection, the court shall
10 make an appropriate order for legal custody.

11 L. No foster care placement of an Indian child may
12 be ordered in the absence of a determination, supported by
13 clear and convincing evidence, including the testimony of
14 qualified expert witnesses, that the continued custody of the
15 child by the parent or Indian custodian is likely to result in
16 serious emotional or physical damage to the child."

17 **SECTION 38.** Section 32A-4-21 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 115, as amended) is amended to read:

19 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
20 REPORTS AND EXAMINATIONS.--

21 A. Prior to holding a dispositional hearing, the
22 court shall direct that a predisposition study and report be
23 submitted in writing to the court by the department.

24 B. The predisposition study required pursuant to
25 Subsection A of this section shall contain the following

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1 information:

2 (1) a statement of the specific reasons for
3 intervention by the department or for placing the child in the
4 department's custody and a statement of the parent's ability to
5 care for the child in the parent's home without causing harm to
6 the child;

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

19 (3) the wishes of the child as to the child's
20 custodian;

21 (4) a statement of the efforts the department
22 has made to identify and locate all grandparents and other
23 relatives and to conduct home studies on any appropriate
24 relative expressing an interest in providing care for the
25 child, and a statement as to whether the child has a family

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1 member who, subsequent to study by the department, is
2 determined to be qualified to care for the child;

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

8 (6) a description of the home or facility in
9 which the child is placed and the appropriateness of the
10 child's placement;

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

13 (8) a statement of the child's medical and
14 educational background;

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

21 (10) a case plan that sets forth steps to
22 ensure that the child's physical, medical, cultural,
23 psychological and educational needs are met and that sets forth
24 services to be provided to the child and the child's parents to
25 facilitate permanent placement of the child in the parent's

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1 home;

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

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

12 (13) a description of the child's foster care
13 placement and whether it is appropriate in terms of the
14 educational setting and proximity to the school the child was
15 enrolled in at the time of the placement, including plans for
16 travel for the child to remain in the school in which the child
17 was enrolled at the time of placement, if reasonable and in the
18 child's best interest.

19 C. A copy of the predisposition report shall be
20 provided by the department to counsel for all parties five days
21 before the dispositional hearing.

22 D. If the child is an adjudicated abused child, any
23 temporary custody orders shall remain in effect until the court
24 has received and considered the predispositional study at the
25 dispositional hearing."

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1 **SECTION 39.** Section 32A-4-22 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 116, as amended) is amended to read:

3 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
4 CHILD.--

5 A. If not held in conjunction with the adjudicatory
6 hearing, the dispositional hearing shall be commenced within
7 thirty days after the conclusion of the adjudicatory hearing.
8 At the conclusion of the dispositional hearing, the court shall
9 make and include in the dispositional judgment its findings on
10 the following:

11 (1) the interaction and interrelationship of
12 the child with the child's parent, siblings and any other
13 person who may significantly affect the child's best interest;

14 (2) the child's adjustment to the child's
15 home, school and community;

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

18 (4) the wishes of the child as to the child's
19 placement;

20 (5) the wishes of the child's parent, guardian
21 or custodian as to the child's custody;

22 (6) whether reasonable efforts have been made
23 by the department to identify, locate and give notice to all
24 grandparents and other relatives and to conduct home studies on
25 any appropriate relative who expresses an interest in providing

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1 care for the child. If the court finds that reasonable efforts
2 in these areas have not been made, the court may make
3 supplemental orders as necessary and may reconsider the matter
4 at the initial judicial review and subsequent periodic review
5 hearings. In the case of an Indian child or a child who the
6 department knows or has reason to know is an Indian child, the
7 department shall meet the standards set forth in the federal
8 Indian Child Welfare Act of 1978 and the State Indian Child
9 Welfare Act;

10 (7) whether consideration has been given to
11 the child's familial identity and connections;

12 (8) whether there exists a relative of the
13 child or other individual who, after study by the department,
14 is found to be qualified to receive and care for the child;

15 (9) the availability of services recommended
16 in the case plan prepared as a part of the predisposition study
17 in accordance with the provisions of Section 32A-4-21 NMSA
18 1978;

19 (10) the ability of the parent to care for the
20 child in the home so that no harm will result to the child;

21 (11) whether reasonable efforts were made by
22 the department to prevent removal of the child from the home
23 prior to placement in substitute care and whether reasonable
24 efforts were made to attempt reunification of the child with
25 the natural parent;

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1 (12) whether reasonable efforts were made by
2 the department to place siblings in custody together, unless
3 such joint placement would be contrary to the safety or well-
4 being of any of the siblings in custody, and whether any
5 siblings not jointly placed have been provided reasonable
6 visitation or other ongoing interaction, unless visitation or
7 other ongoing interaction would be contrary to the safety or
8 well-being of any of the siblings; and

9 (13) if the child is an Indian child [~~whether~~
10 ~~the placement preferences set forth in the federal Indian Child~~
11 ~~Welfare Act of 1978 or the placement preferences of the child's~~
12 ~~Indian tribe have been followed and whether the Indian child's~~
13 ~~case plan provides for maintaining the Indian child's cultural~~
14 ~~ties. When placement preferences have not been followed, good~~
15 ~~cause for noncompliance shall be clearly stated and supported]~~
16 or there is reason to know the child is an Indian child, any
17 other information required for a dispositional judgment
18 pursuant to the State Indian Child Welfare Act and the federal
19 Indian Child Welfare Act of 1978.

20 B. If a child is found to be neglected or abused,
21 the court may enter its judgment making any of the following
22 dispositions to protect the welfare of the child:

23 (1) permit the child to remain with the
24 child's parent, guardian or custodian, subject to those
25 conditions and limitations the court may prescribe;

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1 (2) place the child under protective
2 supervision of the department; or

3 (3) transfer legal custody of the child to one
4 of the following:

5 (a) the noncustodial parent, if it is
6 found to be in the child's best interest; or

7 (b) the department.

8 C. If a child is found to be neglected or abused,
9 in its dispositional judgment the court shall also order the
10 department to implement and the child's parent, guardian or
11 custodian to cooperate with any case plan approved by the
12 court. Reasonable efforts shall be made to preserve and
13 reunify the family, with the paramount concern being the
14 child's health and safety. The court may determine that
15 reasonable efforts are not required to be made when the court
16 finds that:

17 (1) the efforts would be futile; or

18 (2) the parent, guardian or custodian has
19 subjected the child to aggravated circumstances.

20 D. If a child is an Indian child or there is reason
21 to know that the child is an Indian child, active efforts to
22 maintain or reunite an Indian child with the Indian child's
23 family shall be pursued regardless of whether the following
24 apply:

25 (1) the efforts would be futile; or

1 (2) the parent, guardian or custodian has
2 subjected the child to aggravated circumstances.

3 ~~[D.]~~ E. Any parent, guardian or custodian of a
4 child who is placed in the legal custody of the department or
5 other person pursuant to Subsection B of this section shall
6 have reasonable rights of visitation with the child as
7 determined by the court, unless the court finds that the best
8 interests of the child preclude any visitation.

9 ~~[E.]~~ F. The court may order reasonable visitation
10 between a child placed in the custody of the department and the
11 child's siblings or any other person who may significantly
12 affect the child's best interest, if the court finds the
13 visitation to be in the child's best interest.

14 ~~[F.]~~ G. Unless a child found to be neglected or
15 abused is also found to be delinquent, the child shall not be
16 confined in an institution established for the long-term care
17 and rehabilitation of delinquent children.

18 ~~[G.]~~ H. When the court vests legal custody in an
19 agency, institution or department, the court shall transmit
20 with the dispositional judgment copies of the clinical reports,
21 the predisposition study and report and any other information
22 it has pertinent to the care and treatment of the child.

23 ~~[H.]~~ I. Prior to a child being placed in the
24 custody or protective supervision of the department, the
25 department shall be provided with reasonable oral or written

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1 notification and an opportunity to be heard. At any hearing
2 held pursuant to this subsection, the department may appear as
3 a party.

4 ~~[F.]~~ J. As required pursuant to the State Indian
5 Child Welfare Act, when a child is placed in the custody of the
6 department, ~~[the department shall investigate whether the child~~
7 ~~is eligible for enrollment as a member of an Indian tribe and,~~
8 ~~if so]~~ the department shall ~~[pursue the enrollment on the~~
9 ~~child's behalf]~~ work with the parent or the child's Indian
10 tribe to establish membership, at the discretion of the parent
11 or the Indian tribe. An Indian tribe shall have the sole right
12 to determine membership and membership eligibility, as defined
13 by the Indian tribe's law, custom, tradition and practice. The
14 department shall provide records to assist at the request of
15 the parent or the Indian child's tribe.

16 ~~[J.]~~ K. When the court determines pursuant to
17 Subsection C of this section that no reasonable efforts at
18 reunification are required, the court shall conduct, within
19 thirty days, a permanency hearing as described in Section
20 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
21 implement and finalize the permanency plan in a timely manner."

22 **SECTION 40.** Section 32A-4-25 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 119, as amended) is amended to read:

24 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL
25 JUDGMENTS.--

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1 A. The initial judicial review shall be held within
2 sixty days of the disposition. At the initial judicial review,
3 the parties shall demonstrate to the court efforts made to
4 implement the treatment plan approved by the court in its
5 dispositional order. The court shall determine the extent to
6 which the treatment plan has been implemented and make
7 supplemental orders as necessary to ensure compliance with the
8 treatment plan and the safety of the child. Prior to the
9 initial judicial review, the department shall submit a copy of
10 the adjudicatory order, the dispositional order and notice of
11 the initial judicial review to the council. The staff of the
12 council, or an entity contracting with the council, shall
13 review the case. If the staff or contracting entity determines
14 that the case meets the criteria established in council rules,
15 the staff or contracting entity shall designate the case for
16 review by a substitute care review board. A representative of
17 the substitute care review board, if designated, shall be
18 permitted to attend and comment to the court.

19 B. The court shall conduct subsequent periodic
20 judicial reviews of the dispositional order within six months
21 of the conclusion of the permanency hearing or, if a motion has
22 been filed for termination of parental rights or permanent
23 guardianship, within six months of the decision on that motion
24 and every six months thereafter. Prior to a subsequent
25 periodic judicial review, the department shall submit a

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1 progress report to the council or any designated substitute
2 care review board. Prior to any judicial review by the court
3 pursuant to this section, the substitute care review board may
4 review the dispositional order or the continuation of the order
5 and the department's progress report and report its findings
6 and recommendations to the court.

7 C. Judicial review pursuant to this section may be
8 carried out by either of the following:

9 (1) a judicial review hearing conducted by the
10 court; or

11 (2) a judicial review hearing conducted by a
12 special master appointed by the court; provided, however, that
13 the court approve any findings made by the special master.

14 D. The children's court attorney shall give notice
15 of the time, place and purpose of any judicial review hearing
16 held pursuant to Subsection A, B or C of this section to:

17 (1) all parties, including:

18 (a) the child alleged to be neglected or
19 abused or in need of court-ordered services, by and through the
20 child's guardian ad litem or attorney;

21 (b) the child's parent, guardian or
22 custodian, who has allegedly neglected or abused the child or
23 is in need of court-ordered services; ~~and~~

24 (c) any other person made a party by the
25 court; and

1 (d) if the child is an Indian child or
2 there is reason to know the child is an Indian child, the
3 Indian child's tribe pursuant to the State Indian Child Welfare
4 Act;

5 (2) the child's foster parent or substitute
6 care provider;

7 (3) the child's court-appointed special
8 advocate; and

9 (4) if designated by the council, the
10 substitute care review board.

11 E. At any subsequent judicial review hearing held
12 pursuant to Subsection B of this section, the department and
13 all parties given notice pursuant to Subsection D of this
14 section shall have the opportunity to present evidence and to
15 cross-examine witnesses. At the hearing, the department shall
16 show that it has made reasonable effort to implement any
17 treatment plan approved by the court in its dispositional order
18 and shall present a treatment plan consistent with the purposes
19 of the Children's Code for any period of extension of the
20 dispositional order. The respondent shall demonstrate to the
21 court that efforts to comply with the treatment plan approved
22 by the court in its dispositional order and efforts to maintain
23 contact with the child were diligent and made in good faith.
24 The court shall determine the extent of compliance with the
25 treatment plan and whether progress is being made toward

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

1 establishing a stable and permanent placement for the child.

2 F. The Rules of Evidence shall not apply to
3 hearings held pursuant to this section. The court may admit
4 testimony by any person given notice of the hearing who has
5 information about the status of the child or the status of the
6 treatment plan.

7 G. At the conclusion of any hearing held pursuant
8 to this section, the court shall make findings of fact and
9 conclusions of law.

10 H. When the child is an Indian child or there is
11 reason to know the child is an Indian child, the court shall
12 determine during review of a dispositional order whether the
13 placement preferences set forth in the federal Indian Child
14 Welfare Act of 1978 and the State Indian Child Welfare Act or
15 the placement preferences of the Indian child's [~~Indian~~] tribe
16 were followed and whether the [~~child's treatment plan provides~~
17 ~~for maintaining the child's cultural ties. When placement~~
18 ~~preferences have not been followed, good cause for~~
19 ~~noncompliance shall be clearly stated and supported~~] department
20 has made active efforts to implement the Indian child's
21 treatment plan and reunify the Indian family. When placement
22 preferences have not been followed, good cause for
23 noncompliance shall be clearly stated and supported by clear
24 and convincing evidence and the department shall identify steps
25 taken to identify placement in compliance with the State Indian

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1 Child Welfare Act or the placement preferences of the Indian
2 child's tribe.

3 I. Based on its findings at a judicial review
4 hearing held pursuant to Subsection B of this section, the
5 court shall order one of the following dispositions:

6 (1) dismiss the action and return the child to
7 the child's parent without supervision if the court finds that
8 conditions in the home that led to abuse have been corrected
9 and it is now safe for the return of the abused child;

10 (2) permit the child to remain with the
11 child's parent, guardian or custodian subject to those
12 conditions and limitations the court may prescribe, including
13 protective supervision of the child by the department;

14 (3) return the child to the child's parent and
15 place the child under the protective supervision of the
16 department;

17 (4) transfer or continue legal custody of the
18 child to:

19 (a) the noncustodial parent, if that is
20 found to be in the child's best interests;

21 (b) a relative or other individual who,
22 after study by the department or other agency designated by the
23 court, is found by the court to be qualified to receive and
24 care for the child and is appointed as a permanent guardian of
25 the child; or

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1 (c) the department, subject to the
2 provisions of Paragraph (6) of this subsection;

3 (5) continue the child in the legal custody of
4 the department with or without any required parental
5 involvement in a treatment plan. Reasonable efforts shall be
6 made to preserve and reunify the family, with the paramount
7 concern being the child's health and safety unless the court
8 finds that such efforts are not required. The court may
9 determine that reasonable efforts are not required to be made
10 when the court finds that:

11 (a) the efforts would be futile; or

12 (b) the parent, guardian or custodian
13 has subjected the child to aggravated circumstances;

14 (6) make additional orders regarding the
15 treatment plan or placement of the child to protect the child's
16 best interests if the court determines the department has
17 failed in implementing any material provision of the treatment
18 plan or abused its discretion in the placement or proposed
19 placement of the child; [øø]

20 (7) if during a judicial review the court
21 finds that the child's parent, guardian or custodian has not
22 complied with the court-ordered treatment plan, the court may
23 order:

24 (a) the child's parent, guardian or
25 custodian to show cause why the parent, guardian or custodian

1 should not be held in contempt of court; or

2 (b) a hearing on the merits of
3 terminating parental rights; or

4 (8) continue the Indian child in the legal
5 custody of the department with or without any required parental
6 involvement in a treatment plan. Active efforts shall be made
7 to maintain or reunite an Indian child with the Indian child's
8 family, with the paramount concern being the Indian child's
9 health and safety, pursuant to the State Indian Child Welfare
10 Act.

11 J. Dispositional orders entered pursuant to this
12 section shall remain in force for a period of six months,
13 except for orders that provide for transfer of the child to the
14 child's noncustodial parent or to a permanent guardian.

15 K. When the court determines, pursuant to Paragraph
16 (5) of Subsection I of this section, that no reasonable efforts
17 at reunification are required, the court shall conduct, within
18 thirty days, a permanency hearing as described in Section
19 32A-4-25.1 NMSA 1978. The department shall make reasonable
20 efforts to place the child in a timely manner in accordance
21 with the permanency plan and to complete whatever steps are
22 necessary to finalize the permanent placement of the child.
23 This subsection does not apply when the child is an Indian
24 child or there is reason to know the child is an Indian child."

25 SECTION 41. Section 32A-4-25.2 NMSA 1978 (being Laws

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1 2009, Chapter 239, Section 47) is amended to read:

2 "32A-4-25.2. TRANSITION SERVICES.--

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

12 B. The department shall present the child's
13 proposed transition plan to the court at the first hearing
14 scheduled after the child's seventeenth birthday.

15 C. The court shall order a transition plan for the
16 child. The transition plan approved by the court shall be
17 reviewed at every subsequent review and permanency hearing.

18 D. If the child is an Indian child, the Indian
19 child's tribe shall be included in developing the transition
20 plan and shall be provided a copy of the transition plan prior
21 to the presentation of the plan to the court."

22 SECTION 42. Section 32A-4-25.3 NMSA 1978 (being Laws
23 2009, Chapter 239, Section 48) is amended to read:

24 "32A-4-25.3. DISCHARGE HEARING.--

25 A. At the last review or permanency hearing held

1 prior to the child's eighteenth birthday, the court shall
2 review the transition plan and shall determine whether the
3 department has made reasonable efforts to implement the
4 requirements of Subsection B of this section.

5 B. The court shall determine:

6 (1) whether written information concerning the
7 child's family history, the whereabouts of any sibling if
8 appropriate and education and health records have been provided
9 to the child;

10 (2) whether the child's social security card,
11 certified birth certificate, state-issued identification card,
12 death certificate of a parent and proof of citizenship or
13 residence have been provided to the child;

14 (3) whether assistance in obtaining medicaid
15 has been provided to the child, unless the child is ineligible
16 for medicaid; and

17 (4) whether referral for a guardianship or
18 limited guardianship if the child is incapacitated has been
19 made.

20 C. If the court finds that the department has not
21 made reasonable efforts to meet all the requirements of
22 Subsection B of this section and that termination of
23 jurisdiction would be harmful to the young adult, the court may
24 continue to exercise its jurisdiction for a period not to
25 exceed one year from the child's eighteenth birthday. The

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1 young adult must consent to continued jurisdiction of the
2 court. The court may dismiss the case at any time after the
3 child's eighteenth birthday for good cause.

4 D. If the child is an Indian child, the department
5 shall provide documentation of the Indian child's tribal
6 membership and information regarding all other tribes with
7 which the Indian child may have a connection or family and any
8 benefits to which the Indian child may be entitled. The court
9 shall make findings determining that the department made active
10 efforts to meet the requirements of this section and may
11 continue to exercise its jurisdiction for a period not to
12 exceed one year from the child's eighteenth birthday. The
13 young adult must consent to continued jurisdiction of the
14 court. The court may dismiss the case at any time after the
15 child's eighteenth birthday for good cause."

16 SECTION 43. Section 32A-4-27 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 121, as amended) is amended to read:

18 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO
19 INTERVENE.--

20 A. At any stage of an abuse or neglect proceeding
21 that does not involve an Indian child, a person described in
22 this subsection may be permitted to intervene as a party with a
23 motion for affirmative relief:

24 (1) a foster parent with whom the child has
25 resided [~~with~~] for at least six months;

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1 (2) a relative within the fifth degree of
2 consanguinity with whom the child has resided;

3 (3) a stepparent with whom the child has
4 resided; or

5 (4) a person who wishes to become the child's
6 permanent guardian.

7 B. When determining whether a person described in
8 Subsection A of this section should be permitted to intervene,
9 the court shall consider:

10 (1) the person's rationale for the proposed
11 intervention; and

12 (2) whether intervention is in the best
13 interest of the child.

14 C. When the court determines that the child's best
15 interest will be served as a result of intervention by a person
16 described in Subsection A of this section, the court may permit
17 intervention unless the party opposing intervention can
18 demonstrate that a viable plan for reunification with the
19 respondents is in progress and that intervention could impede
20 the progress of the reunification plan.

21 D. The persons described in this subsection shall
22 be permitted to intervene during any stage of an abuse or
23 neglect proceeding:

24 (1) a parent of the child who is not named in
25 the petition alleging abuse or neglect; and

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1 (2) when the child is an Indian child, the
2 child's Indian tribe, the Indian custodian, the Indian child's
3 relative or a member of the Indian child's extended family as
4 provided by the State Indian Child Welfare Act.

5 E. The [~~child's~~] foster parent of a child that is
6 not an Indian child shall be permitted to intervene when:

7 (1) the foster parent desires to adopt the
8 child;

9 (2) the child has resided with the foster
10 parent for at least six months within the year prior to the
11 termination of parental rights;

12 (3) a motion for termination of parental
13 rights has been filed by a person other than the foster parent;
14 and

15 (4) bonding between the child and the child's
16 foster parent is alleged as a reason for terminating parental
17 rights in the motion for termination of parental rights. If
18 the child is an Indian child, bonding between the Indian child
19 and the Indian child's foster parent shall not be considered as
20 a factor in terminating parental rights.

21 F. The foster parent, preadoptive parent or
22 relative providing care for the child shall be given notice of,
23 and an opportunity to be heard in, any review or hearing with
24 respect to the child, except that this subsection shall not be
25 construed to require that any foster parent, preadoptive parent

1 or relative providing care for the child be made a party to
2 such a review or hearing solely on the basis of the notice and
3 opportunity to be heard."

4 SECTION 44. Section 32A-4-28 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 122, as amended) is amended to read:

6 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
7 DECREE.--

8 A. In proceedings to terminate parental rights, the
9 court shall [~~give primary consideration to~~] make the
10 determination based on the physical, mental and emotional
11 welfare and needs of the child, including the likelihood of the
12 child being adopted if parental rights are terminated. If the
13 child is an Indian child, the court shall also make all
14 required determinations pursuant to the State Indian Child
15 Welfare Act and include in its determination the importance of
16 maintaining connections between the Indian child and the
17 child's Indian tribe and tribal culture. In proceedings to
18 terminate parental rights with respect to an Indian child, the
19 court shall consider whether an alternative to termination of
20 parental rights, including permanent guardianship of the child,
21 would best support the Indian child pursuant to the State
22 Indian Child Welfare Act and the federal Indian Child Welfare
23 Act of 1978.

24 B. The court shall terminate parental rights with
25 respect to a child when:

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1 (1) there has been an abandonment of the child
2 by [~~his~~] the child's parents;

3 (2) the child has been a neglected or abused
4 child as defined in the Abuse and Neglect Act and the court
5 finds that the conditions and causes of the neglect and abuse
6 are unlikely to change in the foreseeable future despite
7 reasonable efforts by the department or other appropriate
8 agency to assist the parent in adjusting the conditions that
9 render the parent unable to properly care for the child. The
10 court may find in some cases that efforts by the department or
11 another agency are unnecessary, when:

12 (a) there is a clear showing that the
13 efforts would be futile; or

14 (b) notwithstanding the provisions of
15 Subsection G of Section 32A-4-20 NMSA 1978, the parent has
16 subjected the child to aggravated circumstances; aggravated
17 circumstances do not apply to child custody proceedings
18 involving an Indian child; or

19 (3) the child has been placed in the care of
20 others, including care by other relatives, either by a court
21 order or otherwise and the following conditions exist:

22 (a) the child has lived in the home of
23 others for an extended period of time;

24 (b) the parent-child relationship has
25 disintegrated;

1 (c) a psychological parent-child
2 relationship has developed between the substitute family and
3 the child;

4 (d) if the court deems the child of
5 sufficient capacity to express a preference, the child no
6 longer prefers to live with the natural parent;

7 (e) the substitute family desires to
8 adopt the child; and

9 (f) a presumption of abandonment created
10 by the conditions described in Subparagraphs (a) through (e) of
11 this paragraph has not been rebutted.

12 C. A finding by the court that all of the
13 conditions set forth in Subparagraphs (a) through (f) of
14 Paragraph (3) of Subsection B of this section exist shall
15 create a rebuttable presumption of abandonment.

16 D. The department shall not file a motion, and
17 shall not join a motion filed by another party, to terminate
18 parental rights:

19 (1) when the sole factual basis for the motion
20 is that a child's parent is or was formerly incarcerated; or

21 (2) if the motion is based, to any extent, on
22 the fact that the child is an Indian child or that the child's
23 parent or parents are Indian.

24 E. The termination of parental rights involving [~~a~~
25 ~~child~~] an Indian child or a child the state has reason to know

1 is an Indian child subject to the federal Indian Child Welfare
2 Act of 1978 or the State Indian Child Welfare Act shall:

3 (1) comply with the requirements of [that act]
4 those respective acts;

5 (2) not be ordered unless the Indian child's
6 tribe was provided timely notice of the proceeding in
7 accordance with the State Indian Child Welfare Act and provided
8 an opportunity to state whether it opposes the termination; and

9 (3) not be ordered if the Indian child's tribe
10 proposes an alternate permanency plan, unless the department
11 can show good cause supported by clear and convincing evidence
12 why the alternate permanency plan should not be ordered.

13 F. If the court finds that parental rights should
14 be terminated; that the requirements for the adoption of a
15 child have been satisfied; that the prospective adoptive parent
16 is a party to the action; and that good cause exists to waive
17 the filing of a separate petition for adoption, the court may
18 proceed to grant adoption of the child, absent an appeal of the
19 termination of parental rights. The court shall not waive any
20 time requirements set forth in the Adoption Act unless the
21 termination of parental rights occurred pursuant to the
22 provisions of Paragraph (3) of Subsection B of this section.
23 The court may enter a decree of adoption only after finding
24 that the party seeking to adopt the child has satisfied all of
25 the requirements set forth in the Adoption Act. The court

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1 shall not waive any time requirements set forth in the Adoption
 2 Act, the federal Indian Child Welfare Act of 1978 and the State
 3 Indian Child Welfare Act. Unless otherwise stipulated by all
 4 parties, including Indian tribes when applicable regardless of
 5 whether the Indian tribe is a party, an adoption decree shall
 6 take effect sixty days after the termination of parental
 7 rights, to allow the department sufficient time to provide
 8 counseling for the child and otherwise prepare the child for
 9 the adoption. The adoption decree shall conform to the
 10 requirements of the Adoption Act, federal Indian Child Welfare
 11 Act of 1978 and State Indian Child Welfare Act and shall have
 12 the same force and effect as other adoption decrees entered
 13 pursuant to [~~that act~~] those acts. The court clerk shall
 14 assign an adoption case number to the adoption decree."

15 SECTION 45. Section 32A-4-29 NMSA 1978 (being Laws 1993,
 16 Chapter 77, Section 123, as amended) is amended to read:

17 "32A-4-29. TERMINATION PROCEDURE.--

18 A. A motion to terminate parental rights may be
 19 filed at any stage of the abuse or neglect proceeding by a
 20 party to the proceeding.

21 B. The motion for termination of parental rights
 22 shall set forth:

23 (1) the date, place of birth and marital
 24 status of the child, if known;

25 (2) the grounds for termination and the facts

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1 and circumstances supporting the grounds for termination;

2 (3) the names and addresses of the persons or
3 authorized agency or agency officer to whom legal custody might
4 be transferred;

5 (4) whether the child resides or has resided
6 with a foster parent who desires to adopt this child;

7 (5) whether the motion is in contemplation of
8 adoption;

9 (6) the relationship or legitimate interest of
10 the moving party to the child; and

11 (7) whether the child is subject to the
12 federal Indian Child Welfare Act of 1978 or the State Indian
13 Child Welfare Act and, if so:

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

16 (b) the specific actions taken by the
17 moving party to notify the [~~parents' tribes~~] Indian child's
18 tribe and the results of the contacts, including the names,
19 addresses, titles and telephone numbers of the persons
20 contacted. Copies of any correspondence with the [~~tribes~~]
21 Indian child's tribe shall be attached as exhibits to the
22 petition; [~~and~~]

23 (c) what [~~specific~~] active efforts were
24 made to comply with the placement preferences set forth in the
25 federal Indian Child Welfare Act of 1978 [~~or the placement~~

1 ~~preferences of the appropriate Indian tribes~~, the State Indian
2 Child Welfare Act or the placement preferences of the Indian
3 child's tribe; and

4 (d) what active efforts were made to
5 provide remedial services and rehabilitative programs designed
6 to prevent the breakup of the Indian family and that these
7 efforts have proved unsuccessful pursuant to the State Indian
8 Child Welfare Act and the federal Indian Child Welfare Act of
9 1978.

10 C. Notice of the filing of the motion, accompanied
11 by a copy of the motion, shall be served by the moving party on
12 all other parties, the foster parent, preadoptive parent or
13 relative providing care for the child with whom the child is
14 residing, foster parents with whom the child has resided for
15 six months within the previous twelve months, the custodian of
16 the child, any person appointed to represent any party and any
17 other person the court orders. Service shall be in accordance
18 with the Children's Court Rules for the service of motions,
19 except that foster parents and attorneys of record in this
20 proceeding shall be served by certified mail. The notice shall
21 state specifically that the person served shall file a written
22 response to the motion within twenty days if the person intends
23 to contest the termination. In any case involving a child
24 subject to the federal Indian Child Welfare Act of 1978 or the
25 State Indian Child Welfare Act, notice shall also be sent by

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1 certified mail, with return receipt requested, to the [~~tribes~~
2 ~~of the child's parents~~] Indian child's tribe and upon any
3 "Indian custodian" as that term is defined in 25 U.S.C. Section
4 1903(6) and the State Indian Child Welfare Act. Further notice
5 shall not be required on a parent who has been provided notice
6 previously pursuant to Section 32A-4-17 NMSA 1978 and who
7 failed to make an appearance. If the child is an Indian child,
8 the notice shall meet the standards set forth in the federal
9 Indian Child Welfare Act of 1978 and the State Indian Child
10 Welfare Act.

11 D. When a motion to terminate parental rights is
12 filed, the moving party shall request a hearing on the motion.
13 The hearing date shall be at least thirty days, but no more
14 than sixty days, after service is effected upon the parties
15 entitled to service under this section. The moving party shall
16 also file a motion for court-ordered mediation between the
17 parent and any prospective adoptive parent to discuss an open
18 adoption agreement. If an open adoption agreement is reached
19 at any time before termination of parental rights, it shall be
20 made a part of the court record.

21 E. In any action for the termination of parental
22 rights brought by a party other than the department and
23 involving a child in the legal custody of the department, the
24 department may:

- 25 (1) litigate a motion for the termination of

1 parental rights that was initially filed by another party; or

2 (2) move that the motion for the termination
3 of parental rights be found premature and denied.

4 F. When a motion to terminate parental rights is
5 filed, the department shall perform concurrent planning.

6 G. When a child has been in foster care for not
7 less than fifteen of the previous twenty-two months, and this
8 time was not incurred during voluntary placement agreements,
9 the department shall file a motion to terminate parental
10 rights, unless:

11 (1) a parent has made substantial progress
12 toward eliminating the problem that caused the child's
13 placement in foster care; it is likely that the child will be
14 able to safely return to the parent's home within three months;
15 and the child's return to the parent's home will be in the
16 child's best interests;

17 (2) the child has a close and positive
18 relationship with a parent and a permanent plan that does not
19 include termination of parental rights will provide the most
20 secure and appropriate placement for the child;

21 (3) the child is fourteen years of age or
22 older, is firmly opposed to termination of parental rights and
23 is likely to disrupt an attempt to place the child with an
24 adoptive family;

25 (4) a parent is terminally ill, but in

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1 remission, and does not want parental rights to be terminated;
2 provided that the parent has designated a guardian for the
3 child;

4 (5) the child is not capable of functioning if
5 placed in a family setting. In such a case, the court shall
6 reevaluate the status of the child every ninety days unless
7 there is a final court determination that the child cannot be
8 placed in a family setting;

9 (6) grounds do not exist for termination of
10 parental rights;

11 (7) the child is an unaccompanied, refugee
12 minor and the situation regarding the child involves
13 international legal issues or compelling foreign policy issues;

14 (8) adoption is not an appropriate plan for
15 the child; or

16 (9) the parent's incarceration or
17 participation in a court-ordered residential substance abuse
18 treatment program constitutes the primary factor in the child's
19 placement in substitute care and termination of parental rights
20 is not in the child's best interest.

21 H. In the case of an Indian child or a child who
22 the department knows or has reason to know is an Indian child,
23 the department shall prove beyond a reasonable doubt that the
24 department has complied with the active efforts to give notice,
25 prevent removal, work toward reunification and comply with

1 placement preferences pursuant to the Abuse and Neglect Act,
 2 federal Indian Child Welfare Act of 1978 and State Indian Child
 3 Welfare Act. No termination of parental rights for an Indian
 4 child may be ordered in the absence of a determination,
 5 supported by evidence beyond a reasonable doubt, including
 6 testimony of qualified expert witnesses, that the continued
 7 custody of the child by the parent or Indian custodian is
 8 likely to result in serious emotional or physical damage to the
 9 child.

10 ~~[H.]~~ I. For purposes of this section, a child shall
 11 be considered to have entered foster care on the earlier of:

12 (1) the date of the first judicial finding
 13 that the child has been abused or neglected; or

14 (2) the date that is sixty days after the date
 15 on which the child was removed from the home.

16 ~~[I.]~~ J. The grounds for any attempted termination
 17 shall be proved by clear and convincing evidence. In any
 18 proceeding involving a child subject to the federal Indian
 19 Child Welfare Act of 1978 or the State Indian Child Welfare
 20 Act, the grounds for any attempted termination shall be proved
 21 beyond a reasonable doubt and shall meet the requirements set
 22 forth in ~~[25 U.S.C. Section 1912(f)]~~ those acts.

23 ~~[J.]~~ K. When the court terminates parental rights,
 24 it shall appoint a custodian for the child and fix
 25 responsibility for the child's support.

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1 ~~[K.]~~ L. In any termination proceeding involving a
2 child subject to the federal Indian Child Welfare Act of 1978
3 or the State Indian Child Welfare Act, the court shall in any
4 termination order make specific findings of all active efforts
5 and that all of the requirements of ~~[that act]~~ those acts have
6 been met.

7 ~~[L.]~~ M. A judgment of the court terminating
8 parental rights divests the parent of all legal rights and
9 privileges and dispenses with both the necessity for the
10 consent to or receipt of notice of any subsequent adoption
11 proceeding concerning the child. A judgment of the court
12 terminating parental rights shall not affect the child's rights
13 of inheritance from and through the child's biological parents.

14 ~~[M.]~~ N. When the court denies a motion to terminate
15 parental rights, the court shall issue appropriate orders
16 immediately. The court shall direct the parties to file a
17 stipulated order and interim plan or a request for hearing
18 within thirty days of the date of the hearing denying the
19 termination of parental rights."

20 **SECTION 46.** Section 32A-4-32 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 126, as amended) is amended to read:

22 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

23 A. A motion for permanent guardianship may be filed
24 by any party.

25 B. A motion for permanent guardianship shall set

1 forth:

2 (1) the date, place of birth and marital
3 status of the child, if known;

4 (2) the facts and circumstances supporting the
5 grounds for permanent guardianship;

6 (3) the name and address of the prospective
7 guardian and a statement that the person agrees to accept the
8 duties and responsibilities of guardianship;

9 (4) the basis for the court's jurisdiction;

10 (5) the relationship of the child to the
11 petitioner and the prospective guardian; and

12 (6) whether the child is subject to the
13 federal Indian Child Welfare Act of 1978 or the State Indian
14 Child Welfare Act and, if so,

15 ~~[(a) the tribal affiliations of the~~
16 ~~child's parents;~~

17 ~~(b) the specific actions taken by the~~
18 ~~petitioner to notify the parents' tribe and the results of the~~
19 ~~contacts, including the names, addresses, titles and telephone~~
20 ~~numbers of the persons contacted. Copies of any correspondence~~
21 ~~with the tribes shall be attached as exhibits to the petition;~~
22 ~~and~~

23 ~~(c) what specific efforts were made to~~
24 ~~comply with the placement preferences set forth in the federal~~
25 ~~Indian Child Welfare Act of 1978 or the placement preferences~~

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1 ~~of the appropriate Indian tribes]~~ any additional requirements
2 for that motion as provided pursuant to the State Indian Child
3 Welfare Act.

4 C. If the motion is not filed by the prospective
5 guardian, the motion shall be verified by the prospective
6 guardian.

7 D. Notice of the filing of the motion, accompanied
8 by a copy of the motion, shall be served by the moving party on
9 any parent who has not previously been made a party to the
10 proceeding, the parents of the child, foster parents with whom
11 the child is residing, the foster parent, preadoptive parent or
12 relative providing care for the child with whom the child has
13 resided for six months, the child's custodian, the department,
14 any person appointed to represent any party, including the
15 child's guardian ad litem, and any other person the court
16 orders provided with notice. Service shall be in accordance
17 with the Children's Court Rules for the service of motions. In
18 a case involving [a] an Indian child, [~~subject to the federal~~
19 ~~Indian Child Welfare Act of 1978, notice shall also be sent by~~
20 ~~certified mail to the Indian tribes of the child's parents and~~
21 ~~to any "Indian custodian" as that term is defined in 25 U.S.C.~~
22 ~~Section 1903(6)] notice shall be sent by certified mail, with
23 return receipt requested, to the Indian child's tribe and to
24 any Indian custodian pursuant to the State Indian Child Welfare
25 Act and the federal Indian Child Welfare Act of 1978. Further~~

1 notice shall not be required to a parent who has been provided
2 notice previously pursuant to Section 32A-4-17 NMSA 1978 and
3 who failed to make an appearance, unless the child is an Indian
4 child, in which case notice shall always be made pursuant to
5 the State Indian Child Welfare Act.

6 E. The grounds for permanent guardianship shall be
7 proved by clear and convincing evidence. The grounds for
8 permanent guardianship shall be proved beyond a reasonable
9 doubt and meet the requirements of:

10 (1) 25 U.S.C. Section 1912(f) in [~~any~~] a
11 proceeding involving a child subject to the federal Indian
12 Child Welfare Act of 1978; and

13 (2) the State Indian Child Welfare Act in a
14 proceeding involving a child subject to that act or a child the
15 department or the court knows or has reason to know is subject
16 to that act.

17 F. A judgment of the court vesting permanent
18 guardianship with an individual divests the biological or
19 adoptive parent of legal custody or guardianship of the child,
20 but is not a termination of the parent's rights. A child's
21 inheritance rights from and through the child's biological or
22 adoptive parents are not affected by this proceeding.

23 G. Upon a finding that grounds exist for a
24 permanent guardianship, the court may incorporate into the
25 final order provisions for visitation with the natural parents,

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1 siblings or other relatives of the child and any other
2 provision necessary to rehabilitate the child or provide for
3 the child's continuing safety and well-being.

4 H. The court shall retain jurisdiction to enforce
5 its judgment of permanent guardianship.

6 I. Any party may make a motion for revocation of
7 the order granting guardianship when there is a significant
8 change of circumstances, including:

9 (1) the child's parent is able and willing to
10 properly care for the child; or

11 (2) the child's guardian is unable to properly
12 care for the child.

13 J. The court shall appoint a guardian ad litem for
14 the child in all proceedings for the revocation of permanent
15 guardianship if the child is under the age of fourteen. The
16 court shall appoint an attorney for the child in all
17 proceedings for the revocation of permanent guardianship if the
18 child is fourteen years of age or older at the inception of the
19 proceedings.

20 K. The court may revoke the order granting
21 guardianship when a significant change of circumstances has
22 been proven by clear and convincing evidence and it is in the
23 child's best interests to revoke the order granting
24 guardianship."

25 SECTION 47. Section 32A-4-33 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 127, as amended) is amended to read:

2 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

3 A. All records or information concerning a party to
4 a neglect or abuse proceeding, including social records,
5 diagnostic evaluations, psychiatric or psychological reports,
6 videotapes, transcripts and audio recordings of a child's
7 statement of abuse or medical reports incident to or obtained
8 as a result of a neglect or abuse proceeding or that were
9 produced or obtained during an investigation in anticipation of
10 or incident to a neglect or abuse proceeding shall be
11 confidential and closed to the public.

12 B. The records described in Subsection A of this
13 section shall be disclosed only to the parties and:

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

18 (2) court-appointed special advocates
19 appointed to the neglect or abuse proceeding;

20 (3) the child's guardian ad litem;

21 (4) the attorney representing the child in an
22 abuse or neglect action, a delinquency action or any other
23 action under the Children's Code;

24 (5) department personnel and persons or
25 entities authorized by contract with the department to review,

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1 inspect or otherwise have access to records or information in
2 the department's possession;

3 (6) any local substitute care review board or
4 any agency contracted to implement local substitute care review
5 boards;

6 (7) law enforcement officials, except when use
7 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

8 (8) district attorneys, except when use
9 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

10 (9) any state government social services
11 agency in any state or when, in the opinion of the department
12 it is in the best interest of the child, a governmental social
13 services agency of another country;

14 (10) those persons or entities of an Indian
15 tribe specifically authorized to inspect the records pursuant
16 to the State Indian Child Welfare Act, the federal Indian Child
17 Welfare Act of 1978 or any regulations promulgated [~~thereunder~~]
18 under those acts;

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

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

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

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

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

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

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

23 (18) any person or entity attending a meeting
24 arranged by the department to discuss the safety, well-being
25 and permanency of a child, when the parent or child, or parent

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1 or legal custodian on behalf of a child younger than fourteen
2 years of age, has consented to the disclosure; and

3 (19) any other person or entity, by order of
4 the court, having a legitimate interest in the case or the work
5 of the court.

6 C. A parent, guardian or legal custodian whose
7 child has been the subject of an investigation of abuse or
8 neglect where no petition has been filed shall have the right
9 to inspect any medical report, psychological evaluation, law
10 enforcement reports or other investigative or diagnostic
11 evaluation; provided that any identifying information related
12 to the reporting party or any other party providing information
13 shall be deleted. The parent, guardian or legal custodian
14 shall also have the right to the results of the investigation
15 and the right to petition the court for full access to all
16 department records and information except those records and
17 information the department finds would be likely to endanger
18 the life or safety of any person providing information to the
19 department.

20 D. Whoever intentionally and unlawfully releases
21 any information or records closed to the public pursuant to the
22 Abuse and Neglect Act or releases or makes other unlawful use
23 of records in violation of that act is guilty of a petty
24 misdemeanor and shall be sentenced pursuant to the provisions
25 of Section 31-19-1 NMSA 1978.

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

5 **SECTION 48.** Section 32A-5-4 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 131) is amended to read:

7 "32A-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE
8 ACT OF 1978 AND THE STATE INDIAN CHILD WELFARE ACT.--The
9 protections set forth in the federal Indian Child Welfare Act
10 of 1978 and the State Indian Child Welfare Act, including
11 provisions concerning notice to the Indian child's tribe,
12 transfer to tribal court and placement preferences, apply to
13 all proceedings involving an Indian child under the Adoption
14 Act."

15 **SECTION 49.** Section 32A-5-7 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 134, as amended) is amended to read:

17 "32A-5-7. CLERK OF THE COURT--DUTIES.--

18 A. The clerk of the court shall file pleadings
19 captioned pursuant to the provisions of Section 32A-5-9 NMSA
20 1978. The clerk of the court shall not file incorrectly
21 captioned pleadings.

22 B. The clerk of the court shall mail a copy of the
23 request for placement to the department within one working day
24 of the request for placement being filed with the court. The
25 attorney for the person requesting placement shall provide to

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1 the clerk of the court a copy of the request for placement and
2 a stamped envelope addressed to the department as specified in
3 department regulation.

4 C. The clerk of the court shall mail a copy of the
5 petition for adoption within one working day of the petition
6 for adoption being filed with the court. The attorney for the
7 petitioner shall provide to the clerk of the court a copy of
8 the petition for adoption and a stamped envelope addressed to
9 the department as specified in department regulation.

10 D. The clerk of the court shall mail a copy of the
11 decree of adoption to the department within one working day of
12 the entry of the decree of adoption. The attorney for the
13 petitioner shall provide to the clerk of the court a copy of
14 the decree of adoption and a stamped envelope addressed to the
15 department as specified in department regulation.

16 ~~[E. In any adoption involving an Indian child, the~~
17 ~~clerk of the court shall provide the secretary of the interior~~
18 ~~with a copy of any decree of adoption or adoptive placement~~
19 ~~order and other information as required by the federal Indian~~
20 ~~Child Welfare Act of 1978. The attorney for the petitioner~~
21 ~~shall provide to the clerk of the court a copy of an adoption~~
22 ~~decree, an adoptive placement order, any other information~~
23 ~~required by the federal Indian Child Welfare Act of 1978 and a~~
24 ~~stamped envelope addressed to the secretary of the interior.~~

25 F.] E. The clerk of the court shall provide a

1 certificate of adoption with an adoptee's new name.

2 ~~[G-]~~ F. The attorney for the petitioner shall
3 forward the certificate of adoption provided for in Subsection
4 ~~[F]~~ E of this section as follows:

5 (1) for a person born in the United States, to
6 the appropriate vital statistics office of the place, if known,
7 where the adoptee was born; or

8 (2) for all other persons, to the state
9 registrar of vital statistics."

10 **SECTION 50.** Section 32A-5-13 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 140, as amended) is amended to read:

12 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
13 PLACEMENT ORDER--CERTIFICATION.--

14 A. When a placement order is required, the
15 petitioner shall file a request with the court to allow the
16 placement. An order permitting the placement shall be obtained
17 prior to actual placement.

18 B. Only a pre-placement study that has been
19 prepared or updated within one year immediately prior to the
20 date of placement, approving the petitioner as an appropriate
21 adoptive parent, shall be filed with the court prior to
22 issuance of a placement order, except as provided in Subsection
23 C of Section 32A-5-12 NMSA 1978.

24 C. In order for a person to be certified to conduct
25 pre-placement studies, the person shall meet the standards

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1 promulgated by the department. If the child is an Indian
2 child, the person shall meet the standards set forth in the
3 federal Indian Child Welfare Act of 1978 and the State Indian
4 Child Welfare Act.

5 D. The pre-placement study shall be conducted by an
6 agency or a person certified by the department to conduct the
7 study. A person or agency that wants to be certified to
8 perform pre-placement studies shall file documents verifying
9 their qualifications with the department. The department shall
10 publish a list of persons or agencies certified to conduct a
11 pre-placement study. If necessary to defray additional costs
12 associated with compiling the list, the department may assess
13 and charge a reasonable administrative fee to the person or
14 agency listed.

15 E. When a person or agency that wants to be
16 certified to perform pre-placement studies files false
17 documentation with the department, the person or agency shall
18 be subject to the provisions of Section 32A-5-42 NMSA 1978.

19 F. A request for placement shall be filed and
20 verified by the petitioner and shall allege:

21 (1) the full name, age and place and duration
22 of residence of the petitioner and, if married, the place and
23 date of marriage;

24 (2) the date and place of birth of the
25 adoptee, if known, or the anticipated date and place of birth

1 of the adoptee;

2 (3) a detailed statement of the circumstances
3 and persons involved in the proposed placement;

4 (4) if the adoptee has been born, the address
5 where the adoptee is residing at the time of the request for
6 placement;

7 (5) if the adoptee has been born, the places
8 where the adoptee has lived within the past three years and the
9 names and addresses of the persons with whom the adoptee has
10 lived. If the adoptee is in the custody of an agency or the
11 department, the address shall be the address of the agency or
12 the county office of the department from which the child was
13 placed;

14 (6) the existence of any court orders that are
15 known to the petitioner and that regulate custody, visitation
16 or access to the adoptee, copies of which shall be attached to
17 the request for placement as exhibits; if copies of any such
18 court orders are unavailable at the time of filing the request
19 for placement, the copies shall be filed prior to the issuance
20 of the order of placement;

21 (7) that the petitioner desires to establish a
22 parent and child relationship between the petitioner and the
23 adoptee and that the petitioner is a fit and proper person able
24 to care and provide for the adoptee's welfare;

25 (8) the relationship, if any, of the

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

1 petitioner to the adoptee;

2 (9) whether the adoptee is subject to the
3 federal Indian Child Welfare Act of 1978 or the State Indian
4 Child Welfare Act, and, if so, the petition shall allege the
5 actions taken to comply with the federal Indian Child Welfare
6 Act of 1978 and the State Indian Child Welfare Act and all
7 other allegations required pursuant to [~~that act~~] those acts;

8 (10) whether the adoption is subject to the
9 Interstate Compact on the Placement of Children and what
10 specific actions have been taken to comply with the Interstate
11 Compact on the Placement of Children; and

12 (11) the name, address and telephone number of
13 the agency or investigator who has agreed to do the
14 pre-placement study.

15 G. The request for placement shall be served on all
16 parties entitled to receive notice of the filing of a petition
17 for adoption, as provided in Section 32A-5-27 NMSA 1978. An
18 order allowing placement may be entered prior to service of the
19 request for placement.

20 H. A hearing and the court decision on the request
21 for placement shall occur within thirty days of the filing of
22 the request.

23 I. As part of any court order authorizing placement
24 under this section, the court shall find whether the pre-
25 placement study complies with Section 32A-5-14 NMSA 1978 and

1 that the time requirements concerning placement set forth in
2 this section have been met."

3 SECTION 51. Section 32A-5-15 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 142, as amended) is amended to read:

5 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

6 A. The physical, mental and emotional welfare and
7 needs of the child shall be the primary consideration for the
8 termination of parental rights. The court may terminate the
9 rights of the child's parents as provided by the Adoption Act.

10 B. The court shall terminate parental rights with
11 respect to a child when:

12 (1) the child has been abandoned by the
13 parents;

14 (2) the child has been a neglected or abused
15 child and the court finds that the conditions and causes of the
16 neglect and abuse are unlikely to change in the foreseeable
17 future; or

18 (3) the child has been placed in the care of
19 others, including care by other relatives, either by a court
20 order or otherwise, and the following conditions exist:

21 (a) the child has lived in the home of
22 others for an extended period of time;

23 (b) the parent-child relationship has
24 disintegrated;

25 (c) a psychological parent-child

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1 relationship has developed between the substitute family and
2 the child;

3 (d) if the court deems the child of
4 sufficient capacity to express a preference, the child no
5 longer prefers to live with the natural parent;

6 (e) the substitute family desires to
7 adopt the child; and

8 (f) a presumption of abandonment created
9 by the conditions described in Subparagraphs (a) through (e) of
10 this paragraph has not been rebutted.

11 C. A finding by the court that all of the
12 conditions set forth in [~~Subparagraph~~] Subparagraphs (a)
13 through (e) of Paragraph (3) of Subsection B of this section
14 exist shall create a rebuttable presumption of abandonment.

15 D. The termination of parental rights involving an
16 Indian child shall comply with the requirements of the federal
17 Indian Child Welfare Act of 1978 and the State Indian Child
18 Welfare Act."

19 SECTION 52. Section 32A-5-16 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 143, as amended) is amended to read:

21 "32A-5-16. TERMINATION PROCEDURES.--

22 A. A proceeding to terminate parental rights may be
23 initiated in connection with or prior to an adoption
24 proceeding. Venue shall be in the court for the county in
25 which the child is physically present or in the county from

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1 which the child was placed. The proceeding may be initiated by
2 any of the following:

- 3 (1) the department;
- 4 (2) an agency; or
- 5 (3) any other person having a legitimate
6 interest in the matter, including a petitioner for adoption,
7 the child's guardian, the child's guardian ad litem or attorney
8 in another action, a foster parent, a relative of the child or
9 the child.

10 B. A petition for termination of parental rights
11 shall be signed and verified by the petitioner, be filed with
12 the court and set forth:

- 13 (1) the date, place of birth and marital
14 status of the child, if known;
- 15 (2) the grounds for termination and the facts
16 and circumstances supporting the grounds for termination;
- 17 (3) the names and addresses of the person,
18 authorized agency or agency officer to whom custody might be
19 transferred;
- 20 (4) the basis for the court's jurisdiction;
- 21 (5) that the petition is in contemplation of
22 adoption;
- 23 (6) the relationship or legitimate interest of
24 the applicant to the child; and
- 25 (7) whether the child is an Indian child and,

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1 if so,

2 ~~[(a) the tribal affiliations of the~~
3 ~~child's parents;~~

4 ~~(b) the specific actions taken by the~~
5 ~~moving party to notify the parents' tribe and the results of~~
6 ~~the contacts, including the names, addresses, titles and~~
7 ~~telephone numbers of the persons contacted. Copies of any~~
8 ~~correspondence with the Indian tribe shall be attached as~~
9 ~~exhibits to the petition; and~~

10 ~~(c) what specific efforts were made to~~
11 ~~comply with the placement preferences set forth in the federal~~
12 ~~Indian Child Welfare Act of 1978 or the placement preferences~~
13 ~~of the appropriate Indian tribes] any additional information as~~
14 ~~required pursuant to the State Indian Child Welfare Act and the~~
15 ~~federal Indian Child Welfare Act of 1978 for a petition to~~
16 ~~terminate parental rights.~~

17 C. Notice of the filing of the petition,
18 accompanied by a copy of the petition, shall be served by the
19 petitioner on the parents of the child, the child's guardian,
20 the legal custodian of the child, the person with whom the
21 child is residing, the individuals with whom the child has
22 resided within the past six months and the department. Service
23 shall be in accordance with the Rules of Civil Procedure for
24 the District Courts for the service of process in a civil
25 action in this state, with the exception that the department

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1 may be served by certified mail. The notice shall state
2 specifically that the person served shall file a written
3 response to the petition within twenty days if the person
4 intends to contest the termination. In any case involving an
5 Indian child, notice shall also be served on the child's Indian
6 tribe pursuant to the federal Indian Child Welfare Act of 1978
7 and the State Indian Child Welfare Act.

8 D. If the identification or whereabouts of a parent
9 is unknown, the petitioner shall file a motion for an order
10 granting service by publication or an order stating that
11 service by publication is not required. A motion for an order
12 granting service by publication shall be supported by the
13 affidavit of the petitioner, the agency or the petitioner's
14 attorney detailing the efforts made to locate the parent. Upon
15 being satisfied that reasonable efforts to locate the parent
16 have been made and that information as to the identity or
17 whereabouts of the parent is still insufficient to effect
18 service in accordance with SCRA, Rule 1-004, the court shall
19 order service by publication or order that publication is not
20 required because the parent's consent is not required pursuant
21 to the provisions of Section 32A-5-19 NMSA 1978.

22 E. The court shall, upon request, appoint counsel
23 for an indigent parent who is unable to obtain counsel or if,
24 in the court's discretion, appointment of counsel for an
25 indigent parent is required in the interest of justice.

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1 Payment for the appointed counsel shall be made by the
2 petitioner pursuant to the rate determined by the supreme court
3 of New Mexico for court-appointed attorneys.

4 F. The court shall appoint a guardian ad litem for
5 the child in all contested proceedings for termination of
6 parental rights. If the child is fourteen years of age or
7 older and in the custody of the department, the child's
8 attorney appointed pursuant to the Abuse and Neglect Act shall
9 represent the child in any proceedings for termination of
10 parental rights under this section.

11 G. Within thirty days after the filing of a
12 petition to terminate parental rights, the petitioner shall
13 request a hearing on the petition. The hearing date shall be
14 at least thirty days after service is effected upon the parent
15 of the child or completion of publication.

16 H. The grounds for any attempted termination shall
17 be proved by clear and convincing evidence. In any proceeding
18 involving an Indian child, the grounds for any attempted
19 termination shall be proved beyond a reasonable doubt and meet
20 the requirements set forth in the federal Indian Child Welfare
21 Act of 1978 and the State Indian Child Welfare Act.

22 I. If the court terminates parental rights, it
23 shall appoint a custodian for the child. Upon entering an
24 order terminating the parental rights of a parent, the court
25 may commit the child to the custody of the department, the

1 petitioner or an agency willing to accept custody for the
 2 purpose of placing the child for adoption. In any termination
 3 proceeding involving an Indian child, the court shall, in any
 4 termination order, make specific findings that the requirements
 5 of the federal Indian Child Welfare Act of 1978 and the State
 6 Indian Child Welfare Act were met.

7 J. A judgment of the court terminating parental
 8 rights divests the parent of all legal rights. Termination of
 9 parental rights shall not affect the child's right of
 10 inheritance through the former parent."

11 SECTION 53. Section 32A-5-17 NMSA 1978 (being Laws 1993,
 12 Chapter 77, Section 144, as amended) is amended to read:

13 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
 14 REQUIRED.--

15 A. Consent to adoption or relinquishment of
 16 parental rights to the department or an agency licensed by the
 17 state of New Mexico shall be required of the following:

18 (1) the adoptee, if fourteen years of age or
 19 older, except when the court finds that the adoptee does not
 20 have the mental capacity to give consent;

21 (2) the adoptee's mother;

22 (3) the adoptee's proposed adoptive parent;

23 (4) the presumed father of the adoptee;

24 (5) the adoptee's acknowledged father;

25 (6) the department or the agency to whom the

1 adoptee has been relinquished that has placed the adoptee for
2 adoption or the department or the agency that has custody of
3 the adoptee; provided, however, that the court may grant the
4 adoption without the consent of the department or the agency if
5 the court finds the adoption is in the best interests of the
6 adoptee and that the withholding of consent by the department
7 or the agency is unreasonable; and

8 (7) the guardian of the adoptee's parent when,
9 pursuant to provisions of the Uniform Probate Code, that
10 guardian has express authority to consent to adoption.

11 B. In any adoption involving an Indian child,
12 consent to adoption by the petitioner or relinquishment of
13 parental rights shall be obtained from an "Indian custodian",
14 as required pursuant to the provisions of the federal Indian
15 Child Welfare Act of 1978 and the State Indian Child Welfare
16 Act.

17 C. A consent or relinquishment executed by a parent
18 who is a minor shall not be subject to avoidance or revocation
19 solely by reason of the parent's minority."

20 SECTION 54. Section 32A-5-21 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 148, as amended) is amended to read:

22 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

23 A. Except when consent or relinquishment is
24 implied, a consent or relinquishment by a parent shall be in
25 writing, signed by the parent consenting or relinquishing and

1 shall state the following:

2 (1) the date, place and time of execution;

3 (2) the date and place of birth of the adoptee
4 and any names by which the adoptee has been known;

5 (3) if a consent to adoption is being
6 executed, the identity of the petitioner, if known, or when the
7 adoption is an independent adoption and the identity of the
8 petitioner is unknown, how the petitioner was selected by the
9 consenting parent;

10 (4) if a relinquishment of parental rights is
11 being executed, the name and address of the agency or the
12 department;

13 (5) that the person executing the consent or
14 relinquishment has been counseled, as provided in Section
15 32A-5-22 NMSA 1978, by a certified counselor of the person's
16 choice and with this knowledge the person is voluntarily and
17 unequivocally consenting to the adoption of the named adoptee;

18 (6) that the consenting party has been advised
19 of the legal consequences of the relinquishment or consent
20 either by independent legal counsel or a judge;

21 (7) if the adoption is closed, that all
22 parties understand that the court will not enforce any contact,
23 regardless of any informal agreements that have made between
24 the parties;

25 (8) that the consent to or relinquishment for

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1 adoption cannot be withdrawn;

2 (9) that the person executing the consent or
3 relinquishment has received or been offered a copy of the
4 consent or relinquishment;

5 (10) that a counseling narrative has been
6 prepared pursuant to department regulations and is attached to
7 the consent or relinquishment;

8 (11) that the person who performed the
9 counseling meets the requirements set forth in the Adoption
10 Act; and

11 (12) that the person executing the consent or
12 relinquishment waives further notice of the adoption
13 proceedings.

14 B. The consent of an adoptee, if fourteen years of
15 age or older, shall be in writing, signed by the adoptee,
16 consenting to the adoption and shall state the following:

- 17 (1) the date, place and time of execution;
18 (2) the date and place of birth of the adoptee
19 and any names by which the adoptee has been known;
20 (3) the name of the petitioner;
21 (4) that the adoptee has been counseled
22 regarding the consent pursuant to department regulation;
23 (5) that the adoptee has been advised of the
24 legal consequences of the consent;
25 (6) that the adoptee is voluntarily and

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1 unequivocally consenting to the adoption;

2 (7) that the consent or relinquishment cannot
3 be withdrawn;

4 (8) that a counseling narrative has been
5 prepared pursuant to department regulation and is attached to
6 the consent; and

7 (9) that the person who performed the
8 counseling meets the requirements set forth in the Adoption
9 Act.

10 C. In cases when the consent or relinquishment is
11 in English and English is not the first language of the
12 consenting or relinquishing person, the person taking the
13 consent or relinquishment shall certify in writing that the
14 document has been read and explained to the person whose
15 consent or relinquishment is being taken in that person's first
16 language, by whom the document was so read and explained and
17 that the meaning and implications of the document are fully
18 understood by the person giving the consent or relinquishment.

19 D. Unconditional consents or relinquishments are
20 preferred, and, therefore, conditional consents or
21 relinquishments shall be for good cause and approved by the
22 court. However, if the condition is for a specific petitioner
23 or the condition requires the other parent to consent before
24 the decree of adoption is entered, the condition shall be
25 deemed for good cause. In any event, all conditions permitted

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1 under this subsection shall be met within one hundred eighty
2 days of the execution of the conditional consent or
3 relinquishment or the conclusion of any litigation concerning
4 the petition for adoption. The court may grant an extension of
5 this time for good cause.

6 E. Agency or department consents required pursuant
7 to the provisions of Section 32A-5-17 NMSA 1978 shall state the
8 following:

- 9 (1) the date, place and time of execution;
10 (2) the date and place of birth of the adoptee
11 and any names by which the adoptee has been known;
12 (3) the name of the petitioner; and
13 (4) the consent of the agency or department.

14 F. A consent or relinquishment taken by an
15 individual appointed to take consents or relinquishments by an
16 agency shall be notarized, except that a consent or
17 relinquishment signed in the presence of a judge need not be
18 notarized. A hearing before the court for the purpose of
19 taking a consent or relinquishment shall be heard by the court
20 within seven days of request for setting.

21 G. No consent to adoption or relinquishment of
22 parental rights shall be valid if executed within forty-eight
23 hours after the adoptee's birth. Consent to adoption or
24 relinquishment of parental rights involving an Indian child
25 shall comply with the more stringent requirements of the

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1 federal Indian Child Welfare Act of 1978 and the State Indian
 2 Child Welfare Act.

3 H. The requirements of a consent to adoption or
 4 relinquishment of parental rights involving an Indian child
 5 and the rights of a parent of an Indian child to withdraw the
 6 consent or relinquishment shall be governed by the relevant
 7 provisions of the federal Indian Child Welfare Act of 1978 and
 8 the State Indian Child Welfare Act.

9 I. For non-Indian children, a consent to or
 10 relinquishment for adoption shall not be withdrawn prior to the
 11 entry of a decree of adoption unless the court finds, after
 12 notice and opportunity to be heard is afforded to the
 13 petitioner, to the person seeking the withdrawal and to the
 14 agency placing a child for adoption, that the consent or
 15 relinquishment was obtained by fraud. In no event shall a
 16 consent or relinquishment be withdrawn after the entry of a
 17 decree of adoption."

18 SECTION 55. Section 32A-5-26 NMSA 1978 (being Laws 1993,
 19 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,
 20 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended
 21 to read:

22 "32A-5-26. PETITION--CONTENT.--A petition for adoption
 23 shall be filed and verified by the petitioner and shall allege:

24 A. the full name, age and place and duration of
 25 residence of the petitioner and, if married, the place and date

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1 of marriage; the date and place of any prior marriage,
2 separation or divorce; and the name of any present or prior
3 spouse;

4 B. the date and place of birth of the adoptee, if
5 known;

6 C. the places where the adoptee has lived within
7 the past three years and the names and addresses of the persons
8 with whom the adoptee has lived, unless the adoptee is in the
9 custody of an agency or the department, in which case the
10 petitioner shall state the name and address of the agency or
11 the department's county office from which the child was placed;

12 D. the birth name of the adoptee, any other names
13 by which the adoptee has been known and the adoptee's proposed
14 new name; provided that in the case of an agency adoption, if
15 the petitioner and the biological parents have not agreed to
16 the release of the adoptee's identity to the other person, the
17 birth name and any other names by which the adoptee has been
18 known shall be filed with the court as separate documents at
19 the time the petition is filed;

20 E. where the adoptee is residing at the time of the
21 filing of the petition and, if the adoptee is not living with
22 the petitioner, when the adoptee will commence living with the
23 petitioner;

24 F. that the petitioner desires to establish a
25 parent and child relationship with the adoptee and that the

1 petitioner is a fit and proper person able to care and provide
2 for the adoptee's welfare;

3 G. the existence of any court orders, including
4 placement orders, that are known to the petitioner and that
5 regulate custody, visitation or access to the adoptee, copies
6 of which shall accompany and be attached to the petition as
7 exhibits;

8 H. the relationship, if any, of the petitioner to
9 the adoptee;

10 I. the name and address of the placing agency, if
11 any;

12 J. the names and addresses of all persons from whom
13 consents or relinquishments are required, attaching copies of
14 those obtained and alleging the facts that excuse or imply the
15 consents or relinquishments of the others; provided that if the
16 petitioner has not agreed to the release of [~~his~~] the
17 petitioner's identity to the parent or if the parent has not
18 agreed to the release of [~~his~~] the parent's identity to the
19 petitioner, the names and addresses of all persons from whom
20 consents or relinquishments are required shall be filed with
21 the court as separate documents at the time the petition for
22 adoption is filed;

23 K. whether the adoption will be an open adoption,
24 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

25 L. when consent of the child's father is alleged to

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1 be unnecessary, the results of a search of the putative father
2 registry;

3 M. whether the adoptee is an Indian child and, if
4 so, the petition shall ~~[allege:~~

5 ~~(1) the tribal affiliation of the adoptee's~~
6 ~~parents;~~

7 ~~(2) what specific actions have been taken and~~
8 ~~by whom to notify the parents' tribe and the results of the~~
9 ~~contact, including the names, addresses, titles and telephone~~
10 ~~numbers of the persons contacted. Copies of any correspondence~~
11 ~~with the Indian tribe shall be attached as exhibits to the~~
12 ~~petition; and~~

13 ~~(3) what specific efforts were made to comply~~
14 ~~with the placement preferences set forth in the federal Indian~~
15 ~~Child Welfare Act of 1978 or the placement preferences of the~~
16 ~~appropriate Indian tribe] include any specific allegations as~~
17 ~~required pursuant to the federal Indian Child Welfare Act of~~
18 ~~1978 and the State Indian Child Welfare Act;~~

19 N. whether the adoption is subject to the
20 Interstate Compact on the Placement of Children and, if so, a
21 copy of the interstate compact form indicating approval shall
22 be attached as an exhibit to the petition;

23 O. whether the adoptee is foreign-born and, if so,
24 copies of the child's passport and United States visa and of
25 all documents demonstrating that the adoptee is legally free

1 for adoption, including a certificate from the United States
2 secretary of state that certifies that the adoption is a
3 convention adoption;

4 P. whether the adoption is a convention adoption
5 and, if so, the petition shall allege:

6 (1) that the country in which the child has
7 been residing is a party to the Hague Convention on Protection
8 of Children and Co-operation in Respect of Intercountry
9 Adoption;

10 (2) that the agency or person who is providing
11 the adoption service has been approved as an accrediting
12 entity; and

13 (3) that the certificate issued by the United
14 States secretary of state that certifies the adoption as a
15 convention adoption has been filed with the court; and

16 Q. the name, address and telephone number of the
17 agency or individual who has agreed to conduct the post-
18 placement report in accordance with Section 32A-5-31 NMSA 1978,
19 if different than the agency or individual who prepared the
20 pre-placement study in accordance with Section 32A-5-13 NMSA
21 1978."

22 SECTION 56. Section 32A-5-27 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 154, as amended) is amended to read:

24 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

25 A. The petition for adoption shall be served by the

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1 petitioner on the following, unless it has been previously
2 waived in writing:

3 (1) the department, by providing a copy to the
4 court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

5 (2) any person, agency or institution whose
6 consent or relinquishment is required by Section 32A-5-17 NMSA
7 1978, unless the notice has been previously waived;

8 (3) any acknowledged father of the adoptee;

9 (4) the legally appointed custodian or
10 guardian of the adoptee;

11 (5) the spouse of any petitioner who has not
12 joined in the petition;

13 (6) the spouse of the adoptee;

14 (7) the surviving parent of a deceased parent
15 of the adoptee;

16 (8) any person known to the petitioner having
17 custody of or visitation with the adoptee under a court order;

18 (9) any person in whose home the child has
19 resided for at least two months within the preceding six
20 months;

21 (10) the agency or individual authorized to
22 investigate the adoption under Section 32A-5-13 NMSA 1978; and

23 (11) any other person designated by the court.

24 B. Notice shall not be served on the following:

25 (1) an alleged father; and

1 (2) a person whose parental rights have been
2 relinquished or terminated.

3 C. The petitioner shall provide the clerk of the
4 court with a copy of the petition for adoption, to be mailed to
5 the department pursuant to the provisions of Section 32A-5-7
6 NMSA 1978.

7 D. In an adoption in which the adoptee is an Indian
8 child, in addition to the notice required pursuant to
9 Subsection A of this section, notice of pendency of the
10 adoption proceeding shall be served by the petitioner on the
11 appropriate Indian tribe and on a parent or an "Indian
12 custodian" pursuant to the provisions of the federal Indian
13 Child Welfare Act of 1978 and the State Indian Child Welfare
14 Act.

15 E. The notice shall state that the person served
16 shall respond to the petition within twenty days if the person
17 intends to contest the adoption and shall state that the
18 failure to so respond shall be treated as a default and the
19 person's consent to the adoption shall not be required.
20 Provided, however, that this provision shall not apply to an
21 agency, the department or an investigator preparing the post-
22 placement report pursuant to Section 32A-5-31 NMSA 1978. If an
23 agency, the department or an investigator preparing the post-
24 placement report wants to contest the adoption, it shall notify
25 the court within twenty days after completion of the post-

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

1 placement report.

2 F. Service shall be made pursuant to the Rules of
3 Civil Procedure for the District Courts. If the whereabouts of
4 a parent whose consent is required is unknown, the
5 investigator, department or agency charged with investigating
6 the adoption under Section 32A-5-13 NMSA 1978 shall investigate
7 the whereabouts of the parent and shall file by affidavit the
8 results of the investigation with the court. Upon a finding by
9 the court that information as to the whereabouts of a parent
10 has been sufficiently investigated and is still insufficient to
11 effect service in accordance with the Rules of Civil Procedure
12 for the District Courts, the court shall issue an order
13 providing for service by publication.

14 G. As to any other person for whom notice is
15 required under Subsection A of this section, service by
16 certified mail, return receipt requested, shall be sufficient.
17 If the service cannot be completed after two attempts, the
18 court shall issue an order providing for service by
19 publication.

20 H. The notice required by this section may be
21 waived in writing by the person entitled to notice.

22 I. Proof of service of the notice on all persons
23 for whom notice is required by this section shall be filed with
24 the court before any hearing adjudicating the rights of the
25 persons."

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1 **SECTION 57.** Section 32A-5-28 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 155) is amended to read:

3 "32A-5-28. RESPONSE TO PETITION.--

4 A. Any person responding to a notice of a petition
5 for adoption shall file a verified response to the petition
6 within the time limits specified in Section [~~32-5-25~~] 32A-5-25
7 NMSA 1978.

8 B. The verified response shall follow the Rules of
9 Civil Procedure for the District Courts and shall allege:

10 (1) the existence of any court orders known to
11 the respondent that regulate custody, visitation or access to
12 the adoptee but have not been filed with the court at the time
13 the response is filed and copies of which shall be attached to
14 the response;

15 (2) the relationship, if any, of the
16 respondent to the adoptee;

17 (3) whether the adoptee is an Indian child,
18 and, if so, the response shall set forth all allegations
19 required under the federal Indian Child Welfare Act of 1978 and
20 the State Indian Child Welfare Act;

21 (4) whether the adoption is subject to the
22 Interstate Compact on the Placement of Children; and

23 (5) whether the adoption is an open adoption."

24 **SECTION 58.** Section 32A-5-36 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,

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1 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended
2 to read:

3 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
4 ADOPTION.--

5 A. The court shall conduct hearings on the petition
6 for adoption so as to determine the rights of the parties in a
7 manner that protects confidentiality. The petitioner and the
8 adoptee shall attend the hearing unless the court for good
9 cause waives a party's appearance. Good cause may include
10 burdensome travel requirements.

11 B. The petitioner shall file all documents required
12 pursuant to the Adoption Act and serve the department with
13 copies of the documents simultaneously with the request for
14 hearing on the petition for adoption.

15 C. If any person who claims to be the biological
16 father of the adoptee has appeared before the court and filed a
17 written petition or response seeking custody and assuming
18 financial responsibility of the adoptee, the court shall hear
19 evidence as to the merits of the petition. If the court
20 determines by a preponderance of the evidence that the person
21 is not the biological father of the adoptee or that the child
22 was conceived through an act of rape or incest, the petition
23 shall be dismissed and the person shall no longer be a party to
24 the adoption. If the court determines that the person is the
25 biological father of the adoptee, the court shall further

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1 determine whether the person qualifies as a presumed or
2 acknowledged father whose consent is necessary for adoption,
3 pursuant to Section 32A-5-17 NMSA 1978. If the court
4 determines that the person is the biological father, but does
5 not qualify as a presumed or acknowledged father, the court
6 shall adjudicate the person's rights pursuant to the provisions
7 of the Adoption Act.

8 D. If the mother or father of the adoptee has
9 appeared before the court and filed a written petition that
10 alleges the invalidity of the mother's or father's own consent
11 or relinquishment for adoption previously filed in the adoption
12 proceeding, the court shall hear evidence as to the merits of
13 the petition. If the court determines that the allegations
14 have not been proved by a preponderance of the evidence, the
15 petition shall be dismissed. If the court determines that the
16 allegations of the petition are true, the consent or
17 relinquishment for adoption shall be held invalid, and the
18 court shall determine, in the best interests of the adoptee,
19 the person who shall have custody of the child.

20 E. The petitioner shall present and prove each
21 allegation set forth in the petition for adoption by clear and
22 convincing evidence.

23 F. The court shall grant a decree of adoption if it
24 finds that the petitioner has proved by clear and convincing
25 evidence that:

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1 (1) the court has jurisdiction to enter a
2 decree of adoption affecting the adoptee;

3 (2) the adoptee has been placed with the
4 petitioner for a period of ninety days if the adoptee is under
5 the age of one year at the time of placement or for a period of
6 one hundred eighty days if the adoptee is one year of age or
7 older at the time of placement, unless, for good cause shown,
8 the requirement is waived by the court;

9 (3) all necessary consents, relinquishments,
10 terminations or waivers have been obtained;

11 (4) the post-placement report required by
12 Section 32A-5-31 NMSA 1978 has been filed with the court;

13 (5) service of the petition for adoption has
14 been made or dispensed with as to all persons entitled to
15 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

16 (6) at least ninety days have passed since the
17 filing of the petition for adoption, except the court may
18 shorten or waive this period of time in cases in which the
19 child is being adopted by a stepparent, a relative or a person
20 named in the child's deceased parent's will pursuant to
21 provisions of Section 32A-5-12 NMSA 1978;

22 (7) the petitioner is a suitable adoptive
23 parent and the best interests of the adoptee are served by the
24 adoption;

25 (8) if visitation between the biological

1 family and the adoptee is contemplated, that the visitation is
2 in the child's best interests;

3 (9) if the adoptee is foreign-born, the child
4 is legally free for adoption and a certificate issued by the
5 United States secretary of state that certifies the adoption as
6 a convention adoption has been filed with the court;

7 (10) the results of the criminal records check
8 required pursuant to provisions of the Adoption Act have been
9 received and considered;

10 (11) if the adoptee is an Indian child, the
11 requirements set forth in the federal Indian Child Welfare Act
12 of 1978 and the State Indian Child Welfare Act have been met;

13 (12) when the child is an Indian child, the
14 placement preferences set forth in the federal Indian Child
15 Welfare Act of 1978, the State Indian Child Welfare Act or the
16 placement preferences of the appropriate Indian tribes have
17 been followed or, if not followed, good cause for noncompliance
18 has been clearly stated and [~~supported~~] shown by clear and
19 convincing evidence, as required by the federal Indian Child
20 Welfare Act of 1978 and the State Indian Child Welfare Act and
21 provision has been made to ensure that the Indian child's
22 cultural ties to the Indian child's tribe are protected and
23 fostered; and

24 (13) if the adoption involves the interstate
25 placement of the adoptee, the requirements of the Interstate

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1 Compact on the Placement of Children have been met.

2 G. In addition to the findings required by
3 Subsection F of this section, the court in any decree of
4 adoption shall make findings with respect to each allegation of
5 the petition.

6 H. If the court determines that any of the
7 requirements for a decree of adoption pursuant to provisions of
8 Subsections E and F of this section have not been met or that
9 the adoption is not in the best interests of the adoptee, the
10 court shall deny the petition and determine, in the best
11 interests of the adoptee, the person who shall have custody of
12 the child.

13 I. The decree of adoption shall include the new
14 name of the adoptee and shall not include any other name by
15 which the adoptee has been known or the names of the former
16 parents. The decree of adoption shall order that from the date
17 of the decree, the adoptee shall be the child of the petitioner
18 and accorded the status set forth in Section 32A-5-37 NMSA
19 1978.

20 J. A decree of adoption shall be entered within six
21 months of the filing of the petition if the adoptee is under
22 the age of one year at the time of placement or twelve months
23 if the adoptee is one year of age or older at the time of
24 placement, except that the time may be extended by the court
25 upon request of any of the parties or upon the court's own

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1 motion for good cause shown.

2 K. A decree of adoption may not be attacked upon
3 the expiration of one year from the entry of the decree;
4 provided, however, that in any adoption involving an Indian
5 child, the Indian child's parent or Indian custodian may
6 petition the court pursuant to the provisions of the federal
7 Indian Child Welfare Act of 1978 and the State Indian Child
8 Welfare Act to invalidate the adoption.

9 L. In any adoption involving an Indian child, the
10 clerk of the court shall provide the secretary of the interior
11 with a copy of any decree of adoption or adoptive placement
12 order and other information as required by the federal Indian
13 Child Welfare Act of 1978 and in accordance with the provisions
14 of the State Indian Child Welfare Act."

15 SECTION 59. Section 32A-5-40 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 167, as amended) is amended to read:

17 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

18 A. After the decree of adoption has been entered,
19 all court files containing records of judicial proceedings
20 conducted pursuant to the provisions of the Adoption Act and
21 records submitted to the court in the proceedings shall be kept
22 in separate locked files withheld from public inspection. Upon
23 application to the clerk of the court, the records shall be
24 open to inspection by a former parent if the adoptee is
25 eighteen years of age or older, by an adoptee if the adoptee is

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1 eight years of age or older at the time application is made
2 for inspection, by the adoptive parent if the adoptee is under
3 eighteen years of age at the time application is made for
4 inspection, by the attorney of any party, by any agency that
5 has exercised guardianship over or legal custody of a child who
6 was the adoptee in the particular proceeding, by the department
7 or by an adoptee's sibling; provided that the identity of the
8 former parents and of the adoptee shall be kept confidential
9 unless the former parents and the adoptee have consented to the
10 release of identity. In the absence of consent to release
11 identity, the inspection shall be limited to the following
12 nonidentifying information:

13 (1) the health and medical histories of the
14 adoptee's biological parents;

15 (2) the health and medical history of the
16 adoptee;

17 (3) the adoptee's general family background,
18 including ancestral information, without name references or
19 geographical designations;

20 (4) physical descriptions; and

21 (5) the length of time the adoptee was in the
22 care and custody of persons other than the petitioner.

23 B. After the entry of the decree of adoption, at
24 any time, a former parent may file with the court, with the
25 placing agency or with the department:

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1 (1) a consent or refusal or an amended consent
2 or refusal to be contacted;

3 (2) a release of the former parent's identity
4 to the adoptee if the adoptee is eighteen years of age or older
5 or to the adoptive parent if the adoptee is under eighteen
6 years of age; or

7 (3) information regarding the former parent's
8 location or changes in background information.

9 C. Any changes to post-adoption access to records
10 referred to in Subsection B of this section shall be filed with
11 the court, the placing agency and the department.

12 D. The consent or refusal referred to in Subsection
13 B of this section shall be honored by the court, the placing
14 agency or the department unless for good cause the court orders
15 to the contrary.

16 E. At any time, an adoptee who is eighteen years of
17 age or older may file with the court, a placing agency or the
18 department:

19 (1) information regarding the adoptee's
20 location; or

21 (2) a consent or refusal regarding opening of
22 the adoptee's adoption file to the adoptee's former parents.

23 F. If mutual authorizations for release of
24 identifying information by the parties are not available, an
25 adoptee who is eighteen years of age or older, the biological

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1 parents if the adoptee is eighteen years of age or older or the
2 adoptive parents if the adoptee is under the age of eighteen
3 years may file a motion with the court to obtain the release of
4 identifying information for good cause shown. When hearing the
5 motion, the court shall give primary consideration to the best
6 interests of the adoptee, but shall also give due consideration
7 to the interests of the members of the adoptee's former and
8 adoptive families. In determining whether good cause exists
9 for the release of identifying information, the court shall
10 consider:

11 (1) the reason the information is sought;

12 (2) any procedure available for satisfying the
13 petitioner's request without disclosing the name or identity of
14 another individual, including appointment of a confidential
15 intermediary to contact the individual and request specific
16 information;

17 (3) whether the individual about whom
18 identifying information is sought is alive;

19 (4) the preference, to the extent known, of
20 the adoptee, the adoptive parents, the former parents and other
21 members of the adoptee's former and adoptive families and the
22 likely effect of disclosure on those individuals;

23 (5) the age, maturity and expressed needs of
24 the adoptee;

25 (6) the report or recommendation of any

1 individual appointed by the court to assess the request for
2 identifying information; and

3 (7) any other factor relevant to an assessment
4 of whether the benefit to the adoptee of releasing the
5 information sought will be greater than the benefit to any
6 other individual of not releasing the information.

7 G. An adoptee shall have the right, for the purpose
8 of ~~[enrolling]~~ obtaining membership in the adoptee's tribe of
9 origin, to access information kept by the department.

10 Information needed by an adoptee to ~~[enroll]~~ obtain membership
11 in ~~[his]~~ the adoptee's tribe of origin may be requested from
12 the department ~~[by the following persons:]~~

13 ~~(1) the adoptee, after he reaches eighteen~~
14 ~~years of age;~~

15 ~~(2) when the adoptee is a child, his adoptive~~
16 ~~parent or guardian; or~~

17 ~~(3) an adoptee's descendant or, if the~~
18 ~~adoptee's descendant is a child, an adult representative for~~
19 ~~the descendant] as provided pursuant to the State Indian Child~~
20 ~~Welfare Act and the federal Indian Child Welfare Act of 1978.~~

21 H. When the department receives a request for
22 information regarding an adoptee's tribe of origin, the
23 department shall examine its records to determine if the
24 adoptee is of Indian descent. If the department establishes
25 that an adoptee is of Indian descent, the department shall

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1 ~~[(1) provide the requester with the tribal~~
2 ~~affiliation of the adoptee's biological parents;~~

3 ~~(2) submit to the tribe information necessary~~
4 ~~to establish tribal enrollment for the adoptee and to protect~~
5 ~~any rights flowing from the adoptee's tribal relationship; and~~

6 ~~(3) provide notice to the requester of the~~
7 ~~department's submission of information to the adoptee's tribe]~~
8 provide any information or notice as required pursuant to the
9 State Indian Child Welfare Act and the federal Indian Child
10 Welfare Act of 1978."

11 SECTION 60. Section 40-10B-5 NMSA 1978 (being Laws 2001,
12 Chapter 167, Section 5, as amended) is amended to read:

13 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

16 (1) a kinship caregiver;

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

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

24 (a) the purpose and effect of the
25 guardianship;

1 (b) that the parent has the right to be
2 served with the petition and notices of hearings in the action;
3 and

4 (c) that the parent may appear in court
5 to contest the guardianship.

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

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

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

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

17 (4) the name and address of the petitioner;

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

20 (6) the names and addresses of the parents of
21 the child;

22 (7) the names and addresses of persons having
23 legal custody of the child;

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

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

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

7 (11) whether the child is an Indian child, or
8 there is reason to know that the child is an Indian child, and
9 subject to provisions of the federal Indian Child Welfare Act
10 of 1978, as that act may be amended or its sections renumbered,
11 or the State Indian Child Welfare Act and, if so,

12 [~~(a) the tribal affiliations of the~~
13 ~~child's parents; and~~

14 [~~(b) the specific actions taken by the~~
15 ~~petitioner to notify the parents' tribes and the results of the~~
16 ~~contacts, including the names, addresses, titles and telephone~~
17 ~~numbers of the persons contacted, and copies of correspondence~~
18 ~~with the tribe] shall include any information as required of a
19 petition for a child custody proceeding pursuant to those acts;
20 and~~

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

23 SECTION 61. Section 40-10B-6 NMSA 1978 (being Laws 2001,
24 Chapter 167, Section 6, as amended) is amended to read:

25 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

1 A. The court shall set a date for hearing on the
2 petition, which date shall be no less than thirty and no more
3 than ninety days from the date of filing the petition.

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

6 (1) the children, youth and families
7 department if there is any pending matter relating to the child
8 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

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

11 (3) the parents of the child;

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

14 (5) if the child is an Indian child as defined
15 in the federal Indian Child Welfare Act of 1978, as that act
16 may be amended or its sections renumbered, and the State Indian
17 Child Welfare Act, the [appropriate] Indian tribe and [any] the
18 child's parent or "Indian custodian", together with a notice of
19 pendency of the guardianship proceedings, pursuant to the
20 provisions of the federal Indian Child Welfare Act of 1978, as
21 that act may be amended or its sections renumbered, and the
22 State Indian Child Welfare Act.

23 C. Service of process required by Subsection A of
24 this section shall be made in accordance with the requirements
25 for giving notice of a hearing pursuant to Subsection A of

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1 Section 45-1-401 NMSA 1978.

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

6 SECTION 62. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
7 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
8 2005, Chapter 189, Section 37, as amended) are repealed.

9 SECTION 63. SEVERABILITY.--If any provision of the State
10 Indian Child Welfare Act, related provisions in other sections
11 of New Mexico law or the application of such laws to any person
12 or circumstances is held invalid for any reason in a court of
13 competent jurisdiction, the invalidity does not affect other
14 provisions of the State Indian Child Welfare Act and related
15 laws.

16 SECTION 64. APPLICABILITY.--

17 A. The provisions of Section 8 of this act apply to
18 tribal-state agreements that become effective on or after July
19 1, 2021.

20 B. The provisions of this act apply to all open
21 cases prior to July 1, 2021.

22 SECTION 65. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2021.