

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 135

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHILDREN; ENACTING THE INDIAN FAMILY PROTECTION ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE INDIAN FAMILY PROTECTION ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; PROVIDING A PENALTY; CREATING THE OFFICE OF TRIBAL AFFAIRS WITHIN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REQUIRING A CULTURAL COMPONENT

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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 42 of
this act may be cited as the "Indian Family Protection Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Indian Family
Protection Act:

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

B. "adoptive placement" means a permanent placement
of an Indian child for adoption, including an action resulting
in a final decree of adoption;

C. "child custody proceeding" means an action for
foster care placement, termination of parental rights,
SIRC→**permanent**←SIRC guardianship or adoptive placement or an
action pursuant to Section 32A-3A-8 NMSA 1978 or the Family in
Need of Court- Ordered Services Act and includes investigations
and other preliminary activities preceding the formal
initiation of an action, but does not include:

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- (1) delinquency proceedings; and
- (2) custodial proceedings SIRC→or kinship

guardianships←SIRC pursuant to Chapter 40 NMSA 1978;

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

- (1) the adoptive parents or guardians of the Indian child, which parents or guardians are not members of the Indian child's tribe; and

- (2) the Indian child's tribe;

E. "discussion with an Indian tribe" means documented good faith efforts to actively communicate and work with an Indian tribe;

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

G. "fictive kin" means a person:

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

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

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

H. "foster care placement" means:

(1) an action pursuant to the Abuse and Neglect Act removing an Indian child from the child's parent, guardian or Indian custodian for temporary placement in a foster home or institution or the home of a guardian where the parent or Indian custodian cannot have the child returned upon demand, but in which parental rights have not been terminated; or

(2) the temporary placement of an Indian child in foster care pursuant to a voluntary agreement entered into between a parent, guardian or Indian custodian and the department pursuant to the Family Services Act."

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

"[NEW MATERIAL] INDIAN CHILD'S DOMICILE--DETERMINATION OF DOMICILE AND RESIDENCE.--

A. In a child custody proceeding involving an

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Indian child, the court shall determine and make an order of the domicile and residence of the Indian child and whether the Indian child is under the jurisdiction of a tribal court.

B. The department shall communicate with the Indian child's tribe as necessary to assist the court in making a determination pursuant to this section. If it is unclear which tribe is the Indian child's tribe, the department shall communicate with any tribe with which there is reason to know that the Indian child may be a member or eligible for membership SIRC→~~as otherwise required by federal law~~←SIRC."

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

"[NEW MATERIAL] ACTIVE EFFORTS REQUIRED IN CHILD CUSTODY PROCEEDINGS, INCLUDING VOLUNTARY PLACEMENT AGREEMENTS.--In a child custody proceeding involving an Indian child:

A. active efforts to maintain or reunite an Indian child with the Indian child's family shall be made pursuant to the Indian Family Protection Act. Active efforts shall be tailored to the facts and circumstances of each case. The department shall not seek findings of futility or aggravated circumstances;

B. the department shall, in cooperation with the Indian child and the Indian child's parents, extended family members, guardian, Indian custodian and Indian tribe, make active efforts to maintain or reunite an Indian child with the Indian child's family and tailor the active efforts to the facts and circumstances of the case and shall:

- (1) document in writing the details

.222222.1AIC February 9, 2022 (2:20pm)

demonstrating the quality and quantity of services and assistance provided to alleviate the causes and conditions leading to the child custody proceeding, on the court record;

(2) assist the Indian child's parent or parents, guardian or Indian custodian through the steps of a department case plan and with accessing or developing the resources necessary to satisfy the department case plan;

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

(4) conduct a comprehensive assessment of the circumstances of an Indian child's family with a goal of reunification;

C. the department may make active efforts to maintain or reunite an Indian child with the Indian child's family by:

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

(2) identifying, notifying and inviting representatives of the Indian child's tribe to participate in family team meetings, SIRC→team decision meetings,←SIRC permanency planning, resolution of placement issues and providing support and services to the Indian child's family;

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

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

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

(6) supporting regular visits with the Indian child's parent, guardian or Indian custodian, in the most natural setting as possible, as well as trial home visits during a period of removal, consistent with the need to ensure the health, safety and welfare of the Indian child;

(7) identifying community resources, including housing, financial assistance, transportation, mental health services, health care, substance use prevention and treatment and peer support services and actively assisting the Indian child's parents, guardian or Indian custodian or, when appropriate, the Indian child's family and extended family members, in using and accessing those resources;

(8) monitoring progress and participation of the Indian child's parents, guardian, Indian custodian or extended family members if the services described in Paragraphs (1), (2), (4) and (7) of this subsection are not available and

considering alternative ways to address the needs of the Indian child's parents, guardian, Indian custodian and, where appropriate, the family, if the optimum services do not exist or are not available;

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

(10) allowing the Indian child to participate in customs and traditions, including attending and participating in traditional ceremonies centered around the Indian child and the Indian child's family; or

(11) any other efforts that are appropriate to the Indian child's circumstances;

D. prior to accepting an Indian child for voluntary placement, the department shall document the active efforts:

(1) made by the department to provide or arrange services by other public or private agencies that would be affordable to the family; and

(2) that would alleviate the conditions leading to the placement request;

E. the department shall record all efforts made toward active efforts and report them to the court; and

F. the court shall make a written determination at the conclusion of HHHC ~~the~~ HHHC HHHC ~~every~~ HHHC proceeding as to whether the department has made active efforts to maintain or reunite the Indian child with the Indian child's family.

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The court shall make a written determination based on evidence on the record as to whether the department has made active efforts to provide services and support to preserve and reunify the family."

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

"[NEW MATERIAL] NOTICE TO INDIAN TRIBES.--

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

(1) the pending proceedings;

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

(a) intervention; and

(b) petition the court to transfer the proceeding to the tribal court;

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

(4) the right of the Indian child's tribe to participate in the child custody proceeding whether or not the Indian child's tribe intervenes.

B. In the event that the department attempts to enter into discussion with an Indian tribe and the tribe does not respond within the time frame provided for in the Indian Family Protection Act, the department may proceed; provided

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that the absence of a tribal response does not:

(1) eliminate other requirements of future communication and work with the Indian tribe concerning the child; or

(2) affect the Indian tribe's ability to respond to an action that has not yet been taken."

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

"[NEW MATERIAL] TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--When an Indian child is placed in the custody of the department, the department shall work with the parent, the guardian, the Indian custodian or the Indian child's tribe to establish membership, at the SIRC→~~discretion~~←SIRC SIRC→~~direction~~←SIRC of the parent or the Indian tribe. SIRC→~~The department shall not determine tribal membership.~~←SIRC An Indian tribe shall have the sole right to determine membership and membership eligibility, as defined by the Indian tribe's law, custom, tradition and practice. The department shall provide records to assist with determining membership eligibility at the request of the parent or the Indian child's tribe."

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

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

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A. An Indian tribe has exclusive jurisdiction over a child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the Indian tribe, except when jurisdiction is otherwise vested in the state by federal law or pursuant to a tribal-state agreement. When an Indian child is under the jurisdiction of the tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

B. In a child custody proceeding involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court and the tribal court have concurrent jurisdiction.

C. At the inception of a child custody proceeding involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe, or upon a motion for transfer at any stage of the proceeding, the department shall, without delay, ask the Indian child's tribe in writing whether the Indian child's tribe will accept jurisdiction over the child custody proceeding.

D. If the Indian child's tribe declines to accept jurisdiction, the court retains jurisdiction. A parent, guardian, Indian custodian or the Indian child's tribe retains the right to move the court to transfer the proceeding to the tribal court at any stage of the proceeding. A transfer motion may be made orally on the record or in writing.

E. If the Indian child's tribe accepts jurisdiction in writing provided to the court, the court shall transfer the child custody proceeding to the tribal court unless:

.222222.1AIC February 9, 2022 (2:20pm)

(1) either parent of the Indian child objects to the transfer; or

(2) good cause exists to deny the transfer.

F. If any party asserts that good cause to deny the transfer exists, the reasons for that belief or assertion shall be placed on the record in a written motion, and the motion shall be served on the parties and the Indian child's tribe.

The court shall hold a hearing on the record in which:

(1) all parties and the Indian child's tribe, even if the tribe has not formally intervened in the case, have an opportunity to present facts and legal arguments;

(2) the burden to establish good cause is on the party opposing the transfer; and

(3) good cause shall be established by clear and convincing evidence.

G. For the purpose of transferring a case, a finding of good cause shall not be based on:

(1) the advanced stage of a child custody proceeding if the parent, guardian, Indian custodian or Indian child's tribe did not receive notice of the proceeding until an advanced stage;

(2) the timing of the tribe's intervention;

(3) whether there have been prior proceedings in the court involving the Indian child for which no petition to transfer was filed;

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

(5) the Indian child's cultural connections with the Indian tribe or its reservation;

(6) consideration of any perceived inadequacy of an Indian tribe's judicial systems;

(7) consideration of the perceived socioeconomic conditions within an Indian tribe or reservation;
or

(8) a delay in placing an Indian child with the Indian child's extended family members or adult relatives, regardless of the stage of the child custody proceeding.

H. If the court denies the transfer for good cause, the basis for the decision shall be stated orally on the record and in a written order.

I. When a court authorizes transfer, the court:

(1) retains jurisdiction and shall not dismiss the case until the tribal court exercises jurisdiction and confirms that the tribe has received all information required by this section;

(2) shall expeditiously transfer to the tribal court all records related to the proceeding, including all pleadings and the court record; and

(3) shall direct the department to:

(a) coordinate with the tribal court and the Indian child's tribe to ensure that the transfer is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and

.222222.1AIC February 9, 2022 (2:20pm)

(b) expeditiously provide at no cost to the appropriate tribal agency: 1) all records and original documents related to the Indian child in the department's possession, including a birth certificate, social security card, certificate of Indian birth and similar documents; 2) documentation related to the Indian child's eligibility for state and federal assistance; and 3) the entire case record in the possession of the department."

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

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

A. The department shall make a good faith effort to enter into a tribal-state agreement for the coordination of care and custody of Indian children with each Indian tribe within the borders of this state.

B. The department may enter into a tribal-state agreement with any Indian tribe outside of this state if there are children residing in this state who are members of or are eligible to become members of that Indian tribe.

C. Any state services requiring a tribal-state agreement based on a funding source shall be negotiated and entered into to meet the provisions of this section.

D. A tribal-state agreement may include an agreement regarding:

(1) whether a case needs to be filed, and

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whether the case would be filed by the department in court or by the appropriate tribal agency in tribal court;

(2) exclusive jurisdiction over cases filed by the department in which the court and tribal court would otherwise have concurrent jurisdiction;

(3) the process to transfer cases between a court and tribal court; and

(4) procedures for the assessment, removal, placement and custody of Indian children.

E. A tribal-state agreement shall:

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

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

F. The department shall review the tribal-state agreement every five years and invite the tribe to propose updates to the tribal-state agreement."

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

"[NEW MATERIAL] FULL FAITH AND CREDIT.--The state shall recognize and give full faith and credit to public acts, records and judicial proceedings regarding parentage, nonparentage, adoption and custody decided in an Indian tribe's

jurisdiction."

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

"[NEW MATERIAL] RIGHT TO SERVICES.--An Indian child residing on or off a reservation, as a resident of this state, shall have the same right to services that are available to other children of this state. The cost of the services provided to an Indian child or the Indian child's parents, guardian or Indian custodian shall be determined and provided for in the same manner as services are made to other children of the state, using tribal, state and federal funds."

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

"[NEW MATERIAL] TEMPORARY EMERGENCY JURISDICTION.--

A. The department shall file a petition for temporary emergency removal where the department demonstrates that an Indian child is a resident of or domiciled on a reservation but temporarily located off a reservation. The department shall provide notice and request receipt of notice to the Indian child's tribe, parents, guardian and Indian custodian within twenty-four hours of the filing of the petition.

B. A court of this state has temporary emergency jurisdiction if the Indian child is present in this state but is domiciled on a reservation and the Indian child has been

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abandoned or it is necessary in an emergency to protect the Indian child because the Indian child, or a sibling or parent of the Indian child, is subjected to or threatened with abuse or neglect.

C. A child custody determination made under this section remains in effect until an order is obtained from a tribal court. If a child custody proceeding has not been or is not commenced in tribal court, the department may file a petition alleging abuse and neglect.

D. A court of this state that has been asked to make a temporary emergency order for temporary jurisdiction, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a tribal court having jurisdiction shall immediately communicate with that tribal court to resolve the emergency, protect the safety of the parties and the Indian child and determine a period for the duration of the temporary order."

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

"[NEW MATERIAL] INVESTIGATIONS.--

A. Within twenty-four hours of initiating an investigation that involves an Indian child, the department shall notify the Indian child's tribe of:

- (1) the investigation;
- (2) the involvement of the Indian child;
- (3) the department's obligation to collaborate with the Indian child's tribe to identify a potential qualified expert witness or witnesses to participate in the proceeding if

the investigation results in a child custody proceeding; and

(4) the department's obligation to identify a potential qualified expert witness or witnesses no later than thirty days prior to a child custody or termination proceeding.

B. During an investigation that involves an Indian child, the department shall:

(1) coordinate services with the Indian child's tribe to prevent taking the child into custody;

(2) provide culturally appropriate remedial services designed to prevent the breakup of the Indian family; and

(3) make active efforts to identify extended family members and fictive kin able to be alternative care providers or to ensure the safety of the child.

C. The department's active efforts to coordinate services to prevent taking the Indian child into custody shall be documented in any subsequent action that may result in the child coming into the department's custody.

D. Before filing a petition related to an Indian child, the department shall notify the Indian child's tribe of the results of the investigation, including the active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful, resulting in the department's intention to file the petition."

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

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

A. The court shall not make findings of futility or aggravated circumstances in the child custody proceeding.

B. The standards of evidence of the following child custody proceedings are as follows:

Sf11→SIRC→(1)←for purposes of establishing legal custody at the custody hearing, the standard of proof shall be probable cause;←SIRC←Sf11

Sf11→SIRC→(1)←SIRC SIRC→(2)←SIRC←Sf11
Sf11→(1)←Sf11 the court shall not order a foster care placement of an Indian child SIRC→at adjudication ←SIRC unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent, guardian or Indian custodian is likely to result in serious emotional or physical damage to the child;

Sf11→SIRC→(2)←SIRC SIRC→(3)←SIRC←Sf11
Sf11→(2)←Sf11 the court shall not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent, guardian or Indian custodian is likely to result in serious emotional or physical damage to the child;

Sf11→SIRC→(3)←SIRC SIRC→(4)←SIRC←Sf11

Sf11→(3)←Sf11 for a foster care placement SIRC→at adjudication ←SIRC or termination of parental rights, the evidence shall show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding; and

Sf11→SIRC→(4)←SIRC SIRC→(5)←SIRC←Sf11

Sf11→(4)←Sf11 without a causal relationship identified in Paragraph Sf11→SIRC→(3)←SIRC SIRC→(4)←SIRC←Sf11 Sf11→(3)←Sf11 of this subsection, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior shall not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

C. If there is a reason to know that the Indian child's parent, guardian or Indian custodian has limited English proficiency and may not understand the contents of the notice pursuant to Subsection A of this section, the court shall provide language access services as required by Title 6 of the federal Civil Rights Act of 1964 and other applicable federal and state laws. If the court is unable to secure

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translation or interpretation support, the court shall contact or direct a party to contact the Indian child's tribe or the local office of the United States department of the interior bureau of Indian affairs for assistance identifying a qualified translator or interpreter.

D. If the identity or location of the parent, guardian or Indian custodian and the Indian tribe cannot be determined, a notice shall be given to the secretary in the same manner as provided in Subsection A of this section. The secretary shall have fifteen days after receipt of the notice to provide the same notice to the parent, guardian or Indian custodian and the Indian tribe.

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

F. Nothing in this section prevents a court from reviewing a removal of an Indian child from the child's parent, guardian or Indian custodian at an emergency custody proceeding before the expiration of the waiting periods provided in Subsections D and E of this section to determine the appropriateness of the removal and potential return of the child."

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

.222222.1AIC February 9, 2022 (2:20pm)

"[NEW MATERIAL] INTERVENTION.--

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

B. In any court proceeding subject to the Indian Family Protection Act for the foster care placement, guardianship placement, adoptive placement of or termination of parental rights to an Indian child, the Indian child's relative or extended family member, the guardian or the Indian custodian may file a motion to intervene at any point in the proceeding.

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

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

(2) whether intervention is in the best interest of the Indian child. SIRC→"←SIRC

SIRC→D. When the court determines that the Indian child's best interest will be served as a result of intervention by a person described in Subsection B of this section, the court may permit intervention unless the party opposing intervention can demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan."←SIRC

SECTION 15. A new section of the Children's Code is

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enacted to read:

"[NEW MATERIAL] PETITION--FORM AND CONTENT.--In a petition initiating a child custody proceeding, the department shall include a statement as to whether the child who is the subject of the child custody proceeding is an Indian child and shall include information about:

- A. the Indian child's tribe;
- B. the tribal affiliations of the Indian child's parents;
- C. active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were proven to be unsuccessful and the reasons these efforts were unsuccessful, if known;
- D. active efforts made to comply with the notice requirements pursuant to the Indian Family Protection Act, including results of the contact and the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian child's tribe shall be attached as exhibits to the petition; and
- E. active efforts made to comply with the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the Indian child's tribe."

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

"[NEW MATERIAL] RECORD OF INDIAN CHILD'S TRIBE--INDIAN TRIBE'S RIGHT TO PARTICIPATE.--

- A. The department shall keep a record of:

.222222.1AIC February 9, 2022 (2:20pm)

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

(2) whether the Indian child is a member of one Indian tribe but is eligible for membership in one or more other Indian tribes;

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

(4) the Indian tribe recorded by the court pursuant to Subsection D of this section if the Indian child is eligible for membership in each of those Indian tribes and the Indian tribes cannot agree on the designation of the Indian child's tribe.

B. If the department files a petition SIRC→in court←SIRC, the department shall inform the court SIRC→on the record←SIRC of SIRC→which←SIRC SIRC→the←SIRC Indian tribe or tribes SIRC→of which←SIRC the Indian child is a member or eligible for membership.

C. If there is no dispute, the court shall make a record of the Indian child's tribe.

D. If there is a dispute as to which Indian tribe is the Indian child's tribe, the court shall, after a hearing, record the Indian tribe with which the Indian child has more

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significant contacts, taking into consideration:

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

E. If an Indian child is a member of or is eligible for membership in more than one Indian tribe, the court shall permit an Indian tribe, in addition to the Indian child's tribe as determined pursuant to Subsection D of this section, to participate in the child custody proceeding as an intervenor.

F. In a child custody proceeding involving an Indian child, the Indian child's tribe may be present and may participate at a closed hearing regardless of whether the Indian child's tribe has intervened.

G. The Indian child's tribe or any Indian tribe

claiming the Indian child as a member, whether or not the Indian tribe has intervened, shall have the right to examine all reports or other documents filed with the court upon which a decision with respect to the action may be based."

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

"[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

A. The court shall receive testimony from one or more qualified expert witnesses in all adjudicatory hearings pursuant to the Abuse and Neglect Act and all hearings to terminate parental rights. The court shall receive testimony from a qualified expert witness regardless of whether the parties to the proceeding have stipulated to a finding of abuse or neglect.

B. A person may be qualified by the court to serve as a qualified expert witness if the court finds that the person is:

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

SIRC→and←SIRC

SIRC→(2) able to testify regarding whether the Indian child's continued custody by the parent, guardian or Indian custodian is likely to result in serious emotional or physical damage to the child; and←SIRC

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SIRC→(2)←SIRC SIRC→(3)←SIRC a member of the Indian child's tribe; or

SIRC→(3)←SIRC SIRC→(4)←SIRC a person recommended by the Indian child's tribe.

C. When the department notifies an Indian child's tribe of the pendency of an investigation involving an Indian child from that Indian tribe, the department shall request in writing that the Indian child's tribe designate a qualified expert witness to testify in any child custody or termination proceedings that SIRC→may←SIRC result from the investigation. The department shall make active efforts to collaborate with the Indian tribe to identify a person to serve as a qualified expert witness.

D. If, after active efforts and in no case later than SIRC→forty-five←SIRC SIRC→fifteen←SIRC days after SIRC→~~requesting a designation in writing from the Indian child's tribe~~←SIRC SIRC→filing the petition←SIRC, the department does not receive a designation from the Indian tribe or if the department, after good faith efforts, is unable to retain the Indian tribe's designated qualified expert witness, the department may identify a qualified expert witness who meets the requirements provided in Paragraph (1) of Subsection B of this section from a list of qualified expert witnesses compiled through cooperation among the Indian tribes in the state and the department.

E. If, SIRC→sixty←SIRC SIRC→thirty←SIRC days SIRC→~~following the initiation of an investigation~~←SIRC SIRC→after filing the petition←SIRC, the department has not

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identified a qualified expert witness to testify as required by the Indian Family Protection Act, in considering a motion by the department for a continuance, the court shall consider whether it is in the best interest of the Indian child to remain in the department's custody for additional time.

F. At least thirty days prior to an adjudicatory hearing pursuant to the Abuse and Neglect Act and a hearing to terminate parental rights, the department shall disclose to the Indian child's tribe the name of the qualified expert witness designated by the department to testify at the hearing.

G. An Indian child's tribe shall have the opportunity to question a qualified expert witness in all hearings involving an Indian child in which the qualified expert witness testifies, regardless of whether the Indian child's tribe has intervened. An Indian child's tribe may designate a qualified expert witness to testify in addition to any qualified expert witness designated by the department.

SIRC→~~H. Once designated to a case, a qualified expert witness shall become familiar with the case and provide comments on the case to the court.~~←SIRC

SIRC→~~I.~~←SIRC SIRC→~~H.~~←SIRC An employee of the department shall not serve as a qualified expert witness pursuant to this section."

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

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"[NEW MATERIAL] VOLUNTARY PLACEMENT AGREEMENTS--PARENTAL RIGHTS--CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

A. Prior to entering any voluntary placement agreement, the department shall make active efforts to prevent the breakup of the Indian family pursuant to the Indian Family Protection Act.

B. In a voluntary foster care placement involving an Indian child, an Indian child's parent or guardian may enter into a voluntary placement agreement with the department. An Indian child's parent's or guardian's consent is voidable unless it is executed in writing and recorded before the court.

C. The department shall notify the Indian child's tribe by certified mail, with return receipt requested, of the pending voluntary placement agreement and of the SIRC→department's←SIRC SIRC→Indian child's tribe's←SIRC right to intervene.

D. Before approving a voluntary placement agreement, the court shall ensure that the voluntary placement agreement is executed in writing. The court shall certify on the record that:

(1) the terms and consequences of the consent were fully explained in detail and in a manner that is understandable to the parent or guardian;

(2) the Indian child's parent or guardian fully understands the English language or that the voluntary placement agreement was interpreted into the primary language of the Indian child's parent or guardian;

(3) the child is an Indian child;

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(4) there is no pending child abuse or neglect investigation involving the Indian child;

(5) the Indian child's parent or guardian is SIRC→voluntarily←SIRC entering into the voluntary placement SIRC→voluntarily←SIRC without any threat SIRC→or←SIRC SIRC→of←SIRC removal of the Indian SIRC→child's parent's or guardian's←SIRC child by the department;

(6) the department provided notice to the Indian child's tribe via certified or registered mail with return receipt requested;

(7) confidentiality has been requested or indicated and execution of consent was made in a closed court proceeding not open to the public;

(8) if not represented, the Indian child's parent or guardian is proceeding without an attorney and has the right to consult with an attorney of the Indian child's parent's or guardian's own choosing; and

(9) the Indian child's parent or guardian is of sound mind and judgment.

E. The request for voluntary placement shall be initiated in writing by the Indian child's parent or guardian, and if good cause is shown and the requirements of Subsection D of this section are met, the department may accept temporary custody or placement and care responsibility. Placement and care responsibility means that the department is legally

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accountable for the day-to-day care and protection of the Indian child in foster care. Responsibility for placement and care allows the department to make placement decisions about the Indian child, such as where the child is placed and the type of placement that is most appropriate for the Indian child.

F. During voluntary placement, the department shall make active efforts to provide tailored case planning to alleviate the causes and conditions leading to the voluntary placement agreement.

G. Any consent to a foster care placement that is given prior to or within ten days after birth of an Indian child is voidable.

H. An Indian child's parent or guardian may withdraw consent to a voluntary foster care placement of an Indian child pursuant to the Children's Code at any time. Upon receipt of a request to withdraw, the Indian child shall be returned to the Indian child's parent or guardian. The department shall have up to forty-eight hours after withdrawal of consent to allow for transition arrangements to be made for the Indian child's return to the Indian child's parent or guardian.

I. An Indian child shall not remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in a calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court. If the Indian child's parent or guardian seeks to

extend the voluntary placement, the department shall file a petition for an extension of voluntary placement prior to the expiration of the initial one-hundred-eighty-day period. The court shall hold a hearing and make a finding within the initial one-hundred-eighty-day period that the extension of voluntary placement is in the best interest of the Indian child.

J. If a request for an extension is not filed with the court prior ~~SIRC~~to~~SIRC~~ the initial one-hundred-eighty-day period, the agreement expires. ~~SIRC~~Within~~SIRC~~ ~~SIRC~~No later than~~SIRC~~ thirty days ~~SIRC~~of~~SIRC~~ ~~SIRC~~before~~SIRC~~ the expiration of the initial agreement, the court shall hold a review hearing to determine if the voluntary placement should be extended.

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

L. Any voluntary placement pursuant to this section shall not be considered abandonment, neglect or abuse by an Indian child's parent, guardian or extended family member.

M. The parent or guardian whose Indian child is in voluntary placement pursuant to this section shall have the following rights to:

- (1) have visitation with the child;
- (2) be informed of changes in the Indian

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child's school or of changes in the child's placement by the department;

(3) authorize decisions regarding medical and dental care and behavioral health services, including decisions that affect the daily care, support, safety and well-being of the child;

(4) permit the department to consent to emergency services to ensure the safety and well-being of the Indian child, including medical, dental or behavioral health treatment, if the department is unable to make immediate prior contact with the parent or guardian. The department shall notify the parent or guardian within two hours of making emergency decisions due to inability to make prior contact;

(5) consent to all non-emergency and non-routine medical care provided for the child;

(6) make decisions regarding participation and attendance in cultural and religious events, including traditional and cultural events offered by the Indian child's tribe; and

(7) make decisions of substantial legal significance.

N. If new safety concerns are identified during the voluntary placement, the department shall not extend a voluntary placement agreement, but instead shall make a new report of suspected abuse or neglect to be screened for determination of a new department investigation.

O. The voluntary placement shall adhere to and be in accordance with the placement preferences set forth in the

Indian Family Protection Act.

P. All records or information concerning the voluntary placement shall be confidential in accordance with the confidentiality provision of the Indian Family Protection Act."

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

"[NEW MATERIAL] TERMINATION OF PARENTAL RIGHTS.--

A. In a termination of parental rights proceeding, with respect to an Indian child, the court shall consider whether an alternative to termination of parental rights, including permanent guardianship of the child, would best support the Indian child.

B. In a termination of parental rights proceeding in court, when the court knows an Indian child is involved, the party seeking to effectuate the termination of parental rights shall notify the Indian child's tribe by certified mail, with return receipt requested, of the pending proceedings and of its right to intervene. The court shall not order a termination of parental rights proceeding until the department files documentation with the court that the Indian child's tribe received notice of the proceeding.

C. In a termination of parental rights proceeding, bonding between the Indian child and the Indian child's foster parent shall not be considered as a factor in terminating

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parental rights.

D. In a termination of parental rights proceeding, a termination shall not be ordered unless:

(1) the Indian child's tribe was provided timely notice of the proceeding in accordance with the Indian Family Protection Act and provided an opportunity to state whether it opposes the termination; and

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

E. In a proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in the Indian Family Protection Act.

F. In a termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings of all active efforts and ensure that all of the requirements of the Indian Family Protection Act have been met.

G. After the entry of a final decree of adoption of an Indian child in a court that is made pursuant to the Adoption Act, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent. An adoption that has been in effect for at least two years shall not be invalidated except as otherwise

provided by law. SIRC→"~~←SIRC~~

SIRC→H. In an adoption proceeding involving a child who is an Indian child, the court-ordered mediation pursuant to Section 32A-4-29 NMSA 1978 shall not be waived and the Indian child's tribe shall be allowed to participate, whether or not the Indian child's tribe intervenes."←SIRC

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

"[NEW MATERIAL] PETITION TO COURT TO INVALIDATE ACTION.-- An Indian child who is the subject SIRC→of←SIRC a child custody proceeding, a parent, guardian or Indian custodian from whose custody the child was removed or the Indian child's tribe may petition the court to invalidate that action upon a showing that the action violated any provision of Section 4, 5, 7, SIRC→9,←SIRC 12, 13, 14, SIRC→16,←SIRC 17, 18, 19, 21 SIRC→or←SIRC SIRC→,←SIRC 28 SIRC→, 34 or 35←SIRC of the Indian Family Protection Act."

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

"[NEW MATERIAL] PLACEMENT PREFERENCES--FOSTER CARE PLACEMENT--ADOPTION--GUARDIANSHIP--PLACEMENT OF INDIAN CHILDREN.--

A. In the case of a foster care placement of an Indian child, except as provided in Subsection C of this section, the child shall be placed in the least restrictive

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setting that:

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

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

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

(4) is in accordance with the order of preference established by the Indian child's tribe by any means, or, if that Indian tribe has not established placement preferences, preference shall be given in accordance with the following order of preference:

(a) an extended family member of the Indian child;

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

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

B. Under no circumstances shall an Indian child under three months of age be placed outside of the placement preferences provided in this section.

C. If an Indian child is placed in a foster care placement that is contrary to the placement preferences provided in this section, a secondary permanency plan shall not be simultaneously permitted, and before the child's placement may be changed to an adoptive or other permanent placement, the

department shall:

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

(2) at the inception of the case and periodically through the pendency of the case, make active efforts to identify a placement that aligns with the placement preferences as soon as practicable; and

(3) at the inception of the case and periodically through the pendency of the case, document all active efforts made to identify a placement that aligns with the placement preferences. At minimum, this shall include:

(a) contacting the Indian child's tribe;
(b) conducting a relative search;
(c) interviewing relatives throughout the case;

(d) making ongoing active efforts to search for and identify relatives to the Indian child throughout the case;

(e) providing the Indian child's tribe with all information regarding family members;

(f) offering relatives an expedited foster care license;

(g) assisting relatives with practical supports through the licensing process and actively supporting

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relatives in overcoming barriers for licensure;

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

(i) providing continued contact, including visitation; and

(j) providing access to culturally appropriate interventions.

D. If the Indian child is in a foster care placement that is not a preferred placement, the court shall hold hearings no less than every six months. The department shall continue to bear the burden of establishing why good cause continues to exist for the current placement or why the Indian child is not in a preferred placement.

E. Whenever there is any change in placement of an Indian child, the department shall file a notice of placement change with the court. The department shall also notify the Indian child's tribe, by certified mail with return receipt requested.

F. If there is a voluntary placement agreement in which the Indian child at first was not determined to be an Indian child and was later determined to be an Indian child, the agreement is voided.

G. If the Indian child's tribe has established a different order of preference than that specified in the Indian Family Protection Act, the Indian child's tribe's placement preferences shall apply.

H. In determining whether good cause exists, the

court shall not permit departure from the placement preferences based on:

- (1) the socioeconomic status of the placement;
- (2) a home environment that does not impact the safety and well-being of the Indian child;
- (3) ordinary bonding or attachment that occurred from time spent in a non-preferred placement that was made in violation of the Indian Family Protection Act; or
- (4) the extent of the participation of the parents or the Indian child in tribal, cultural, social, religious or political activities.

I. In the case of a foster care placement, adoptive placement or guardianship of an Indian child pursuant to the Children's Code, if the Indian child's tribe establishes a different order of preference, the adoption agency or court effecting the placement shall follow the order of preference established by the Indian child's tribe. When appropriate, the preference of the Indian child or parent may be considered; provided that the court has not terminated the parental rights of the Indian child's parent.

J. The department shall support and not delay the placement of the Indian child with the Indian child's extended family members and adult relatives regardless of the stage of the case in the child custody proceedings.

K. Whenever there is any change in the placement of

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an Indian child, the department shall file notice of the placement change with the court.

L. If the court finds there was a delay in placement with the Indian child's extended family members or adult relatives pursuant to Paragraph (3) of Subsection C of Section 4 of the Indian Family Protection Act, this factor shall not be used in a finding for good cause to deviate from the placement preferences of this section or the placement preferences of the Indian child's tribe.

M. An Indian child shall be placed in accordance with the placement preferences unless there is good cause to depart from the placement preferences as determined by the court after a hearing; provided that:

(1) the party that asserts good cause exists not to follow the placement preferences shall state the reasons for this assertion in writing to the court. The court shall make a record. The party making the assertion shall provide all parties to the case and the Indian child's tribe with a copy;

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

(3) a court's determination of good cause to depart from the placement preferences shall be made in writing and be based on the considerations set forth by the Indian Family Protection Act. SIRC→"←SIRC

SIRC→N. ~~In an adoption proceeding involving a child~~

~~who is an Indian child, the court-ordered mediation pursuant to Section 32A-4-29 NMSA 1978 shall not be waived and the Indian child's tribe shall be allowed to participate, whether or not the Indian child's tribe intervenes."~~←SIRC

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

"[NEW MATERIAL] INDIAN FAMILY PROTECTION ACT RESPONSIVENESS TRAINING.--

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

- (1) the Indian Family Protection Act, including cultural compacts; and
- (2) the Indian tribes geographically located within the state.

B. The training required in this section shall be required at least annually or no less than every fifteen months. The training shall be open for attorneys or other professionals to attend.

C. If an Indian child is placed in a household that does not include a foster parent or guardian who is a member of the Indian child's tribe, upon placement and at least annually

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thereafter, the department shall provide mandatory training to the foster parent. Training shall address conditions on foster care placements under federal, state and tribal law. The department shall work with each Indian tribe in New Mexico to develop the training required in this section."

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

"[NEW MATERIAL] ADOPTIVE AND GUARDIANSHIP PLACEMENTS-- MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To ensure that the Indian Family Protection Act is fully implemented and that all Indian children have the opportunity to maintain strong connections to their culture, if the household into which an Indian child is placed for adoption or guardianship does not include a parent who is a member of the Indian child's tribe, the court shall require the parties to the adoption to enter a cultural compact, at the discretion of the Indian child's tribe, that documents the parties' agreement regarding how the Indian child will continue to actively participate in the Indian child's cultural learning and activities and engagement with family members. Each cultural compact shall be specific to the Indian child and shall articulate the Indian child's understanding as the Indian child grows and matures. The cultural compact shall become part of the court record, shall be enforced by the court and shall be included in the adoption decree."

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

"[NEW MATERIAL] TRANSITION SERVICES.--

A. Prior to an Indian child's reaching seventeen years of age, the department shall meet with the Indian child, the Indian child's tribe, the Indian child's attorney and others of the Indian child's choosing, including biological family members, to develop a transition plan. The department shall assist the Indian child in identifying and planning to meet the Indian child's needs after the Indian child's eighteenth birthday, including maintenance of culture, housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.

B. The Indian child's tribe shall be included in developing the transition plan and shall be provided a copy of the transition plan prior to the presentation of the plan to the court pursuant to the Indian Family Protection Act."

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

"[NEW MATERIAL] DISCHARGE HEARING.--

A. At the last review or permanency hearing held prior to the Indian child's eighteenth birthday, the court shall determine whether documentation of the Indian child's tribal membership and any information regarding the Indian child's tribal affiliation have been provided to the Indian child.

B. If the court finds that the department has not

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made active efforts to meet all of the requirements of Section 32A-4-25.3 NMSA 1978 and of Subsection A of this section and that termination of jurisdiction would be harmful to the Indian child, the court may continue to exercise its jurisdiction. The court may dismiss the case at any time after the Indian child's eighteenth birthday for good cause."

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

"[NEW MATERIAL] ABUSE OR NEGLECT PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--If the child is an Indian child, all predispositional studies and reports shall follow the requirements listed in Section 32A-4-21 NMSA 1978 and shall also document:

A. whether the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the Indian child's tribe were followed;

B. whether the Indian child's case plan provides for maintaining the Indian child's cultural ties as well as the plan detailing how the department shall establish and maintain the Indian child's cultural connections, in conjunction with the Indian child's tribe and family;

C. whether active efforts were made by the department to prevent removal of the Indian child from the home prior to placement in substitute care and whether active efforts were made to attempt reunification of the Indian child with the natural parent;

D. whether active efforts were made by the department to place siblings in custody together, unless such

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joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings; and

E. whether the department has provided notification to the Indian child's tribe consistent with the requirements of the Indian Family Protection Act."

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

"[NEW MATERIAL] PERMANENCY HEARINGS--PERMANENCY REVIEW HEARINGS.--

A. The department shall submit a copy of any continuation of the dispositional order and notice of any permanency and permanency review hearings to the Indian child's tribe pursuant to notice requirements of the Indian Family Protection Act.

B. The department shall submit a progress report that documents:

(1) that the Indian child's tribe has been invited to attend the pre-permanency meeting and is included in any attempt to settle issues attendant to the permanency hearing and has the opportunity to participate in developing a proposed treatment plan that serves the Indian child's best

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interest;

(2) that active efforts were conducted to prevent the breakup of the Indian family or to reunify the Indian family;

(3) that the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the Indian child's tribe were followed. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported by clear and convincing evidence;

(4) the active efforts made pursuant to the Indian Family Protection Act to implement the Indian child's cultural maintenance plan in conjunction with the Indian child's tribe and family;

(5) the inclusion of the Indian child's tribe in the department's active efforts for case planning and documentation of the Indian tribe's input; and

(6) that all requirements pursuant to the Indian Family Protection Act were followed."

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

"[NEW MATERIAL] DISPOSITIONAL JUDGMENTS--COURT FINDINGS.--"

A. At the conclusion of a dispositional hearing in a child custody proceeding involving an Indian child, in addition to other requirements for a court's findings pursuant to the Children's Code, when the judgment is made in a child custody proceeding held pursuant to the Family in Need of Court-Ordered Services Act or the Abuse and Neglect Act, a

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court shall include findings of:

(1) whether the placement preferences set forth in the Indian Family Protection Act have been incorporated into a plan for family services made pursuant to Section 32A-3B-15 NMSA 1978 or in a case plan as described in Section 32A-4-21 NMSA 1978; provided that if those placement preferences are not incorporated into the plan for family services or the case plan, good cause for noncompliance shall be clearly stated and supported by clear and convincing evidence;

(2) whether the plan for family services or the case plan provides for maintenance of the Indian child's cultural ties;

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

(4) whether the Indian child's tribe was included in developing the SIRC→~~transition~~←SIRC SIRC→~~case~~←SIRC plan for the Indian child and was provided a copy of the transition plan prior to the presentation of the plan to the court.

B. The court shall determine during a review of a dispositional judgment involving an Indian child pursuant to Section 32A-4-25 NMSA 1978 whether the judgment complies with

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the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the Indian child's tribe and whether the child's case plan as described in Section 32A-4-21 NMSA 1978 provides for maintaining the Indian child's cultural ties. When placement preferences are not followed, good cause for noncompliance shall be clearly stated and supported by clear and convincing evidence. A court's determination of good cause shall be made on the record or in writing and shall be based on the considerations set forth in the federal regulations or other factors authorized by federal and state law.

C. The court shall make findings determining that the department made active efforts pursuant to the Indian Family Protection Act to meet the requirements of this section and may continue to exercise its jurisdiction for a period not to exceed one year from the Indian child's eighteenth birthday. The young adult must consent to continued jurisdiction of the court. Additionally, the Indian child may volunteer to participate in the fostering connections program through the department. The court may dismiss the case at any time after the Indian child's eighteenth birthday for good cause.

D. When the child is an Indian child, the court shall determine during review of a dispositional order whether all requirements pursuant to Section 27 of the Indian Family Protection Act were followed."

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

"[NEW MATERIAL] PERIODIC REVIEW OF DISPOSITIONAL

JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the dispositional judgment. At the initial judicial review:

(1) the parties shall demonstrate to the court the active efforts made to implement the treatment plan approved by the court in its dispositional order; and

(2) the court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the Indian child.

B. The court shall determine during review of a dispositional order whether the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the Indian child's tribe were followed and whether the department has made active efforts pursuant to the Indian Family Protection Act to implement the Indian child's treatment plan and reunify the Indian family.

C. The children's court attorney shall give notice to the Indian child's tribe of the time, place and purpose of any judicial review hearing held pursuant to the Indian Family Protection Act.

D. At any subsequent judicial review hearing held pursuant to Section 32A-4-25 NMSA 1978, the department shall show that it has made active efforts to implement any treatment

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plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order."

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

"[NEW MATERIAL] PERMANENT GUARDIANSHIP.--

A. A motion for permanent guardianship shall set forth:

- (1) the tribal affiliations of the Indian child's parents;
- (2) the specific actions taken by the petitioner to notify the parents' Indian tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribes shall be attached as exhibits to the petition;
- (3) the specific active efforts made to comply with the placement preferences set forth in the Indian Family Protection Act or the placement preferences of the appropriate Indian tribes and any additional requirements for that motion as provided pursuant to the Indian Family Protection Act; and
- (4) that notice has been sent by certified mail, with return receipt requested, to the Indian child's tribe and to any Indian custodian pursuant to the Indian Family Protection Act.

B. The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of

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the Indian Family Protection Act."

SECTION 31. A new section of the Children's Code is enacted to read:

"~~[NEW MATERIAL]~~ INDEPENDENT ADOPTIONS--PRE-PLACEMENT STUDIES.--To be certified to conduct pre-placement studies for the adoption of an Indian child, a person shall meet the standards adopted by the department."

SECTION 32. A new section of the Children's Code is enacted to read:

"~~[NEW MATERIAL]~~ TERMINATION PROCEDURES IN INDEPENDENT ADOPTIONS--NOTICE OF PETITION--BURDEN OF PROOF--REQUIRED FINDINGS.--

A. In addition to the requirements of the Adoption Act, a petition for termination of parental rights involving an Indian child shall set forth:

(1) the tribal affiliations of the Indian child's parents;

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

(3) the specific active efforts made to comply with the placement preferences of the Indian Family Protection

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Act.

B. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner by certified or registered mail with return receipt requested on the Indian child's tribe and on the Indian child's parents or guardians.

C. The grounds for any SIRC→~~attempted~~←SIRC termination shall be proved beyond a reasonable doubt.

D. A judgment of the court terminating parental rights shall include findings establishing that each requirement of the Indian Family Protection Act was met."

SECTION 33. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED IN AN INDEPENDENT ADOPTION.--In an independent adoption, consent from the parent or guardian of an Indian child to adoption by the petitioner or relinquishment of parental rights shall be obtained in the manner required by the Indian Family Protection Act."

SECTION 34. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] ADJUDICATION--DISPOSITION--DECREE OF ADOPTION--INVALIDATION.--

A. The court shall grant a decree of adoption if it finds that:

(1) the petitioner has proved by clear and convincing evidence that the placement preferences set forth in the Indian Family Protection Act, or the placement preferences

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established by the Indian child's tribe, have been followed or, if not followed, good cause for noncompliance has been proved by clear and convincing evidence; and

(2) provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered.

B. In any adoption involving an Indian child, the clerk of the court shall provide the secretary with a copy of the final decree of adoption or adoptive placement order.

C. A parent may withdraw consent to a voluntary adoption of the Indian child at any time before entry of the final decree of adoption.

D. Within two years after a final decree of adoption of an Indian child, the court may invalidate a voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

E. Upon filing of a petition to vacate the final decree of adoption of the parent's Indian child, the petitioner shall give notice to all parties to the adoption proceedings and the Indian child's tribe, and the court shall hold a hearing on the petition.

F. Where the court finds that the parent's consent was obtained through fraud or duress, the court shall vacate the final decree of adoption, order the consent revoked and order that the child be returned to the parent."

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SECTION 35. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] RETURN OF CUSTODY.--Whenever an Indian child has been adopted and the relationship between the SIRC→**adoptive**←SIRC parent and the Indian child has been severed for any reason, a biological parent, guardian or prior Indian custodian may petition for return of custody, and there shall be a presumption that the Indian child shall be returned to the biological parent, guardian or prior Indian custodian, unless the return of custody is not in the best interests of the Indian child. The provisions of this section shall not be deemed to conflict with other provisions pertaining to return of custody in the Indian Family Protection Act."

SECTION 36. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When making a determination regarding the best interests of an Indian child pursuant to the Indian Family Protection Act, a court shall, SIRC→~~in discussion with~~←SIRC SIRC→**after allowing testimony from all parties and**←SIRC the Indian child's tribe, consider the following relevant factors:

- A. the prioritization of placement of the Indian child in accordance with the placement preferences provided by the Indian Family Protection Act;
- B. the prevention of unnecessary out-of-home placement of the Indian child;
- C. the critical importance to the Indian child of establishing, developing or maintaining a political, cultural,

social and spiritual relationship with the Indian child's tribe and tribal community and with familial ties such as clanship and family with unique cultural characteristics;

D. the importance to the Indian child of the ability of the Indian child's tribe to maintain its existence and integrity in promotion of the stability and security of Indian children and families; and

E. the protection, safety and well-being of the Indian child."

SECTION 37. A new section of the Children's Code is enacted to read:

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

A. Pursuant to the Indian Family Protection Act, an Indian tribe shall have access to the post-decree adoption records that involve an Indian child who is a member or eligible for membership in the Indian tribe.

B. Upon application by an Indian person who has reached the age of eighteen and who was the subject of an adoptive placement in this state prior to the enactment of the Indian Family Protection Act, the court that entered the final decree shall inform that Indian person of the tribal affiliation, if any, of the Indian person's biological parents and provide any other information necessary to protect any rights flowing from the Indian person's tribal relationship.

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C. If the adoption predated enactment of the federal Indian Child Welfare Act of 1978, the court shall attempt to find information related to the adoption and may order the department to assist. If the adoption of an Indian person was completed after enactment of the federal Indian Child Welfare Act of 1978, the Indian person may contact the secretary for necessary information regarding the Indian person's adoption. If the secretary certifies that the secretary does not have that information, the state court shall attempt to find the information and may order the department to assist.

D. If an Indian person does not know the court that issued the adoption decree, the Indian person may request that information from the department. The department shall provide to the Indian person the name and location of the court that entered the final decree, if known."

SECTION 38. A new section of the Children's Code is enacted to read:

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

A. The clerk of a court entering a final decree or order in an adoptive placement of an Indian child shall provide the secretary with a copy of that decree, adoptive placement order and any other information necessary to show:

(1) the birth name and birthdate of the Indian child;

(2) any information relating to tribal membership or eligibility for membership of the adopted Indian

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child;

(3) the tribal affiliation and name of the Indian child after adoption;

(4) the names and addresses of the biological parents;

(5) the names and addresses of the adoptive parents;

(6) the name and contact information of any agency having files or information relating to the adoption; and

(7) any affidavit signed by the biological parent or parents asking that their identity remain confidential.

B. The attorney for the SIRC→petitioner←SIRC SIRC→prospective adoptive parent←SIRC shall provide to the clerk of the court a copy of the decree of adoption, an adoptive placement order or any other information required by the Indian Family Protection Act and a stamped envelope addressed to the secretary marked "Confidential".

SECTION 39. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information, whether on file with the court, an agency, the department, an attorney or other provider of professional services, concerning a party to any

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proceedings pursuant to the Indian Family Protection Act, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of an Indian child's statement of abuse or medical reports incident to or obtained as a result of an investigation or proceeding pursuant to the Indian Family Protection Act or that were produced or obtained during an investigation in anticipation of or incident to any proceeding pursuant to the Indian Family Protection Act, shall be confidential and closed to the public.

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

- (1) court personnel and persons or entities authorized by contract with the court to review, inspect or otherwise have access to records or information in the court's possession;
- (2) court-appointed special advocates appointed to the Indian child in a child custody proceeding;
- (3) the Indian child's guardian ad litem;
- (4) the attorney, including a public defender, representing the Indian child in any child custody proceeding pursuant to the Indian Family Protection Act;
- (5) department personnel and persons or entities authorized by contract with the department to review, inspect or otherwise have access to records or information in the department's possession;
- (6) any local substitute care review board or any agency contracted to implement local substitute care review

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boards;

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

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

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

(10) an Indian child's tribe;

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

(12) school personnel involved with the Indian child if the records concern the Indian child's cultural, social or educational needs;

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

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child;

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

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

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

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

(18) any person or entity attending a meeting arranged by the department to discuss the safety, well-being and permanency of an Indian child, when the parent or child, or parent or guardian on behalf of a child younger than fourteen years of age, has consented to the disclosure; and

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

C. A parent or guardian whose Indian child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any

medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent or guardian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

D. In an adoption proceeding, all hearings held pursuant to the Indian Family Protection Act shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel and the Indian child's tribe.

E. In an adoption proceeding, unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to the release of the parent's identity to the petitioner, the attorneys, the court, the adoption agency and the department shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner,

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the department or the adoption agency, any attorney appointed as a guardian ad litem or attorney for the adoptee, the Indian child's tribe, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

F. In an adoption proceeding, all information and documentation provided for the purpose of full disclosure is confidential. Documentation provided for the purpose of full disclosure shall remain the property of the person making full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing full disclosure. A prospective adoptive parent shall not disclose any confidential information received during the full disclosure process, except as necessary to make a placement decision or to provide information to an Indian child's guardian ad litem or attorney or the court.

G. In an adoption proceeding, prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute an affidavit stating whether the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents.

H. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Indian Family Protection Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the

provisions of Section 31-19-1 NMSA 1978.

I. The department shall promulgate rules for implementing disclosure of records pursuant to the Indian Family Protection Act and in compliance with state and federal law and the Children's Court Rules."

SECTION 40. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INDIAN FAMILY PROTECTION ACT SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--

A. To the greatest extent possible, the Indian Family Protection Act shall be read as in harmony with the federal Indian Child Welfare Act of 1978.

B. The provisions of the Children's Code SIRC ~~and the Kinship Guardianship Act~~ SIRC are supplemental to and in harmony with the Indian Family Protection Act. The provisions of the Indian Family Protection Act govern child custody proceedings involving Indian children. To the extent the provisions of those acts or any provision of New Mexico state law conflicts with the provisions of the Indian Family Protection Act, the provisions of the Indian Family Protection Act shall apply."

SECTION 41. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The "office of tribal affairs" is created in the department. The

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office shall be dedicated to ensuring the department's compliance with and full implementation of the Indian Family Protection Act."

SECTION 42. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The department, through discussion with the Indian nations, tribes and pueblos of the state, shall promulgate rules to implement the provisions of the Indian Family Protection Act. The administrative office of the courts shall also discuss with the Indian nations, tribes and pueblos of the state the recommendation of court rules for potential adoption by the courts of the state."

SECTION 43. A new section of Chapter 32A, Article 1 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DETERMINATION OF WHETHER A CHILD IS AN INDIAN CHILD.--

SIRC→A. If a child is taken into custody by the department, the department shall make active efforts to determine whether there is reason to know the child is an Indian child.

B. At the beginning of every proceeding under the Children's Code, the court shall make a written determination as to whether the Indian Family Protection Act applies to the case.←SIRC

SIRC→A.←SIRC SIRC→C.←SIRC At the commencement of any hearing in a child custody proceeding, the court shall determine whether the child is an Indian child by asking, on

the record, each individual present on the matter whether the individual knows or has reason to know that the child is an Indian child. If no individual present at the hearing knows or has reason to know that the child is an Indian child, the court shall instruct each party to inform the court immediately if the individual later receives information that provides reason to know that the child is an Indian child.

SIRC→~~B.~~←SIRC SIRC→~~D.~~←SIRC A court has reason to know that a child is an Indian child if:

SIRC→(1) an Indian tribe asserts that the child may be eligible for membership;←SIRC

SIRC→~~(1)~~←SIRC SIRC→(2)←SIRC SIRC→each←SIRC SIRC→any←SIRC party in the proceeding, officer of the court involved in the proceeding SIRC→,~~Indian tribe or~~←SIRC SIRC→or an←SIRC Indian organization SIRC→~~or agency~~←SIRC informs the court that the child is an Indian child;

SIRC→~~(2)~~←SIRC SIRC→(3)←SIRC SIRC→each←SIRC SIRC→any←SIRC party at the hearing, officer of the court present at the hearing, Indian tribe or Indian organization SIRC→~~or agency~~←SIRC informs the court that information has been discovered indicating that the child is an Indian child;

SIRC→~~(3)~~←SIRC SIRC→(4)←SIRC the child indicates to the court that the child is an Indian child;

(4) the court is informed that the domicile or residence of the child, the child's parent, the child's

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guardian or the child's Indian custodian is on a reservation or in an Alaska native village;

SIRC→(4)←SIRC SIRC→(5)←SIRC the court is informed that the child is or has been SIRC→a-ward←SIRC SIRC→under the jurisdiction←SIRC of a tribal court;

SIRC→(5)←SIRC SIRC→(6)←SIRC the court is informed that the child or the child's parent possesses an identification card or other record indicating membership in an Indian tribe;

SIRC→(6)←SIRC SIRC→(7)←SIRC testimony or documents presented to the court indicate that the child may be an Indian child; or

SIRC→(7)←SIRC SIRC→(8)←SIRC any other indicia provided to the court or within the court's knowledge indicate that the child is an Indian child.

SIRC→G.←SIRC SIRC→E.←SIRC If a court has reason to know that a child is an Indian child but does not have sufficient evidence to determine whether the child is an Indian child, the court shall:

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

(2) require the department or another party to submit a report, declaration or testimony on the record that the department or other party made active efforts to identify and work with all of the Indian tribes of which there is reason to know the child may be a member or be eligible for membership to verify whether the child is an Indian child.

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SIRC→~~SIRC~~→D.←SIRC SIRC→F.←SIRC ~~In a case in which a court determines indigency, the parent, guardian or Indian custodian shall have the right to court-appointed counsel in any removal, placement or termination proceeding. The court may appoint counsel for the child upon a finding that the appointment is in the best interest of the child. To the extent appropriations from the state are insufficient to provide for the appointment of counsel in the proceeding, the court shall promptly notify the secretary upon appointment of counsel so that the secretary may pay for reasonable fees and expenses as provided pursuant to 25 U.S.C. Section 1912 upon certification of the presiding judge.~~"←SIRC

SIRC→F. As used in this section, "Indian organization" means a group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians."←SIRC

SECTION 44. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

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

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

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

[B.] C. "child" means a person who is less than

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eighteen years old;

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

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

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

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

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

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

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

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

custody of the department or agency;

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

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

N. "Indian" means, whether an adult or child, a person who is:

(1) a member of an Indian tribe; or

(2) eligible for membership in an Indian

tribe;

[L-] O. "Indian child" means an ~~[unmarried person who is~~

~~(1) less than eighteen years old;~~

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

~~(3) the biological child of a member of an Indian tribe]~~ Indian SIRC→child←SIRC SIRC→person←SIRC , or a SIRC→child←SIRC SIRC→person←SIRC whom there is reason to know is an Indian SIRC→child←SIRC SIRC→person←SIRC , under eighteen years of age, who is neither:

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(1) married; or

(2) emancipated;

[M.] P. "Indian child's tribe" means:

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

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

Q. "Indian custodian" means an Indian who, pursuant to tribal law or custom or pursuant to state law:

(1) is an adult with legal custody of an Indian child; or

(2) has been transferred temporary physical care, custody and control by the parent of the Indian child;

[N.] R. "Indian tribe" means [~~a federally recognized Indian tribe, community or group pursuant to 25 U.S.C. Section 1903(1)] an Indian nation, tribe, pueblo or other band, organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c) or a regional corporation as defined in 43 U.S.C. Section 1606. For the purposes of notification to and communication with a tribe as required in the Indian Family Protection Act, "Indian tribe" also includes those tribal officials and staff who are responsible for child welfare and social services matters;~~

[O.] S. "judge", when used without further

qualification, means the judge of the court;

[P-] T. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

U. "member" or "membership" means a determination made by an Indian tribe that a person is a member of or eligible for membership in that Indian tribe;

[Q-] V. "parent" or "parents" [~~includes~~] means a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child or a person who has lawfully adopted an Indian child pursuant to state law or tribal law or tribal custom;

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

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(1) reunification;

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

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

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

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

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

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

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

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

[W.] BB. "relative" means a person related to

another person:

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

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

CC. "reservation" means:

(1) "Indian country" as defined in 18 U.S.C. Section 1151;

(2) any lands to which the title is held by the United States in trust for the benefit of an Indian tribe or individual; or

(3) any lands held by an Indian tribe or individual subject to a restriction by the United States against alienation;

~~[X.]~~ DD. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

EE. "secretary" means the United States secretary of the interior;

~~[Y.]~~ FF. "tribal court" means

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

~~(2) any administrative body of an Indian tribe~~

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~~that is vested with judicial authority]~~ a court with jurisdiction over child custody proceedings that is either a court of Indian offenses, a court established and operated under the law or custom of an Indian tribe or any other administrative body that is vested by an Indian tribe with authority over child custody proceedings;

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

[AA.] HH. "tribunal" means any judicial forum other than the court."

SECTION 45. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

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

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

- (1) a delinquent child;
- (2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act;
- (3) a neglected child;
- (4) an abused child;

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(5) a child subject to adoption; or

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

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

C. The provisions of the Indian Family Protection Act govern child custody proceedings involving Indian children. To the extent the provisions of the Indian Family Protection Act conflict with the Children's Code, the provisions of the Indian Family Protection Act shall apply.

~~[G-]~~ D. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

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

~~E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state~~

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~~resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.~~

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

SECTION 46. Section 32A-1-11 NMSA 1978 (being Laws 1993, Chapter 77, Section 20, as amended) is amended to read:

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

- A. the facts necessary to invoke the jurisdiction of the court;
- B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;
- C. the name, birth date and residence address of

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the child;

D. the name and residence address of the parents, guardian, custodian or spouse, if any, of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the state or if a residence address is unknown, the name of any known adult relative residing within the state or, if there be none, the known adult relative residing nearest to the court;

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

F. whether the child is an Indian child and, if so, any additional information required pursuant to the Indian Family Protection Act; and

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

SECTION 47. Section 32A-3B-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 88, as amended) is amended to read:

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

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

- (1) the ability of the parent and child to

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share a residence;

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

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

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

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

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

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

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

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

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

~~[(11) whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been incorporated into the plan. When placement preferences have~~

~~not been incorporated into the plan, an explanation shall be clearly stated and supported;~~

~~(12) when the child is an Indian child, whether the plan provides for maintaining the Indian child's cultural ties; and~~

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

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

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

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

(3) transfer legal custody of the child to:

(a) the department;

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

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

(4) if the evidence indicates that the child's

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educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

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

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

SECTION 48. Section 32A-4-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 100, as amended) is amended to read:

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

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

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

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being conducted if:

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

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

(c) the child has been abandoned;

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

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

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

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

B. A child shall not be taken into protective

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custody solely on the grounds that the child's parent, guardian or custodian refuses to consent to the administration of a psychotropic medication to the child.

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

D. When a child is taken into custody, the department shall make [~~reasonable~~] active efforts to determine whether the child is an Indian child as required pursuant to the Indian Family Protection Act.

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

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

SECTION 49. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

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

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication.

Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

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

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

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

(2) the child is in immediate danger from the child's surroundings and removal from those surroundings is necessary for the child's safety or well-being;

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

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

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

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

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

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

E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. When the department determines that the home of an adult relative of the child meets all relevant child protection and licensing standards and placement in the home would be in the best interest of the child, the department shall give a preference to placement of the child in that home. The department shall make reasonable efforts to conduct home studies on appropriate relatives who express an interest in providing placement for the child.

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

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

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

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

G. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. If the court determines that probable cause does not exist, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

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

I. Notwithstanding any other provision of law, a party aggrieved by an order entered pursuant to this section shall be permitted to file an immediate appeal as a matter of right. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be expedited and shall be heard at the earliest practicable time. While an appeal pursuant to

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this section is pending, the court shall have jurisdiction to take further action in the case pursuant to Subsection B of Section 32A-1-17 NMSA 1978.

~~[J. Nothing in this section shall be construed to abridge the rights of Indian children pursuant to the federal Indian Child Welfare Act of 1978.]~~"

SECTION 50. Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115, as amended) is amended to read:

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

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

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

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

(2) a statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent's home, including emotional harm that may result due to separation from the child's parents, and a

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statement of how the intervention plan is designed to place the child in close proximity to the parent's home without causing harm to the child due to separation from parents, siblings or any other person who may significantly affect the child's best interest;

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

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

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

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

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

(8) a statement of the child's medical and

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educational background;

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

~~(10)]~~ (9) a case plan that sets forth steps to ensure that the child's physical, medical, cultural, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to facilitate permanent placement of the child in the parent's home;

~~[(11)]~~ (10) for children sixteen years of age and older, a plan for developing the specific skills the child requires for successful transition into independent living as an adult, regardless of whether the child is returned to the child's parent's home;

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

~~[(13)]~~ (12) a description of the child's foster care placement and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to remain in the school in which the child was enrolled at the time of placement, if reasonable and

in the child's best interest.

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

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

SECTION 51. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

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

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

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

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

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

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

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

(6) whether reasonable efforts have been made by the department to identify, locate and give notice to all grandparents and other relatives and to conduct home studies on any appropriate relative who expresses an interest in providing care for the child. If the court finds that reasonable efforts in these areas have not been made, the court may make supplemental orders as necessary and may reconsider the matter at the initial judicial review and subsequent periodic review hearings;

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

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

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

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

(11) whether reasonable efforts were made by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were made to attempt reunification of the child with

the natural parent; and

(12) whether reasonable efforts were made by the department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings [~~and~~

~~(13) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's case plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported].~~

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

- (1) permit the child to remain with the child's parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;
- (2) place the child under protective supervision of the department; or
- (3) transfer legal custody of the child to one

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of the following:

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

(b) the department.

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

(1) the efforts would be futile; or

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

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

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused

is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

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

H. Prior to a child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

~~I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so the department shall pursue the enrollment on the child's behalf.~~

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

SECTION 52. Section 32A-4-25 NMSA 1978 (being Laws 1993,

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Chapter 77, Section 119, as amended) is amended to read:

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

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

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

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

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

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

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

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

(1) all parties, including:

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

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

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

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

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

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

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

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

G. At the conclusion of any hearing held pursuant

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to this section, the court shall make findings of fact and conclusions of law.

~~[H. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.]~~

[.] H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, the court shall order one of the following dispositions:

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

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

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

(4) transfer or continue legal custody of the

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child to:

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

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

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

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

(a) the efforts would be futile; or

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

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

(7) if during a judicial review the court

finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why the parent, guardian or custodian should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

~~[J-]~~ I. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

~~[K-]~~ J. When the court determines, pursuant to Paragraph (5) of Subsection ~~[I]~~ H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. The department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

SECTION 53. Section 32A-4-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 121, as amended) is amended to read:

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

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

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

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

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

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

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

(1) the person's rationale for the [~~purposed~~] proposed intervention; and

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

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

D. [~~The persons described in this subsection shall be permitted to intervene during any stage of an abuse or~~

~~neglect proceeding: (1)~~ A parent of the child who is not named in the petition alleging abuse or neglect ~~[and~~

~~(2) when the child is an Indian child, the child's Indian tribe]~~ shall be permitted to intervene during any stage of an abuse or neglect proceeding.

E. The ~~[child's]~~ foster parent shall be permitted to intervene when:

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

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

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

(4) bonding between the child and the child's foster parent is alleged as a reason for terminating parental rights in the motion for termination of parental rights.

F. The foster parent, preadoptive parent or relative providing care for the child shall be given notice of, and an opportunity to be heard in, any review or hearing with respect to the child, except that this subsection shall not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to such a review or hearing solely on the basis of the notice and

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opportunity to be heard."

SECTION 54. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

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

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

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

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

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

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

(b) the parent has subjected the child to aggravated circumstances; or

(3) the child has been placed in the care of

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others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

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

(b) the parent-child relationship has disintegrated;

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

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

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

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

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

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

(1) when the sole factual basis for the motion

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is that a child's parent is or was formerly incarcerated; or
(2) if the motion is based, to any extent, on
the fact that the child is an Indian child or that the child's
parent or parents are Indian.

~~[E. The termination of parental rights involving a
child subject to the federal Indian Child Welfare Act of 1978
shall comply with the requirements of that act.~~

F.] E. If the court finds that parental rights
should be terminated; that the requirements for the adoption of
a child have been satisfied; that the prospective adoptive
parent is a party to the action; and that good cause exists to
waive the filing of a separate petition for adoption, the court
may proceed to grant adoption of the child, absent an appeal of
the termination of parental rights. The court shall not waive
any time requirements set forth in the Adoption Act unless the
termination of parental rights occurred pursuant to the
provisions of Paragraph (3) of Subsection B of this section.
The court may enter a decree of adoption only after finding
that the party seeking to adopt the child has satisfied all of
the requirements set forth in the Adoption Act. Unless
otherwise stipulated by all parties, an adoption decree shall
take effect sixty days after the termination of parental
rights, to allow the department sufficient time to provide
counseling for the child and otherwise prepare the child for
the adoption. The adoption decree shall conform to the
requirements of the Adoption Act and shall have the same force
and effect as other adoption decrees entered pursuant to that
act. The court clerk shall assign an adoption case number to

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the adoption decree."

SECTION 55. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

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

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

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

- (1) the date, place of birth and marital status of the child, if known;
- (2) the grounds for termination and the facts and circumstances supporting the grounds for termination;
- (3) the names and addresses of the persons or authorized agency or agency officer to whom legal custody might be transferred;
- (4) whether the child resides or has resided with a foster parent who desires to adopt ~~[this]~~ the child;
- (5) whether the motion is in contemplation of adoption;
- (6) the relationship or legitimate interest of the moving party to the child; and
- (7) whether the child is subject to the ~~[federal Indian Child Welfare Act of 1978 and, if so:~~
 - ~~(a) the tribal affiliations of the~~

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~~child's parents;~~

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

~~(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes]~~ Indian Family Protection Act.

C. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on all other parties, the foster parent, preadoptive parent or relative providing care for the child with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Children's Court Rules for the service of motions, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. ~~[In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the tribes of the child's parents and upon any "Indian custodian" as that term is~~

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~~defined in 25 U.S.C. Section 1903(6).~~] Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

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

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

- (1) litigate a motion for the termination of parental rights that was initially filed by another party; or
- (2) move that the motion for the termination of parental rights be found premature and denied.

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

G. When a child has been in foster care for not

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less than fifteen of the previous twenty-two months, the department shall file a motion to terminate parental rights, unless:

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

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

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

(4) a parent is terminally ill, but in remission, and does not want parental rights to be terminated; provided that the parent has designated a guardian for the child;

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

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

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

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

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

H. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

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

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

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

J. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

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~~[K. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.~~

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

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

SECTION 56. Section 32A-4-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 126, as amended) is amended to read:

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

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

B. A motion for permanent guardianship shall set forth:

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

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

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

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

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

(6) whether the child is subject to the ~~[federal Indian Child Welfare Act of 1978]~~ Indian Family Protection Act and, if so,

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

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

~~(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes]~~ any additional requirements for that motion as provided pursuant to the Indian Family Protection Act.

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

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guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, the foster parent, preadoptive parent or relative providing care for the child with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Children's Court Rules for the service of motions. ~~[In a case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the Indian tribes of the child's parents and to any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).]~~ Further notice shall not be required to a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

E. The grounds for permanent guardianship shall be proved by clear and convincing evidence. ~~[The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.]~~

F. A judgment of the court vesting permanent guardianship with an individual divests the biological or

adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

G. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

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

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

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

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

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

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proceedings.

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

SECTION 57. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

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

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

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

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

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

(3) the child's guardian ad litem;

(4) the attorney representing the child in an

abuse or neglect action, a delinquency action or any other action under the Children's Code;

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

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

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

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

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

~~[(10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;~~

~~(11)]~~ (10) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or

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educational needs of the child;

~~(12)~~ (11) school personnel involved with the child if the records concern the child's social or educational needs;

~~(13)~~ (12) a grandparent, parent of a sibling, relative or fictive kin, if the records or information pertain to a child being considered for placement with that grandparent, parent of a sibling, relative or fictive kin and the records or information concern the social, medical, psychological or educational needs of the child;

~~(14)~~ (13) health care or mental health professionals involved in the evaluation or treatment of the child or of the child's parents, guardian, custodian or other family members;

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

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

~~(17)~~ (16) representatives of the federal government or their contractors authorized by federal statute or regulation to review, inspect, audit or otherwise have access to records and information pertaining to neglect or abuse proceedings;

~~(18)~~ (17) any person or entity attending a

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

~~[(19)]~~ (18) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

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

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty

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misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

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

SECTION 58. Section 32A-5-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 134, as amended) is amended to read:

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

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

B. The clerk of the court shall mail a copy of the request for placement to the department within one working day of the request for placement being filed with the court. The attorney for the person requesting placement shall provide to the clerk of the court a copy of the request for placement and a stamped envelope addressed to the department as specified in department [~~regulation~~] rules.

C. The clerk of the court shall mail a copy of the petition for adoption within one working day of the petition for adoption being filed with the court. The attorney for the petitioner shall provide to the clerk of the court a copy of the petition for adoption and a stamped envelope addressed to the department as specified in department [~~regulation~~] rules.

D. The clerk of the court shall mail a copy of the decree of adoption to the department within one working day of

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the entry of the decree of adoption. The attorney for the petitioner shall provide to the clerk of the court a copy of the decree of adoption and a stamped envelope addressed to the department as specified in department ~~[regulation]~~ rules.

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

~~F.]~~ E. The clerk of the court shall provide a certificate of adoption with an adoptee's new name.

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

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

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

SECTION 59. Section 32A-5-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 140, as amended) is amended to read:

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

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

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

C. In order for a person to be certified to conduct pre-placement studies, the person shall meet the standards promulgated by the department. [~~If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978.~~]

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

E. When a person or agency that wants to be

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certified to perform pre-placement studies files false documentation with the department, the person or agency shall be subject to the provisions of Section 32A-5-42 NMSA 1978.

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

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

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

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

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

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

(6) the existence of any court orders that are known to the petitioner and that regulate custody, visitation

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or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

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

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the [~~federal Indian Child Welfare Act of 1978~~] Indian Family Protection Act, and, if so, the petition shall allege the actions taken to comply with the [~~federal Indian Child Welfare Act of 1978~~] Indian Family Protection Act and all other allegations required pursuant to that act;

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

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

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

request for placement.

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

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32A-5-14 NMSA 1978 and that the time requirements concerning placement set forth in this section have been met."

SECTION 60. Section 32A-5-15 NMSA 1978 (being Laws 1993, Chapter 77, Section 142, as amended) is amended to read:

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

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

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

- (1) the child has been abandoned by the parents;
- (2) the child has been a neglected or abused child and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future; or
- (3) the child has been placed in the care of

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others, including care by other relatives, either by a court order or otherwise, and the following conditions exist:

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

(b) the parent-child relationship has disintegrated;

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

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

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

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

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

~~[D. The termination of parental rights involving an Indian child shall comply with the requirements of the federal Indian Child Welfare Act of 1978.]"~~

SECTION 61. Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143, as amended) is amended to read:

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

A. A proceeding to terminate parental rights may be

initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

- (1) the department;
- (2) an agency; or
- (3) any other person having a legitimate

interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem or attorney in another action, a foster parent, a relative of the child or the child.

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

- (1) the date, place of birth and marital status of the child, if known;
- (2) the grounds for termination and the facts and circumstances supporting the grounds for termination;
- (3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;
- (4) the basis for the court's jurisdiction;
- (5) that the petition is in contemplation of adoption;

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(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child [~~and, if so,~~

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

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

~~(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes].~~

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, the individuals with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the person

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intends to contest the termination. [~~In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.~~]

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

E. The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.

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

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

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. ~~[In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.]~~

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. ~~[In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met].~~

J. A judgment of the court terminating parental

rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

SECTION 62. Section 32A-5-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 144, as amended) is amended to read:

"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--

A. Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

(1) the adoptee, if fourteen years of age or older, except when the court finds that the adoptee does not have the mental capacity to give consent;

(2) the adoptee's mother;

(3) the adoptee's proposed adoptive parent;

(4) the presumed father of the adoptee;

(5) the adoptee's acknowledged father;

(6) the department or the agency to whom the adoptee has been relinquished that has placed the adoptee for adoption or the department or the agency that has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and

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(7) the guardian of the adoptee's parent when, pursuant to provisions of the Uniform Probate Code, that guardian has express authority to consent to adoption.

~~[B. In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of parental rights shall be obtained from an "Indian custodian", as required pursuant to the provisions of the federal Indian Child Welfare Act of 1978.~~

G.] B. A consent or relinquishment executed by a parent who is a minor shall not be subject to avoidance or revocation solely by reason of the parent's minority."

SECTION 63. Section 32A-5-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 148, as amended) is amended to read:

"32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

A. Except when consent or relinquishment is implied, a consent or relinquishment by a parent shall be in writing, signed by the parent consenting or relinquishing and shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) if a consent to adoption is being executed, the identity of the petitioner, if known, or when the adoption is an independent adoption and the identity of the petitioner is unknown, how the petitioner was selected by the consenting parent;
- (4) if a relinquishment of parental rights is being executed, the name and address of the agency or the

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department;

(5) that the person executing the consent or relinquishment has been counseled, as provided in Section 32A-5-22 NMSA 1978, by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting to the adoption of the named adoptee;

(6) that the consenting party has been advised of the legal consequences of the relinquishment or consent either by independent legal counsel or a judge;

(7) if the adoption is closed, that all parties understand that the court will not enforce any contact, regardless of any informal agreements that have made between the parties;

(8) that the consent to or relinquishment for adoption cannot be withdrawn;

(9) that the person executing the consent or relinquishment has received or been offered a copy of the consent or relinquishment;

(10) that a counseling narrative has been prepared pursuant to department [~~regulations~~] rules and is attached to the consent or relinquishment;

(11) that the person who performed the counseling meets the requirements set forth in the Adoption Act; and

(12) that the person executing the consent or

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relinquishment waives further notice of the adoption proceedings.

B. The consent of an adoptee, if fourteen years of age or older, shall be in writing, signed by the adoptee, consenting to the adoption and shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) the name of the petitioner;
- (4) that the adoptee has been counseled regarding the consent pursuant to department [~~regulation~~] rules;
- (5) that the adoptee has been advised of the legal consequences of the consent;
- (6) that the adoptee is voluntarily and unequivocally consenting to the adoption;
- (7) that the consent or relinquishment cannot be withdrawn;
- (8) that a counseling narrative has been prepared pursuant to department [~~regulation~~] rules and is attached to the consent; and
- (9) that the person who performed the counseling meets the requirements set forth in the Adoption Act.

C. In cases when the consent or relinquishment is in English and English is not the first language of the consenting or relinquishing person, the person taking the consent or relinquishment shall certify in writing that the

document has been read and explained to the person whose consent or relinquishment is being taken in that person's first language, by whom the document was so read and explained and that the meaning and implications of the document are fully understood by the person giving the consent or relinquishment.

D. Unconditional consents or relinquishments are preferred, and, therefore, conditional consents or relinquishments shall be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, all conditions permitted under this subsection shall be met within one hundred eighty days of the execution of the conditional consent or relinquishment or the conclusion of any litigation concerning the petition for adoption. The court may grant an extension of this time for good cause.

E. Agency or department consents required pursuant to the provisions of Section 32A-5-17 NMSA 1978 shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) the name of the petitioner; and
- (4) the consent of the agency or department.

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F. A consent or relinquishment taken by an individual appointed to take consents or relinquishments by an agency shall be notarized, except that a consent or relinquishment signed in the presence of a judge need not be notarized. A hearing before the court for the purpose of taking a consent or relinquishment shall be heard by the court within seven days of request for setting.

G. No consent to adoption or relinquishment of parental rights shall be valid if executed within forty-eight hours after the adoptee's birth. [~~Consent to adoption or relinquishment of parental rights involving an Indian child shall comply with the more stringent requirements of the federal Indian Child Welfare Act of 1978.~~]

~~H. The requirements of a consent to adoption or relinquishment of parental rights involving an Indian child and the rights of a parent of an Indian child to withdraw the consent or relinquishment shall be governed by the relevant provisions of the federal Indian Child Welfare Act of 1978.~~

~~F.]~~ H. A consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and opportunity to be heard is afforded to the petitioner, to the person seeking the withdrawal and to the agency placing a child for adoption, that the consent or relinquishment was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption."

SECTION 64. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,

Section 4 and by Laws 2003, Chapter 321, Section 4) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

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E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom consents or relinquishments are required, attaching copies of those obtained and alleging the facts that excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of [~~his~~] the petitioner's identity to the parent or if the parent has not agreed to the release of [~~his~~] the parent's identity to the petitioner, the names and addresses of all persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

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K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child [~~and, if so, the petition shall allege:~~

~~(1) the tribal affiliation of the adoptee's parents;~~

~~(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and~~

~~(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe];~~

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign-born and, if so, copies of the child's passport and United States visa and of

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all documents demonstrating that the adoptee is legally free for adoption, including a certificate from the United States secretary of state that certifies that the adoption is a convention adoption;

P. whether the adoption is a convention adoption and, if so, the petition shall allege:

(1) that the country in which the child has been residing is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(2) that the agency or person who is providing the adoption service has been approved as an accrediting entity; and

(3) that the certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court; and

Q. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

SECTION 65. Section 32A-5-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 154, as amended) is amended to read:

"32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

A. The petition for adoption shall be served by the petitioner on the following, unless it has been previously waived in writing:

.222222.1AIC February 9, 2022 (2:20pm)

(1) the department, by providing a copy to the court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

(2) any person, agency or institution whose consent or relinquishment is required by Section 32A-5-17 NMSA 1978, unless the notice has been previously waived;

(3) any acknowledged father of the adoptee;

(4) the legally appointed custodian or guardian of the adoptee;

(5) the spouse of any petitioner who has not joined in the petition;

(6) the spouse of the adoptee;

(7) the surviving parent of a deceased parent of the adoptee;

(8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;

(9) any person in whose home the child has resided for at least two months within the preceding six months;

(10) the agency or individual authorized to investigate the adoption under Section 32A-5-13 NMSA 1978; and

(11) any other person designated by the court.

B. Notice shall not be served on the following:

(1) an alleged father; and

(2) a person whose parental rights have been relinquished or terminated.

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C. The petitioner shall provide the clerk of the court with a copy of the petition for adoption, to be mailed to the department pursuant to the provisions of Section 32A-5-7 NMSA 1978.

~~[D. In an adoption in which the adoptee is an Indian child, in addition to the notice required pursuant to Subsection A of this section, notice of pendency of the adoption proceeding shall be served by the petitioner on the appropriate Indian tribe and on an "Indian custodian" pursuant to the provisions of the federal Indian Child Welfare Act of 1978.~~

E.] D. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall state that the failure to so respond shall be treated as a default and the person's consent to the adoption shall not be required. Provided, however, that this provision shall not apply to an agency, the department or an investigator preparing the post-placement report pursuant to Section 32A-5-31 NMSA 1978. If an agency, the department or an investigator preparing the post-placement report wants to contest the adoption, it shall notify the court within twenty days after completion of the post-placement report.

~~[F.]~~ E. Service shall be made pursuant to the Rules of Civil Procedure for the District Courts. If the whereabouts of a parent whose consent is required is unknown, the investigator, department or agency charged with investigating the adoption under Section 32A-5-13 NMSA 1978 shall investigate

the whereabouts of the parent and shall file by affidavit the results of the investigation with the court. Upon a finding by the court that information as to the whereabouts of a parent has been sufficiently investigated and is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall issue an order providing for service by publication.

[G.] F. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, shall be sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

[H.] G. The notice required by this section may be waived in writing by the person entitled to notice.

[I.] H. Proof of service of the notice on all persons for whom notice is required by this section shall be filed with the court before any hearing adjudicating the rights of the persons."

SECTION 66. Section 32A-5-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 155) is amended to read:

"32A-5-28. RESPONSE TO PETITION.--

A. Any person responding to a notice of a petition for adoption shall file a verified response to the petition within the time limits specified in Section ~~[32-5-25]~~ 32A-5-25

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NMSA 1978.

B. The verified response shall follow the Rules of Civil Procedure for the District Courts and shall allege:

(1) the existence of any court orders known to the respondent that regulate custody, visitation or access to the adoptee but have not been filed with the court at the time the response is filed and copies of which shall be attached to the response;

(2) the relationship, if any, of the respondent to the adoptee;

(3) whether the adoptee is an Indian child; ~~[and, if so, the response shall set forth all allegations required under the federal Indian Child Welfare Act of 1978]~~

(4) whether the adoption is subject to the Interstate Compact on the Placement of Children; and

(5) whether the adoption is an open adoption."

SECTION 67. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 133, as amended by Laws 2003, Chapter 294, Section 5 and by Laws 2003, Chapter 321, Section 5) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

.222222.1AIC February 9, 2022 (2:20pm)

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the documents simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent

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or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;

(5) service of the petition for adoption has

.222222.1AIC February 9, 2022 (2:20pm)

been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign-born, the child is legally free for adoption and a certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court;

(10) the results of the criminal records check required pursuant to provisions of the Adoption Act have been received and considered;

~~[(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;~~

~~(12) when the child is an Indian child, the~~

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~~placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes have been followed or, if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978, and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered]; and~~

~~[(13)]~~ (11) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA

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1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree. ~~[provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to invalidate the adoption.~~

~~L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978.]"~~

SECTION 68. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167, as amended) is amended to read:

"32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and

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records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a child who was the adoptee in the particular proceeding, by the department or by an adoptee's sibling; provided that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

- (1) the health and medical histories of the adoptee's biological parents;
- (2) the health and medical history of the adoptee;
- (3) the adoptee's general family background, including ancestral information, without name references or geographical designations;
- (4) physical descriptions; and
- (5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at

.222222.1AIC February 9, 2022 (2:20pm)

any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. Any changes to post-adoption access to records referred to in Subsection B of this section shall be filed with the court, the placing agency and the department.

D. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing agency or the department unless for good cause the court orders to the contrary.

E. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

F. If mutual authorizations for release of

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identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

- (1) the reason the information is sought;
- (2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including appointment of a confidential intermediary to contact the individual and request specific information;
- (3) whether the individual about whom identifying information is sought is alive;
- (4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families and the likely effect of disclosure on those individuals;
- (5) the age, maturity and expressed needs of the adoptee;
- (6) the report or recommendation of any individual appointed by the court to assess the request for

identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

~~[G. An adoptee shall have the right, for the purpose of enrolling in the adoptee's tribe of origin, to access information kept by the department. Information needed by an adoptee to enroll in his tribe of origin may be requested from the department by the following persons:~~

~~(1) the adoptee, after he reaches eighteen years of age;~~

~~(2) when the adoptee is a child, his adoptive parent or guardian; or~~

~~(3) an adoptee's descendant or, if the adoptee's descendant is a child, an adult representative for the descendant.~~

~~H. When the department receives a request for information regarding an adoptee's tribe of origin, the department shall examine its records to determine if the adoptee is of Indian descent. If the department establishes that an adoptee is of Indian descent, the department shall~~

~~(1) provide the requester with the tribal affiliation of the adoptee's biological parents;~~

~~(2) submit to the tribe information necessary~~

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~~to establish tribal enrollment for the adoptee and to protect any rights flowing from the adoptee's tribal relationship; and~~
~~(3) provide notice to the requester of the department's submission of information to the adoptee's tribe.]"~~

SECTION 69. Section 40-10B-5 NMSA 1978 (being Laws 2001, Chapter 167, Section 5, as amended) is amended to read:

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

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

(1) a kinship caregiver;

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

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

(a) the purpose and effect of the guardianship;

(b) that the parent has the right to be served with the petition and notices of hearings in the action; and

(c) that the parent may appear in court to contest the guardianship.

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

.222222.1AIC February 9, 2022 (2:20pm)

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

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

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

(4) the name and address of the petitioner;

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

(6) the names and addresses of the parents of the child;

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

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

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

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

(11) whether the child is an Indian child or there is reason to know that the child is an Indian child, and

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subject to provisions of the [~~federal Indian Child Welfare Act of 1978~~] Indian Family Protection Act and, if so:

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

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

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

SECTION 70. Section 40-10B-6 NMSA 1978 (being Laws 2001, Chapter 167, Section 6, as amended) is amended to read:

"40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

A. The court shall set a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

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

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

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

(3) the parents of the child;

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

(5) if the child is an Indian child or there

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is reason to know the child is an Indian child as defined in the ~~[federal Indian Child Welfare Act of 1978]~~ Children's Code, the ~~[appropriate]~~ Indian tribe and ~~[any]~~ the child's parent or "Indian custodian", together with a notice of pendency of the guardianship proceedings ~~[pursuant to the provisions of the federal Indian Child Welfare Act of 1978]~~.

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

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

SECTION 71. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws 2005, Chapter 189, Section 37, as amended) are repealed.

SECTION 72. SEVERABILITY.--If any provision of the Indian Family Protection Act, related provisions in other sections of New Mexico law or the application of such laws to any person or circumstances is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions of the Indian Family Protection Act and related laws.

SECTION 73. APPLICABILITY.--

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SIRC→A. The provisions of this act apply to all cases filed on or after July 1, 2022.

B.←SIRC The provisions of Section 8 of this act apply to tribal-state agreements that become effective on or after July 1, 2022.

SIRC→~~SECTION 74. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2022.~~←SIRC

SIRC→SECTION 74. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 21 and 23 through 73 of this act is July 1, 2022.

B. The effective date of the provisions of Section 22 of this act is July 1, 2023.←SIRC

- 157 -