

HOUSE BILL 135

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

INTRODUCED BY

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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 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 .221200.7

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

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

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

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

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

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

19 (1) delinquency proceedings; and  
20 (2) custodial proceedings pursuant to Chapter  
21 40 NMSA 1978;

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

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1 into among:

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

5 (2) the Indian child's tribe;

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

9 F. "fictive kin" means a person:

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

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

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

23 G. "foster care placement" means:

24 (1) an action pursuant to the Abuse and  
25 Neglect Act removing an Indian child from the child's parent,

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

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

10 H. "reservation" means:

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

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

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

19 I. "secretary" means the United States secretary of  
20 the interior."

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

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

25 A. In a child custody proceeding involving an  
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1 Indian child, the court shall determine and make an order of  
2 the domicile and residence of the Indian child and whether the  
3 Indian child is under the jurisdiction of a tribal court.

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

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

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

16 A. active efforts to maintain or reunite an Indian  
17 child with the Indian child's family shall be made pursuant to  
18 the Indian Family Protection Act. The department shall neither  
19 seek findings of futility nor aggravated circumstances, and the  
20 court shall not grant those findings;

21 B. the department shall make active efforts to  
22 maintain or reunite an Indian child with the Indian child's  
23 family and shall:

24 (1) document in detail in writing  
25 demonstrating the quality and quantity of services and

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1 assistance provided to alleviate the causes and conditions  
2 leading to the child custody proceeding, on the court record;

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

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

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

13 (5) conduct in cooperation with the Indian  
14 child and the Indian child's parents, extended family members,  
15 guardian, Indian custodian and Indian tribe; and

16 (6) tailor to the facts and circumstances of  
17 the case;

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

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

25 (2) identifying, notifying and inviting

1 representatives of the Indian child's tribe to participate in  
2 family team meetings, permanency planning, resolution of  
3 placement issues and providing support and services to the  
4 Indian child's family;

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

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

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

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

22 (7) identifying community resources, including  
23 housing, financial assistance, transportation, mental health  
24 services, health care, substance abuse prevention and treatment  
25 and peer support services and actively assisting the Indian

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1 child's parents, guardian or Indian custodian or, when  
2 appropriate, the Indian child's family and extended family  
3 members, in using and accessing those resources;

4 (8) monitoring progress and participation of  
5 the Indian child's parents, guardian, Indian custodian or  
6 extended family members if the services described in Paragraphs  
7 (1), (2), (4) and (7) of this subsection are not available and  
8 considering alternative ways to address the needs of the Indian  
9 child's parents, guardian, Indian custodian and, where  
10 appropriate, the family, if the optimum services do not exist  
11 or are not available;

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

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

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

20 D. prior to accepting any child for voluntary  
21 placement, the department shall document the efforts:

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

25 (2) that would alleviate the conditions



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1 leading to the placement request; and

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

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

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

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

12 (1) the pending proceedings;

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

15 (a) intervention; and

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

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

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

24 B. In the event that the department attempts to  
25 enter into discussion with an Indian tribe and the tribe does

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1 not respond within the time frame provided for in the Indian  
2 Family Protection Act, the department may proceed; provided  
3 that the absence of a tribal response does not:

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

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

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

11 "[NEW MATERIAL] TRIBAL MEMBERSHIP--DEPARTMENT  
12 ASSISTANCE.--When an Indian child is placed in the custody of  
13 the department, the department shall work with the parent, the  
14 guardian, the Indian custodian or the Indian child's tribe to  
15 establish membership, at the discretion of the parent or the  
16 Indian tribe. An Indian tribe shall have the sole right to  
17 determine membership and membership eligibility, as defined by  
18 the Indian tribe's law, custom, tradition and practice. The  
19 department shall provide records to assist with determining  
20 membership eligibility at the request of the parent or the  
21 Indian child's tribe."

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

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

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

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

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

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

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

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

6                   (2) good cause exists to deny the transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 I. When a court authorizes transfer, the court:

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

24 (2) shall expeditiously transfer to the tribal  
25 court all records related to the proceeding, including all

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1 pleadings and the court record; and

2 (3) shall direct the department to:

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

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

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

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

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

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

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

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

6 (1) whether a case needs to be filed, and  
7 whether the case would be filed by the department in court or  
8 by the appropriate tribal agency in tribal court;

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

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

14 (4) the assessment, removal, placement and  
15 custody of Indian children.

16 E. A tribal-state agreement shall:

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

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

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

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

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

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

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

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

23 "[NEW MATERIAL] TEMPORARY EMERGENCY JURISDICTION.--

24 A. The department shall file a petition for  
25 temporary emergency removal where the department demonstrates

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1 that a child is an Indian child who is a resident of or  
2 domiciled on a reservation but temporarily located off a  
3 reservation. The department shall provide notice and request  
4 receipt of notice to the child's tribe, parents, guardian and  
5 Indian custodian within twenty-four hours of the filing of the  
6 petition.

7 B. A court of this state has temporary emergency  
8 jurisdiction if the child is present in this state but is  
9 domiciled on a reservation and the child has been abandoned or  
10 it is necessary in an emergency to protect the child because  
11 the child, or a sibling or parent of the child, is subjected to  
12 or threatened with abuse or neglect.

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

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

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

3           "[NEW MATERIAL] INVESTIGATIONS.--

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

7                     (1) the investigation;

8                     (2) the involvement of the Indian child;

9                     (3) the department's obligation to collaborate  
10 with the Indian child's tribe to identify a potential qualified  
11 expert witness or witnesses to participate in the proceeding if  
12 the investigation results in a child custody proceeding; and

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

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

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

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

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

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

5 D. Before filing a petition related to an Indian  
6 child, the department shall notify the Indian child's tribe of  
7 the results of the investigation pursuant to Subsection A of  
8 this section, including the active efforts that have been made  
9 to provide remedial services and rehabilitative programs  
10 designed to prevent the breakup of the Indian family and that  
11 these efforts have proved unsuccessful, resulting in the  
12 department's intention to file the petition.

13 E. At the conclusion of every proceeding pursuant  
14 to the Indian Family Protection Act, the court shall make a  
15 written determination based on evidence on the record as to  
16 whether the department has made active efforts to provide  
17 services and support to preserve and reunify the family.

18 F. With respect to those proceedings to which the  
19 Indian Family Protection Act applies, the record shall include  
20 written statements of compliance with that act regarding  
21 notice, evidentiary and other requirements."

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

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

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

7 (1) the pending proceedings;

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

10 (a) intervention; and

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

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

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

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

21 (1) the court shall not order a foster care  
22 placement of an Indian child unless clear and convincing  
23 evidence is presented, including the testimony of one or more  
24 qualified expert witnesses, demonstrating that the child's  
25 continued custody by the child's parent, guardian or Indian

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1 custodian is likely to result in serious emotional or physical  
2 damage to the child;

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

10 (3) for a foster care placement or termination  
11 of parental rights, the evidence shall show a causal  
12 relationship between the particular conditions in the home and  
13 the likelihood that continued custody of the child will result  
14 in serious emotional or physical damage to the particular child  
15 who is the subject of the child custody proceeding; and

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

24 C. If there is a reason to know that the Indian  
25 child's parent, guardian or Indian custodian has limited

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1 English proficiency and may not understand the contents of the  
2 notice pursuant to Subsection A of this section, the court  
3 shall provide language access services as required by Title 6  
4 of the federal Civil Rights Act of 1964 and other applicable  
5 federal and state laws. If the court is unable to secure  
6 translation or interpretation support, the court shall contact  
7 or direct a party to contact the Indian child's tribe or the  
8 local office of the United States department of the interior  
9 bureau of Indian affairs for assistance identifying a qualified  
10 translator or interpreter.

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

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

25 F. Nothing in this section prevents a court from

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1 reviewing a removal of an Indian child from the child's parent,  
2 guardian or Indian custodian at an emergency custody proceeding  
3 before the expiration of the waiting periods provided in  
4 Subsections D and E of this section to determine the  
5 appropriateness of the removal and potential return of the  
6 child."

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

9 "[NEW MATERIAL] INTERVENTION.--

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

12 B. In a court proceeding for the foster care  
13 placement, guardianship placement, adoptive placement of or  
14 termination of parental rights to an Indian child, the Indian  
15 child's relative or extended family member, the guardian or the  
16 Indian custodian may intervene at any point in the proceeding.

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

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

22 (2) whether intervention is in the best  
23 interest of the Indian child."

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

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1           "[NEW MATERIAL] PETITION--FORM AND CONTENT.--

2           A. A petition initiating a child custody proceeding  
3 shall include a statement as to whether the child who is the  
4 subject of the child custody proceeding is an Indian child.

5           B. A party that files a petition, motion or other  
6 document in a court that seeks to effect a child custody  
7 proceeding of an Indian child shall include in that petition,  
8 motion or document:

9                         (1) the Indian child's tribe;

10                        (2) the tribal affiliations of the Indian  
11 child's parents;

12                        (3) the active efforts made by the petitioner  
13 to notify the Indian child's tribe pursuant to the Indian  
14 Family Protection Act;

15                        (4) a statement of and clear and convincing  
16 evidence that active efforts have been made to provide remedial  
17 services and rehabilitative programs designed to prevent the  
18 breakup of the Indian family and that these efforts have proved  
19 unsuccessful and the reasons these efforts were unsuccessful,  
20 if known;

21                        (5) the active efforts that were made to  
22 comply with the notice requirements pursuant to the Indian  
23 Family Protection Act, including results of the contact and the  
24 names, addresses, titles and telephone numbers of the persons  
25 contacted. Copies of any correspondence with the Indian

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1 child's tribe shall be attached as exhibits to the petition;  
2 and

3 (6) the active efforts that were made to  
4 comply with the placement preferences set forth in the Indian  
5 Family Protection Act or the placement preferences of the  
6 Indian child's tribe.

7 C. If the petition relates to an Indian child,  
8 aggravated circumstances shall not be considered by the court  
9 and shall not be recorded in the court's findings on the  
10 petition."

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

13 "[NEW MATERIAL] COURT RECORD OF INDIAN CHILD'S TRIBE.--

14 A. Solely for the purposes of a child custody  
15 proceeding involving an Indian child, a court shall make a  
16 record of:

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

20 (2) an Indian tribe of which an Indian child  
21 is a member if the Indian child is a member of one Indian tribe  
22 but is eligible for membership in one or more other Indian  
23 tribes;

24 (3) the Indian tribe designated by agreement  
25 between one or more Indian tribes if the Indian child is not a

1 member of each of those Indian tribes but is eligible for  
2 membership in each of those Indian tribes; or

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

8 B. When recording an Indian child's tribe pursuant  
9 to Paragraph (4) of Subsection A of this section, a court  
10 shall, after a hearing, record the Indian tribe with which the  
11 Indian child has more significant contacts, taking into  
12 consideration:

13 (1) the preference of each of the Indian  
14 child's parents;

15 (2) the duration of the Indian child's current  
16 or prior domicile or residence on or near the reservation of  
17 each Indian tribe;

18 (3) the tribal membership of the Indian  
19 child's custodial parent or Indian custodian;

20 (4) the interests asserted by each Indian  
21 tribe;

22 (5) whether the Indian tribe has previously  
23 adjudicated a case involving an Indian child;

24 (6) the Indian tribe's custom and tradition;  
25 and

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1 (7) if the court determines that the Indian  
2 child is of sufficient age and capacity to meaningfully self-  
3 identify the Indian child's tribe, the self-identification of  
4 the Indian child.

5 C. If an Indian child is a member of or is eligible  
6 for membership in more than one Indian tribe, the court shall  
7 permit an Indian tribe, in addition to the Indian child's tribe  
8 as determined pursuant to Subsection A of this section, to  
9 participate in the child custody proceeding in an advisory  
10 capacity or as a party."

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

13 "[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--  
14 RIGHT TO COUNSEL.--

15 A. At the commencement of any hearing in a child  
16 custody proceeding, the court shall determine whether the child  
17 is an Indian child by asking, on the record, each individual  
18 present on the matter whether the individual knows or has  
19 reason to know that the child is an Indian child. If no  
20 individual present at the hearing knows or has reason to know  
21 that the child is an Indian child, the court shall instruct  
22 each party to inform the court immediately if the individual  
23 later receives information that provides reason to know that  
24 the child is an Indian child.

25 B. A court has reason to know that a child is an

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1 Indian child if:

2 (1) an individual present in the proceeding,  
3 officer of the court involved in the proceeding, Indian tribe,  
4 Indian organization or agency informs the court that the child  
5 is an Indian child;

6 (2) an individual present at the hearing,  
7 officer of the court present at the hearing, Indian tribe or  
8 Indian organization or agency informs the court that  
9 information has been discovered indicating that the child is an  
10 Indian child;

11 (3) the child indicates to the court that the  
12 child is an Indian child;

13 (4) the court is informed that the domicile or  
14 residence of the child, the child's parent, the child's  
15 guardian or the child's Indian custodian is on a reservation or  
16 in an Alaska native village;

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

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

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

24 (8) any other indicia provided to the court or  
25 within the court's knowledge indicate that the child is an

1 Indian child.

2 C. If a court has reason to know that a child is an  
3 Indian child but does not have sufficient evidence to determine  
4 whether the child is an Indian child, the court shall:

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

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

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

25 E. Each party, including the Indian child's tribe,

1 whether or not the Indian child's tribe has intervened, in a  
2 foster care placement or termination of parental rights  
3 proceeding pursuant to the Abuse and Neglect Act or the  
4 Adoption Act involving an Indian child shall have the right to  
5 examine all reports or other documents filed with the court  
6 upon which a decision with respect to the action may be based.

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

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

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

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

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

24 (1) knowledgeable about the prevailing social  
25 and cultural standards of the tribe and is familiar with the

1 family and child-rearing practices of the Indian child's tribe;  
2 and

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

4 (3) a person recommended by the Indian child's  
5 tribe.

6 C. When the department notifies an Indian child's  
7 tribe of the pendency of an investigation involving an Indian  
8 child from that Indian tribe, the department shall request in  
9 writing that the Indian child's tribe designate a qualified  
10 expert witness to testify in any child custody or termination  
11 proceedings that result from the investigation. The department  
12 shall make active efforts to collaborate with the Indian tribe  
13 to identify a person to serve as a qualified expert witness.

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

25 E. If, sixty days following the initiation of an

1 investigation, the department has not identified a qualified  
2 expert witness to testify as required by the Indian Family  
3 Protection Act, in considering a motion by the department for a  
4 continuance, the court shall consider whether it is in the best  
5 interest of the Indian child to remain in the department's  
6 custody for additional time.

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

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

19 H. Once designated to a case, a qualified expert  
20 witness shall become familiar with the case and provide  
21 comments on the case to the court.

22 I. An employee of the department shall not serve as  
23 a qualified expert witness pursuant to this section."

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

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

3           A. When a parent, guardian or Indian custodian  
4 voluntarily consents to a foster care placement or to  
5 termination of parental rights, that consent is not valid  
6 unless executed in writing and recorded before a judge of  
7 competent jurisdiction and accompanied by the presiding judge's  
8 certificate that the terms and consequences of the consent were  
9 fully explained in detail and were fully understood by the  
10 parent, guardian or Indian custodian. The court shall also  
11 certify either that the parent, the guardian or the Indian  
12 custodian fully understood the explanation in English or that  
13 it was interpreted into a language that the parent, guardian or  
14 Indian custodian understood. Any consent to a foster care  
15 placement or termination of parental rights that is given prior  
16 to or within ten days after birth of an Indian child is not  
17 valid.

18           B. A parent, guardian or Indian custodian may  
19 withdraw consent to a voluntary foster care placement of an  
20 Indian child pursuant to the Children's Code at any time and,  
21 upon receipt of the request to withdraw, the Indian child shall  
22 be immediately returned to the parent, guardian or Indian  
23 custodian.

24           C. In a voluntary proceeding for termination of  
25 parental rights or adoptive placement of an Indian child

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1 pursuant to the Children's Code, the consent of the parent may  
2 be withdrawn for any reason at any time prior to the entry of a  
3 final decree of termination or adoption as the case may be, and  
4 the Indian child shall be returned to the parent.

5 D. After the entry of a final decree of adoption of  
6 an Indian child in a court that is made pursuant to the  
7 Adoption Act, the parent may withdraw consent to the adoption  
8 upon the grounds that consent was obtained through fraud or  
9 duress and may petition the court to vacate the decree. Upon a  
10 finding that the consent was obtained through fraud or duress,  
11 the court shall vacate the decree and return the child to the  
12 parent. An adoption that has been in effect for at least two  
13 years shall not be invalidated except as otherwise provided by  
14 law.

15 E. In any voluntary foster care placement or  
16 termination of parental rights proceeding in court, when the  
17 court knows or has reason to know that an Indian child is  
18 involved, the party seeking to effectuate the foster care  
19 placement or termination of parental rights shall notify the  
20 Indian child's tribe, by certified mail, with return receipt  
21 requested, of the pending proceedings and of its right of  
22 intervention.

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

1 parental rights.

2 G. In a termination of parental rights proceeding,  
3 with respect to an Indian child, the court shall consider in  
4 its determination whether an alternative to termination of  
5 parental rights, including permanent guardianship of the child,  
6 would best support the Indian child.

7 H. In a termination of parental rights proceeding,  
8 a termination shall not be ordered unless:

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

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

17 I. In a voluntary foster placement involving an  
18 Indian child, a parent or guardian's consent is voidable unless  
19 it is executed in writing and recorded before a court of  
20 competent jurisdiction and accompanied by the court's  
21 certification that:

22 (1) the child is an Indian child;

23 (2) the terms and consequences of the consent  
24 were fully explained in detail in a manner that was fully  
25 understood by the parents or guardian;

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1 (3) the parent or guardian fully understood  
2 the explanation in English or that it was interpreted into the  
3 primary language of the parent or guardian;

4 (4) any consent to a foster care placement  
5 that is given prior to or within ten days after birth of an  
6 Indian child is voidable;

7 (5) no investigation has been initiated and  
8 there is no pending child abuse or neglect investigation  
9 involving the Indian child and the parent or guardian is  
10 entering into the voluntary placement voluntarily without any  
11 threat or removal of the child by the department;

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

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

18 (8) the parent is proceeding without an  
19 attorney, if not represented, and the parent has the right to  
20 consult with an attorney of the parent's own choosing; and

21 (9) the parent or guardian is of sound mind  
22 and judgment.

23 J. The request shall be initiated in writing by the  
24 Indian child's parent or guardian and, if good cause is shown,  
25 the department may accept temporary custody.

underscoring material = new  
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1           K. A parent or guardian may withdraw consent to a  
2 voluntary foster care placement of an Indian child pursuant to  
3 the Children's Code at any time. Upon receipt of the request  
4 to withdraw, the Indian child shall be returned to the parent  
5 or guardian within forty-eight hours.

6           L. An Indian child shall not remain in voluntary  
7 placement for longer than one hundred eighty consecutive days  
8 or for more than one hundred eighty days in any calendar year;  
9 provided that a child may remain in voluntary placement up to  
10 an additional one hundred eighty consecutive days upon order of  
11 the court after the filing of a petition by the department for  
12 extension of voluntary placement, a hearing and a finding that  
13 additional voluntary placement is in the best interests of the  
14 Indian child.

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

18           N. Any voluntary placement pursuant to this section  
19 shall not be considered abandonment, neglect or abuse by a  
20 parent or guardian or other family member.

21           O. The parent or guardian whose Indian child is a  
22 voluntary placement pursuant to this section shall have the  
23 following rights with respect to the Indian child:

24                   (1) the right of reasonable visitation with  
25 the Indian child;

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1 (2) the right to be informed of changes in the  
2 Indian child's school or of changes in the Indian child's  
3 placement by the department;

4 (3) the right to authorize decisions regarding  
5 medical and dental care and behavioral health services,  
6 including decisions that affect the daily care, support, safety  
7 and well-being of the Indian child;

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

16 (5) the right to consent to all nonemergency  
17 and nonroutine medical care provided for the Indian child;

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

22 (7) the right to authorize enlistment in the  
23 armed forces; and

24 (8) the right to make decisions of substantial  
25 legal significance.

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1 P. The voluntary placement shall adhere and be in  
2 accordance with the placement preferences set forth in the  
3 Indian Family Protection Act.

4 Q. All records or information concerning the  
5 voluntary placement shall be confidential in accordance with  
6 the confidentiality provision of the Children's Code."

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

9 "[NEW MATERIAL] PETITION TO COURT TO INVALIDATE ACTION.--  
10 An Indian child who is the subject a child custody proceeding,  
11 a parent, guardian or Indian custodian from whose custody the  
12 child was removed or the Indian child's tribe may petition the  
13 court to invalidate that action upon a showing that the action  
14 violated any provision of Section 7, 12, 14, 17, 18, 19, 21 or  
15 28 of the Indian Family Protection Act."

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

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

21 A. In the case of a foster care placement of an  
22 Indian child, except as provided in Subsection C of this  
23 section, the child shall be placed in the least restrictive  
24 setting that:

25 (1) most closely approximates a family, taking

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1 into consideration the Indian child's sibling attachment;

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

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

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

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

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

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

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

22 C. If an Indian child is placed in a foster care  
23 placement that is contrary to the placement preferences  
24 provided in this section, a secondary permanency plan shall not  
25 be simultaneously permitted, and before the child's placement

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1 may be changed to an adoptive or other permanent placement, the  
2 department shall:

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

6 (2) make active efforts to identify a  
7 placement that aligns with the placement preferences as soon as  
8 practicable; and

9 (3) document all active efforts made to  
10 identify a placement that aligns with the placement  
11 preferences. At minimum, this shall include:

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

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

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

21 (f) offering relatives an expedited  
22 foster care license;

23 (g) assisting relatives with practical  
24 supports through the licensing process and actively supporting  
25 relatives in overcoming barriers for licensure;

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

4 (i) providing continued contact,  
5 including visitation; and

6 (j) providing access to culturally  
7 appropriate interventions.

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

14 E. If there is a voluntary placement agreement in  
15 which the Indian child at first was not determined to be an  
16 Indian child and was later determined to be an Indian child,  
17 the department shall file a petition with the court to void the  
18 agreement and shall follow the preferred placement preferences.

19 F. If the Indian child's tribe has established by  
20 resolution a different order of preference than that specified  
21 in the Indian Family Protection Act, the Indian child's tribe's  
22 placement preferences shall apply.

23 G. In determining whether good cause exists, the  
24 court shall not permit departure from the placement preferences  
25 based on:

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1 (1) the socioeconomic status of the placement;

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

4 (3) ordinary bonding or attachment that  
5 occurred from time spent in a non-preferred placement that was  
6 made in violation of the Indian Family Protection Act; or

7 (4) the extent of the participation of the  
8 parents or the Indian child in tribal, cultural, social,  
9 religious or political activities.

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

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

23 J. Whenever there is any change in the placement of  
24 an Indian child, the department shall file notice of the  
25 placement change with the court.

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

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

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

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

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

24           M. In an adoption proceeding involving a child who  
25 is an Indian child, the court-ordered mediation pursuant to

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1 Section 32A-4-29 NMSA 1978 shall not be waived and the Indian  
2 child's tribe shall be allowed to participate, whether or not  
3 the Indian child's tribe intervenes."

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

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

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

14 (1) the Indian Family Protection Act,  
15 including cultural compacts; and

16 (2) the Indian tribes geographically located  
17 within the state.

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

22 C. If an Indian child is placed in a household that  
23 does not include a parent or guardian who is a member of the  
24 Indian child's tribe, upon placement and at least annually  
25 thereafter, the department shall provide mandatory training to

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

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

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

25 SECTION 24. A new section of the Children's Code is  
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[bracketed material] = delete

1 enacted to read:

2 "[NEW MATERIAL] TRANSITION SERVICES.--

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

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

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

20 "[NEW MATERIAL] DISCHARGE HEARING.--

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

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1 child.

2 B. If the court finds that the department has not  
3 made active efforts to meet all of the requirements of Section  
4 32A-4-25.3 NMSA 1978 and of Subsection A of this section and  
5 that termination of jurisdiction would be harmful to the young  
6 adult, the court may continue to exercise its jurisdiction.  
7 The court may dismiss the case at any time after the Indian  
8 child's eighteenth birthday for good cause."

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

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

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

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

24 C. whether active efforts were made by the  
25 department to prevent removal of the Indian child from the home

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1 prior to placement in substitute care and whether active  
2 efforts were made to attempt reunification of the Indian child  
3 with the natural parent;

4 D. whether active efforts were made by the  
5 department to place siblings in custody together, unless such  
6 joint placement would be contrary to the safety or well-being  
7 of any of the siblings in custody, and whether any siblings not  
8 jointly placed have been provided reasonable visitation or  
9 other ongoing interaction, unless visitation or other ongoing  
10 interaction would be contrary to the safety or well-being of  
11 any of the siblings; and

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

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

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

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

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

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

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

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

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

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

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

25 SECTION 28. A new section of the Children's Code is

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1 enacted to read:

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

3 A. At the conclusion of a dispositional hearing in  
4 a child custody proceeding involving an Indian child, in  
5 addition to other requirements for a court's findings pursuant  
6 to the Children's Code, a court shall include:

7 (1) when the judgment is made in a child  
8 custody proceeding held pursuant to the Family in Need of  
9 Court-Ordered Services Act or the Abuse and Neglect Act,  
10 findings of:

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

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

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

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1 to the child; and

2 (d) whether the Indian child's tribe was  
3 included in developing the transition plan for the Indian child  
4 and was provided a copy of the transition plan prior to the  
5 presentation of the plan to the court; and

6 (2) in a termination of parental rights  
7 proceeding pursuant to the Abuse and Neglect Act or the  
8 Adoption Act, findings that the requirements of the Indian  
9 Family Protection Act have been met.

10 B. The court shall determine during a review of a  
11 dispositional judgment involving an Indian child pursuant to  
12 Section 32A-4-25 NMSA 1978 whether the judgment complies with  
13 the placement preferences set forth in the Indian Family  
14 Protection Act or the placement preferences of the Indian  
15 child's tribe and whether the child's case plan as described in  
16 Section 32A-4-21 NMSA 1978 provides for maintaining the Indian  
17 child's cultural ties. When placement preferences are not  
18 followed, good cause for noncompliance shall be clearly stated  
19 and supported by clear and convincing evidence. A court's  
20 determination of good cause shall be made on the record or in  
21 writing and shall be based on the considerations set forth in  
22 the federal regulations or other factors authorized by federal  
23 and state law.

24 C. The court shall make findings determining that  
25 the department made active efforts pursuant to the Indian

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1 Family Protection Act to meet the requirements of this section  
2 and may continue to exercise its jurisdiction for a period not  
3 to exceed one year from the Indian child's eighteenth birthday.  
4 The young adult must consent to continued jurisdiction of the  
5 court. Additionally, the Indian child may volunteer to  
6 participate in the fostering connections program through the  
7 department. The court may dismiss the case at any time after  
8 the Indian child's eighteenth birthday for good cause.

9 D. When the child is an Indian child, the court  
10 shall determine during review of a dispositional order whether  
11 all requirements pursuant to the Indian Family Protection Act  
12 were followed, including that:

13 (1) active efforts were conducted to prevent  
14 the breakup of the Indian family or to reunify the Indian  
15 family;

16 (2) the placement preferences set forth in the  
17 Indian Family Protection Act or the placement preferences of  
18 the Indian child's tribe were followed. When placement  
19 preferences have not been followed, good cause for  
20 noncompliance shall be clearly stated and supported;

21 (3) active efforts were made pursuant to the  
22 Indian Family Protection Act to implement the Indian child's  
23 cultural maintenance plan in conjunction with the Indian  
24 child's tribe and family;

25 (4) the Indian child's tribe was included in

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1 the department's active efforts for case planning and  
2 documentation of the tribe's input; and

3 (5) all requirements pursuant to the Indian  
4 Family Protection Act were followed."

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

7 "[NEW MATERIAL] PERIODIC REVIEW OF DISPOSITIONAL  
8 JUDGMENTS.--

9 A. The initial judicial review shall be held within  
10 sixty days of the disposition. At the initial judicial review:

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

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

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

25 C. The children's court attorney shall give notice

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1 to the Indian child's tribe of the time, place and purpose of  
2 any judicial review hearing held pursuant to the Indian Family  
3 Protection Act.

4 D. At any subsequent judicial review hearing held  
5 pursuant to Section 32A-4-25 NMSA 1978, the department shall  
6 show that it has made active efforts to implement any treatment  
7 plan approved by the court in its dispositional order and shall  
8 present a treatment plan consistent with the purposes of the  
9 Children's Code for any period of extension of the  
10 dispositional order."

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

13 "[NEW MATERIAL] PERMANENT GUARDIANSHIP.--

14 A. A motion for permanent guardianship shall set  
15 forth:

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

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

24 (3) the specific active efforts made to comply  
25 with the placement preferences set forth in the Indian Family

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1 Protection Act or the placement preferences of the appropriate  
2 Indian tribes and any additional requirements for that motion  
3 as provided pursuant to the Indian Family Protection Act; and

4 (4) that notice has been sent by certified  
5 mail, with return receipt requested, to the Indian child's  
6 tribe and to any Indian custodian pursuant to the Indian Family  
7 Protection Act.

8 B. The grounds for permanent guardianship shall be  
9 proved beyond a reasonable doubt and meet the requirements of  
10 the Indian Family Protection Act."

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

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

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

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

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

25 (1) the tribal affiliations of the Indian

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1 child's parents;

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

8 (3) the specific active efforts made to comply  
9 with the placement preferences of the Indian Family Protection  
10 Act.

11 B. Notice of the filing of the petition,  
12 accompanied by a copy of the petition, shall be served by the  
13 petitioner by certified or registered mail with return receipt  
14 requested on the Indian child's tribe and on the Indian child's  
15 parent or guardian.

16 C. The grounds for any attempted termination shall  
17 be proved beyond a reasonable doubt.

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

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

23 "[NEW MATERIAL] PERSONS WHOSE CONSENTS OR RELINQUISHMENTS  
24 ARE REQUIRED IN AN INDEPENDENT ADOPTION.--In an independent  
25 adoption, consent from the parent or guardian of an Indian

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1 child to adoption by the petitioner or relinquishment of  
2 parental rights shall be obtained in the manner required by the  
3 Indian Family Protection Act."

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

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

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

10 (1) the petitioner has proved by clear and  
11 convincing evidence that the placement preferences set forth in  
12 the Indian Family Protection Act, or the placement preferences  
13 established by the Indian child's tribe, have been followed or,  
14 if not followed, good cause for noncompliance has been proved  
15 by clear and convincing evidence; and

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

19 B. In any adoption, the clerk of the court shall  
20 provide the secretary with a copy of the final decree of  
21 adoption or adoptive placement order.

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

25 D. Within two years after a final decree of

1 adoption of an Indian child, the court may invalidate a  
2 voluntary adoption upon finding that the parent's consent was  
3 obtained by fraud or duress.

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

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

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

15 "[NEW MATERIAL] RETURN OF CUSTODY.--Whenever an Indian  
16 child has been adopted and the relationship between the parent  
17 and the Indian child has been severed for any reason, a  
18 biological parent, guardian or prior Indian custodian may  
19 petition for return of custody, and there shall be a  
20 presumption that the Indian child shall be returned to the  
21 biological parent, guardian or prior Indian custodian, unless  
22 the return of custody is not in the best interests of the  
23 Indian child."

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

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1            "[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When  
2 making a determination regarding the best interests of an  
3 Indian child pursuant to the Indian Family Protection Act, a  
4 court shall, in discussion with the Indian child's tribe,  
5 consider the following relevant factors:

6            A. the prioritization of placement of the Indian  
7 child in accordance with the placement preferences provided by  
8 the Indian Family Protection Act;

9            B. the prevention of unnecessary out-of-home  
10 placement of the Indian child;

11           C. the critical importance to the Indian child of  
12 establishing, developing or maintaining a political, cultural,  
13 social and spiritual relationship with the Indian child's tribe  
14 and tribal community and with familial ties such as clanship  
15 and family with unique cultural characteristics;

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

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

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

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

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

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

13           C. If the adoption predated enactment of the  
14 federal Indian Child Welfare Act of 1978, the court shall  
15 attempt to find information related to the adoption and may  
16 order the department to assist. If the adoption of an Indian  
17 person was completed after enactment of the federal Indian  
18 Child Welfare Act of 1978, the Indian person may contact the  
19 United States department of the interior for necessary  
20 information regarding the Indian person's adoption. If the  
21 United States department of the interior certifies that it does  
22 not have that information, the state court shall attempt to  
23 find the information and may order the department to assist.

24           D. If an Indian person does not know the court that  
25 issued the adoption decree, the Indian person may apply to the

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1 department. The department shall provide to the Indian person  
2 the name and location of the court that entered the final  
3 decree, if known."

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

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

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

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

14 (2) any information relating to tribal  
15 membership or eligibility for membership of the adopted Indian  
16 child;

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

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

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

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

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

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

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

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

12 A. All records or information, whether on file with  
13 the court, an agency, the department, an attorney or other  
14 provider of professional services, concerning a party to any  
15 proceedings pursuant to the Indian Family Protection Act,  
16 including social records, diagnostic evaluations, psychiatric  
17 or psychological reports, videotapes, transcripts and audio  
18 recordings of an Indian child's statement of abuse or medical  
19 reports incident to or obtained as a result of an investigation  
20 or proceeding pursuant to the Indian Family Protection Act or  
21 that were produced or obtained during an investigation in  
22 anticipation of or incident to any proceeding pursuant to the  
23 Indian Family Protection Act, shall be confidential and closed  
24 to the public.

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

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

6 (2) court-appointed special advocates  
7 appointed to the Indian child in a child custody proceeding;

8 (3) the Indian child's guardian ad litem;

9 (4) the attorney, including a public defender,  
10 representing the Indian child in any child custody proceeding  
11 pursuant to the Indian Family Protection Act;

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

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

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

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

23 (9) any state or tribal government social  
24 services agency in any state or when, in the opinion of the  
25 department it is in the best interest of the Indian child, a

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1 governmental social services agency of another country;

2 (10) an Indian child's tribe;

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

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

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

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

23 (15) protection and advocacy representatives  
24 pursuant to the federal Developmental Disabilities Assistance  
25 and Bill of Rights Act and the federal Protection and Advocacy

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1 for Mentally Ill Individuals Amendments Act of 1991;

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

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

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

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

18 C. A parent or guardian whose Indian child has been  
19 the subject of an investigation of abuse or neglect where no  
20 petition has been filed shall have the right to inspect any  
21 medical report, psychological evaluation, law enforcement  
22 reports or other investigative or diagnostic evaluation;  
23 provided that any identifying information related to the  
24 reporting party or any other party providing information shall  
25 be deleted. The parent or guardian shall also have the right

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1 to the results of the investigation and the right to petition  
2 the court for full access to all department records and  
3 information except those records and information the department  
4 finds would be likely to endanger the life or safety of any  
5 person providing information to the department.

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

11 E. In an adoption proceeding, unless the petitioner  
12 agrees to be contacted or agrees to the release of the  
13 petitioner's identity to the parent and the parent agrees to be  
14 contacted or agrees to the release of the parent's identity to  
15 the petitioner, the attorneys, the court, the agency and the  
16 department shall maintain confidentiality regarding the names  
17 of the parties, unless the information is already otherwise  
18 known. After the petition is filed and prior to the entry of  
19 the decree, the records in adoption proceedings shall be open  
20 to inspection only by the attorney for the petitioner, the  
21 department or the agency, any attorney appointed as a guardian  
22 ad litem or attorney for the adoptee, the Indian child's tribe,  
23 any attorney retained by the adoptee or other persons upon  
24 order of the court for good cause shown.

25 F. In an adoption proceeding, all information and

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1 documentation provided for the purpose of full disclosure is  
2 confidential. Documentation provided for the purpose of full  
3 disclosure shall remain the property of the person making full  
4 disclosure when a prospective adoptive parent decides not to  
5 accept a placement. Immediately upon refusal of the placement,  
6 the prospective adoptive parent shall return all full  
7 disclosure documentation to the person providing full  
8 disclosure. A prospective adoptive parent shall not disclose  
9 any confidential information received during the full  
10 disclosure process, except as necessary to make a placement  
11 decision or to provide information to an Indian child's  
12 guardian ad litem or attorney or the court.

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

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

25 I. The department shall promulgate rules for

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1 implementing disclosure of records pursuant to the Indian  
2 Family Protection Act and in compliance with state and federal  
3 law and the Children's Court Rules."

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

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

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

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

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

21 "[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The  
22 "office of tribal affairs" is created in the department. The  
23 office shall be dedicated to ensuring the department's  
24 compliance with and full implementation of the Indian Family  
25 Protection Act."

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

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

11           SECTION 43. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 13, as amended) is amended to read:

13           "32A-1-4. DEFINITIONS.--As used in the Children's Code:

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

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

19           ~~[B.]~~ C. "child" means a person who is less than  
20 eighteen years old;

21           ~~[C.]~~ D. "council" means the substitute care  
22 advisory council established pursuant to Section 32A-8-4 NMSA  
23 1978;

24           ~~[D.]~~ E. "court", when used without further  
25 qualification, means the children's court division of the

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1 district court and includes the judge, special master or  
2 commissioner appointed pursuant to the provisions of the  
3 Children's Code or supreme court rule;

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

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

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

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

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

24 K. "federal Indian Child Welfare Act of 1978" means  
25 the federal Indian Child Welfare Act of 1978, as that act may

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1 be amended or its sections renumbered;

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

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

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

15 O. "Indian" means, whether an adult or child, a  
16 person who is:

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

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

20 [L.] P. "Indian child" means an ~~[unmarried person~~  
21 ~~who is~~

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

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

25 ~~(3) the biological child of a member of an~~

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1 ~~Indian tribe]~~ Indian child, or a child whom there is reason to  
2 know is an Indian child, under eighteen years of age, who is  
3 neither:

4 (1) married; or

5 (2) emancipated;

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

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

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

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

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

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

20 [N.] S. "Indian tribe" means [~~a federally~~  
21 ~~recognized Indian tribe, community or group pursuant to 25~~  
22 ~~U.S.C. Section 1903(1)] an Indian nation, tribe, pueblo or  
23 other band, organized group or community of Indians recognized  
24 as eligible for the services provided to Indians by the  
25 secretary because of their status as Indians, including an~~

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1 Alaska native village as defined in 43 U.S.C. Section 1602(c).  
2 A member of or eligible for membership in a regional  
3 corporation as defined in 43 U.S.C. Section 1606. For the  
4 purposes of notification to and communication with a tribe as  
5 required in the Indian Family Protection Act, "Indian tribe"  
6 also includes those tribal officials and staff who are  
7 responsible for child welfare and social services matters;

8           ~~[Θ-]~~ T. "judge", when used without further  
9 qualification, means the judge of the court;

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

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

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

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

- 9                   (1) reunification;
- 10                  (2) placement for adoption after the parents'  
11 rights have been relinquished or terminated or after a motion  
12 has been filed to terminate parental rights;
- 13                  (3) placement with a person who will be the  
14 child's permanent guardian;
- 15                  (4) placement in the legal custody of the  
16 department with the child placed in the home of a fit and  
17 willing relative; or
- 18                  (5) placement in the legal custody of the  
19 department under a planned permanent living arrangement;

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

22           [T.] Z. "plan of care" means a plan created by a  
23 health care professional intended to ensure the safety and  
24 well-being of a substance-exposed newborn by addressing the  
25 treatment needs of the child and any of the child's parents,

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1 relatives, guardians, family members or caregivers to the  
2 extent those treatment needs are relevant to the safety of the  
3 child;

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

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

11 [W.] CC. "relative" means a person related to  
12 another person:

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

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

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

22 [Y.] EE. "tribal court" means

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

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

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

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

12 [AA.] GG. "tribunal" means any judicial forum other  
13 than the court."

14 **SECTION 44.** Section 32A-1-8 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 17, as amended) is amended to read:

16 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT  
17 JURISDICTION--EXCEPTION.--

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

- 23 (1) a delinquent child;  
24 (2) a child of a family in need of  
25 court-ordered services or a child in need of services pursuant

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1 to the Family in Need of Court-Ordered Services Act;

2 (3) a neglected child;

3 (4) an abused child;

4 (5) a child subject to adoption; or

5 (6) a child subject to placement for a

6 developmental disability or a mental disorder.

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

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

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

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

24 ~~E. A tribal court order pertaining to an Indian~~  
25 ~~child in an action under the Children's Code shall be~~

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1 ~~recognized and enforced by the district court for the judicial~~  
2 ~~district in which the tribal court is located. A tribal court~~  
3 ~~order pertaining to an Indian child that accesses state~~  
4 ~~resources shall be recognized and enforced pursuant to the~~  
5 ~~provisions of intergovernmental agreements entered into by the~~  
6 ~~Indian child's tribe and the department or another state~~  
7 ~~agency. An Indian child residing on or off a reservation, as a~~  
8 ~~citizen of this state, shall have the same right to services~~  
9 ~~that are available to other children of the state, pursuant to~~  
10 ~~intergovernmental agreements. The cost of the services~~  
11 ~~provided to an Indian child shall be determined and provided~~  
12 ~~for in the same manner as services are made available to other~~  
13 ~~children of the state, utilizing tribal, state and federal~~  
14 ~~funds and pursuant to intergovernmental agreements. The tribal~~  
15 ~~court, as the court of original jurisdiction, shall retain~~  
16 ~~jurisdiction and authority over the Indian child.~~

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

20 SECTION 45. Section 32A-1-11 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 20, as amended) is amended to read:

22 "32A-1-11. PETITION--FORM AND CONTENT.--A petition  
23 initiating proceedings pursuant to the provisions of Chapter  
24 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the  
25 Matter of ....., a child", and shall set forth with

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1 specificity:

2 A. the facts necessary to invoke the jurisdiction  
3 of the court;

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

6 C. the name, birth date and residence address of  
7 the child;

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

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

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

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

25 SECTION 46. Section 32A-3B-16 NMSA 1978 (being Laws 1993,  
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1 Chapter 77, Section 88, as amended) is amended to read:

2 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

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

6 (1) the ability of the parent and child to  
7 share a residence;

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

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

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

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

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

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

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

25 (9) the availability of services recommended

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1 in the treatment plan;

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

6 ~~[(11) whether the placement preferences set~~  
7 ~~forth in the federal Indian Child Welfare Act of 1978 or the~~  
8 ~~placement preferences of the child's Indian tribe have been~~  
9 ~~incorporated into the plan. When placement preferences have~~  
10 ~~not been incorporated into the plan, an explanation shall be~~  
11 ~~clearly stated and supported;~~

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

15 ~~(13)]~~ (11) when the child is an undocumented  
16 immigrant child, whether the family services plan included  
17 referral to nongovernmental agencies that may be able to assist  
18 the child, and family when appropriate, in addressing  
19 immigration status.

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

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

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

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

4 (a) the department;

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

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

9 (4) if the evidence indicates that the child's  
10 educational needs are not being met, the local education agency  
11 may be joined as a party and directed to assess the child's  
12 needs within forty-five days, attempt to meet the child's  
13 educational needs and document its efforts to meet the child's  
14 educational needs.

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

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

25 SECTION 47. Section 32A-4-6 NMSA 1978 (being Laws 1993,  
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1 Chapter 77, Section 100, as amended) is amended to read:

2 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

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

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

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

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

22 (c) the child has been abandoned;

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

25 (e) the department is not available to

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1 conduct a safety assessment in a timely manner; or

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

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

12 B. A child shall not be taken into protective  
13 custody solely on the grounds that the child's parent, guardian  
14 or custodian refuses to consent to the administration of a  
15 psychotropic medication to the child.

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

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

24 ~~[E. If a child taken into custody is an Indian~~  
25 ~~child and is alleged to be neglected or abused, the department~~

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1 ~~shall give notice to the agent of the Indian child's tribe in~~  
2 ~~accordance with the federal Indian Child Welfare Act of 1978.~~

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

6 SECTION 48. Section 32A-4-18 NMSA 1978 (being Laws 1993,  
7 Chapter 77, Section 112, as amended) is amended to read:

8 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--  
9 PROBABLE CAUSE.--

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

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

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

25 (1) the child is suffering from an illness or

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1 injury, and the parent, guardian or custodian is not providing  
2 adequate care for the child;

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

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

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

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

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

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

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

25 E. Reasonable efforts shall be made to preserve and

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

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

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

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

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

22 G. At the conclusion of the custody hearing, the  
23 court may order the respondent or the child alleged to be  
24 neglected or abused, or both, to undergo appropriate diagnostic  
25 examinations or evaluations. If the court determines that



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

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

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

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

25 SECTION 49. Section 32A-4-21 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 115, as amended) is amended to read:

2 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,  
3 REPORTS AND EXAMINATIONS.--

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

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

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

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

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1 interest;

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

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

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

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

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

21 (8) a statement of the child's medical and  
22 educational background;

23 ~~[(9) if the child is an Indian child, whether  
24 the placement preferences set forth in the federal Indian Child  
25 Welfare Act of 1978 or the placement preferences of the child's~~

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1 ~~Indian tribe were followed, and whether the child's case plan~~  
2 ~~provides for maintaining the child's cultural ties;~~

3           ~~(10)~~ (9) a case plan that sets forth steps to  
4 ensure that the child's physical, medical, cultural,  
5 psychological and educational needs are met and that sets forth  
6 services to be provided to the child and the child's parents to  
7 facilitate permanent placement of the child in the parent's  
8 home;

9           ~~(11)~~ (10) for children sixteen years of age  
10 and older, a plan for developing the specific skills the child  
11 requires for successful transition into independent living as  
12 an adult, regardless of whether the child is returned to the  
13 child's parent's home;

14           ~~(12)~~ (11) a case plan that sets forth steps  
15 to ensure that the child's educational needs are met and, for a  
16 child fourteen years of age or older, a case plan that  
17 specifically sets forth the child's educational and post-  
18 secondary goals; and

19           ~~(13)~~ (12) a description of the child's  
20 foster care placement and whether it is appropriate in terms of  
21 the educational setting and proximity to the school the child  
22 was enrolled in at the time of the placement, including plans  
23 for travel for the child to remain in the school in which the  
24 child was enrolled at the time of placement, if reasonable and  
25 in the child's best interest.

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

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

8 SECTION 50. Section 32A-4-22 NMSA 1978 (being Laws 1993,  
9 Chapter 77, Section 116, as amended) is amended to read:

10 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED  
11 CHILD.--

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

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

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

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

25 (4) the wishes of the child as to the child's

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1 placement;

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

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

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

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

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

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

24 (11) whether reasonable efforts were made by  
25 the department to prevent removal of the child from the home

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1 prior to placement in substitute care and whether reasonable  
2 efforts were made to attempt reunification of the child with  
3 the natural parent; and

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

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

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

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

25 (2) place the child under protective

1 supervision of the department; or

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

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

6 (b) the department.

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

16 (1) the efforts would be futile; or

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

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

25 E. The court may order reasonable visitation

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1 between a child placed in the custody of the department and the  
2 child's siblings or any other person who may significantly  
3 affect the child's best interest, if the court finds the  
4 visitation to be in the child's best interest.

5 F. Unless a child found to be neglected or abused  
6 is also found to be delinquent, the child shall not be confined  
7 in an institution established for the long-term care and  
8 rehabilitation of delinquent children.

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

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

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

24 ~~J.]~~ I. When the court determines pursuant to  
25 Subsection C of this section that no reasonable efforts at

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1 reunification are required, the court shall conduct, within  
2 thirty days, a permanency hearing as described in Section  
3 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to  
4 implement and finalize the permanency plan in a timely manner."

5 SECTION 51. Section 32A-4-25 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 119, as amended) is amended to read:

7 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL  
8 JUDGMENTS.--

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

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1 permitted to attend and comment to the court.

2 B. The court shall conduct subsequent periodic  
3 judicial reviews of the dispositional order within six months  
4 of the conclusion of the permanency hearing or, if a motion has  
5 been filed for termination of parental rights or permanent  
6 guardianship, within six months of the decision on that motion  
7 and every six months thereafter. Prior to a subsequent  
8 periodic judicial review, the department shall submit a  
9 progress report to the council or any designated substitute  
10 care review board. Prior to any judicial review by the court  
11 pursuant to this section, the substitute care review board may  
12 review the dispositional order or the continuation of the order  
13 and the department's progress report and report its findings  
14 and recommendations to the court.

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

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

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

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

25 (1) all parties, including:

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

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

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

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

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

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

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

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1 by the court in its dispositional order and efforts to maintain  
2 contact with the child were diligent and made in good faith.

3 The court shall determine the extent of compliance with the  
4 treatment plan and whether progress is being made toward  
5 establishing a stable and permanent placement for the child.

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

11 G. At the conclusion of any hearing held pursuant  
12 to this section, the court shall make findings of fact and  
13 conclusions of law.

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

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

25 (1) dismiss the action and return the child to

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

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

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

11 (4) transfer or continue legal custody of the  
12 child to:

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

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

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

22 (5) continue the child in the legal custody of  
23 the department with or without any required parental  
24 involvement in a treatment plan; provided that reasonable  
25 efforts shall be made to preserve and reunify the family, with

1 the paramount concern being the child's health and safety  
2 unless the court finds that such efforts are not required. The  
3 court may determine that reasonable efforts are not required to  
4 be made when the court finds that:

5 (a) the efforts would be futile; or  
6 (b) the parent, guardian or custodian  
7 has subjected the child to aggravated circumstances;

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

14 (7) if during a judicial review the court  
15 finds that the child's parent, guardian or custodian has not  
16 complied with the court-ordered treatment plan, the court may  
17 order:

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

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

23 [J.] I. Dispositional orders entered pursuant to  
24 this section shall remain in force for a period of six months,  
25 except for orders that provide for transfer of the child to the

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1 child's noncustodial parent or to a permanent guardian.

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

11           **SECTION 52.** Section 32A-4-27 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 121, as amended) is amended to read:

13           "32A-4-27. INTERVENTION--PERSONS PERMITTED TO  
14 INTERVENE.--

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

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

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

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

25                       (4) a person who wishes to become the child's

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1 permanent guardian.

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

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

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

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

16 D. The persons described in this subsection shall  
17 be permitted to intervene during any stage of an abuse or  
18 neglect proceeding ~~[(+)]~~ a parent of the child who is not named  
19 in the petition alleging abuse or neglect ~~[and~~

20 ~~(2) when the child is an Indian child, the~~  
21 ~~child's Indian tribe].~~

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

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

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

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

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

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

18 SECTION 53. Section 32A-4-28 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 122, as amended) is amended to read:

20 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION  
21 DECREE.--

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

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1 terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~[E. The termination of parental rights involving a~~  
25 ~~child subject to the federal Indian Child Welfare Act of 1978~~

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1 ~~shall comply with the requirements of that act.~~

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

24           **SECTION 54.** Section 32A-4-29 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 123, as amended) is amended to read:

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1 "32A-4-29. TERMINATION PROCEDURE.--

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

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

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

9 (2) the grounds for termination and the facts  
10 and circumstances supporting the grounds for termination;

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

14 (4) whether the child resides or has resided  
15 with a foster parent who desires to adopt [~~this~~] the child;

16 (5) whether the motion is in contemplation of  
17 adoption;

18 (6) the relationship or legitimate interest of  
19 the moving party to the child; and

20 (7) whether the child is subject to the  
21 [~~federal Indian Child Welfare Act of 1978 and, if so:~~

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

24 ~~(b) the specific actions taken by the~~  
25 ~~moving party to notify the parents' tribes and the results of~~

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1 ~~the contacts, including the names, addresses, titles and~~  
2 ~~telephone numbers of the persons contacted. Copies of any~~  
3 ~~correspondence with the tribes shall be attached as exhibits to~~  
4 ~~the petition; and~~

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

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

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

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

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

19 (1) litigate a motion for the termination of  
20 parental rights that was initially filed by another party; or

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

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

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



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

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

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

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

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

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

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1 placed in a family setting;

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

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

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

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

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

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

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

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

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

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

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

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

21           SECTION 55. Section 32A-4-32 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 126, as amended) is amended to read:

23           "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

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

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1                   B. A motion for permanent guardianship shall set  
2 forth:

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

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

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

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

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

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

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

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

24                                 ~~(c) what specific efforts were made to~~  
25 ~~comply with the placement preferences set forth in the federal~~

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1 ~~Indian Child Welfare Act of 1978 or the placement preferences~~  
2 ~~of the appropriate Indian tribes]~~ any additional requirements  
3 for that motion as provided pursuant to the Indian Family  
4 Protection Act.

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

8 D. Notice of the filing of the motion, accompanied  
9 by a copy of the motion, shall be served by the moving party on  
10 any parent who has not previously been made a party to the  
11 proceeding, the parents of the child, foster parents with whom  
12 the child is residing, the foster parent, preadoptive parent or  
13 relative providing care for the child with whom the child has  
14 resided for six months, the child's custodian, the department,  
15 any person appointed to represent any party, including the  
16 child's guardian ad litem, and any other person the court  
17 orders provided with notice. Service shall be in accordance  
18 with the Children's Court Rules for the service of motions.

19 ~~[In a case involving a child subject to the federal Indian~~  
20 ~~Child Welfare Act of 1978, notice shall also be sent by~~  
21 ~~certified mail to the Indian tribes of the child's parents and~~  
22 ~~to any "Indian custodian" as that term is defined in 25 U.S.C.~~  
23 ~~Section 1903(6).]~~ Further notice shall not be required to a  
24 parent who has been provided notice previously pursuant to  
25 Section 32A-4-17 NMSA 1978 and who failed to make an

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1 appearance.

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

8 F. A judgment of the court vesting permanent  
9 guardianship with an individual divests the biological or  
10 adoptive parent of legal custody or guardianship of the child,  
11 but is not a termination of the parent's rights. A child's  
12 inheritance rights from and through the child's biological or  
13 adoptive parents are not affected by this proceeding.

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

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

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

25 (1) the child's parent is able and willing to

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1 properly care for the child; or

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

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

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

16 SECTION 56. Section 32A-4-33 NMSA 1978 (being Laws 1993,  
17 Chapter 77, Section 127, as amended) is amended to read:

18 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

19 A. All records or information concerning a party to  
20 a neglect or abuse proceeding, including social records,  
21 diagnostic evaluations, psychiatric or psychological reports,  
22 videotapes, transcripts and audio recordings of a child's  
23 statement of abuse or medical reports incident to or obtained  
24 as a result of a neglect or abuse proceeding or that were  
25 produced or obtained during an investigation in anticipation of

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1 or incident to a neglect or abuse proceeding shall be  
2 confidential and closed to the public.

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

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

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

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

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

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

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

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

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

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

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

9 ~~(11)]~~ (10) a foster parent, if the records are  
10 those of a child currently placed with that foster parent or of  
11 a child being considered for placement with that foster parent  
12 and the records concern the social, medical, psychological or  
13 educational needs of the child;

14 ~~[(12)]~~ (11) school personnel involved with the  
15 child if the records concern the child's social or educational  
16 needs;

17 ~~[(13)]~~ (12) a grandparent, parent of a  
18 sibling, relative or fictive kin, if the records or information  
19 pertain to a child being considered for placement with that  
20 grandparent, parent of a sibling, relative or fictive kin and  
21 the records or information concern the social, medical,  
22 psychological or educational needs of the child;

23 ~~[(14)]~~ (13) health care or mental health  
24 professionals involved in the evaluation or treatment of the  
25 child or of the child's parents, guardian, custodian or other

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1 family members;

2                   ~~[(15)]~~ (14) protection and advocacy  
3 representatives pursuant to the federal Developmental  
4 Disabilities Assistance and Bill of Rights Act and the federal  
5 Protection and Advocacy for Mentally Ill Individuals Amendments  
6 Act of 1991;

7                   ~~[(16)]~~ (15) children's safehouse organizations  
8 conducting investigatory interviews of children on behalf of a  
9 law enforcement agency or the department;

10                   ~~[(17)]~~ (16) representatives of the federal  
11 government or their contractors authorized by federal statute  
12 or regulation to review, inspect, audit or otherwise have  
13 access to records and information pertaining to neglect or  
14 abuse proceedings;

15                   ~~[(18)]~~ (17) any person or entity attending a  
16 meeting arranged by the department to discuss the safety,  
17 well-being and permanency of a child, when the parent or child,  
18 or parent or legal custodian on behalf of a child younger than  
19 fourteen years of age, has consented to the disclosure; and

20                   ~~[(19)]~~ (18) any other person or entity, by  
21 order of the court, having a legitimate interest in the case or  
22 the work of the court.

23                   C. A parent, guardian or legal custodian whose  
24 child has been the subject of an investigation of abuse or  
25 neglect where no petition has been filed shall have the right

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1 to inspect any medical report, psychological evaluation, law  
2 enforcement reports or other investigative or diagnostic  
3 evaluation; provided that any identifying information related  
4 to the reporting party or any other party providing information  
5 shall be deleted. The parent, guardian or legal custodian  
6 shall also have the right to the results of the investigation  
7 and the right to petition the court for full access to all  
8 department records and information except those records and  
9 information the department finds would be likely to endanger  
10 the life or safety of any person providing information to the  
11 department.

12 D. Whoever intentionally and unlawfully releases  
13 any information or records closed to the public pursuant to the  
14 Abuse and Neglect Act or releases or makes other unlawful use  
15 of records in violation of that act is guilty of a petty  
16 misdemeanor and shall be sentenced pursuant to the provisions  
17 of Section 31-19-1 NMSA 1978.

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

22 SECTION 57. Section 32A-5-7 NMSA 1978 (being Laws 1993,  
23 Chapter 77, Section 134, as amended) is amended to read:

24 "32A-5-7. CLERK OF THE COURT--DUTIES.--

25 A. The clerk of the court shall file pleadings

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1 captioned pursuant to the provisions of Section 32A-5-9 NMSA  
2 1978. The clerk of the court shall not file incorrectly  
3 captioned pleadings.

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

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

17 D. The clerk of the court shall mail a copy of the  
18 decree of adoption to the department within one working day of  
19 the entry of the decree of adoption. The attorney for the  
20 petitioner shall provide to the clerk of the court a copy of  
21 the decree of adoption and a stamped envelope addressed to the  
22 department as specified in department ~~[regulation]~~ rules.

23 ~~[E. In any adoption involving an Indian child, the~~  
24 ~~clerk of the court shall provide the secretary of the interior~~  
25 ~~with a copy of any decree of adoption or adoptive placement~~

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1 ~~order and other information as required by the federal Indian~~  
2 ~~Child Welfare Act of 1978. The attorney for the petitioner~~  
3 ~~shall provide to the clerk of the court a copy of an adoption~~  
4 ~~decree, an adoptive placement order, any other information~~  
5 ~~required by the federal Indian Child Welfare Act of 1978 and a~~  
6 ~~stamped envelope addressed to the secretary of the interior.~~

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

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

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

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

17 **SECTION 58.** Section 32A-5-13 NMSA 1978 (being Laws 1993,  
18 Chapter 77, Section 140, as amended) is amended to read:

19 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--  
20 PLACEMENT ORDER--CERTIFICATION.--

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

25 B. Only a pre-placement study that has been

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1 prepared or updated within one year immediately prior to the  
2 date of placement, approving the petitioner as an appropriate  
3 adoptive parent, shall be filed with the court prior to  
4 issuance of a placement order, except as provided in Subsection  
5 C of Section 32A-5-12 NMSA 1978.

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

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

21 ~~[E.]~~ D. When a person or agency that wants to be  
22 certified to perform pre-placement studies files false  
23 documentation with the department, the person or agency shall  
24 be subject to the provisions of Section 32A-5-42 NMSA 1978.

25 ~~[F.]~~ E. A request for placement shall be filed and  
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1 verified by the petitioner and shall allege:

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

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

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

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

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

20 (6) the existence of any court orders that are  
21 known to the petitioner and that regulate custody, visitation  
22 or access to the adoptee, copies of which shall be attached to  
23 the request for placement as exhibits; if copies of any such  
24 court orders are unavailable at the time of filing the request  
25 for placement, the copies shall be filed prior to the issuance

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1 of the order of placement;

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

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

8 (9) whether the adoptee is subject to the  
9 ~~[federal Indian Child Welfare Act of 1978]~~ Indian Family  
10 Protection Act, and, if so, the petition shall allege the  
11 actions taken to comply with the ~~[federal Indian Child Welfare~~  
12 ~~Act of 1978]~~ Indian Family Protection Act and all other  
13 allegations required pursuant to that act;

14 (10) whether the adoption is subject to the  
15 Interstate Compact on the Placement of Children and what  
16 specific actions have been taken to comply with the Interstate  
17 Compact on the Placement of Children; and

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

21 ~~[G.]~~ F. The request for placement shall be served  
22 on all parties entitled to receive notice of the filing of a  
23 petition for adoption, as provided in Section 32A-5-27 NMSA  
24 1978. An order allowing placement may be entered prior to  
25 service of the request for placement.

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1           [~~H.~~] G. A hearing and the court decision on the  
2 request for placement shall occur within thirty days of the  
3 filing of the request.

4           [~~F.~~] H. As part of any court order authorizing  
5 placement under this section, the court shall find whether the  
6 pre-placement study complies with Section 32A-5-14 NMSA 1978  
7 and that the time requirements concerning placement set forth  
8 in this section have been met."

9           **SECTION 59.** Section 32A-5-15 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 142, as amended) is amended to read:

11           "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

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

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

18                       (1) the child has been abandoned by the  
19 parents;

20                       (2) the child has been a neglected or abused  
21 child and the court finds that the conditions and causes of the  
22 neglect and abuse are unlikely to change in the foreseeable  
23 future; or

24                       (3) the child has been placed in the care of  
25 others, including care by other relatives, either by a court

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1 order or otherwise, and the following conditions exist:

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

4 (b) the parent-child relationship has  
5 disintegrated;

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

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

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

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

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

21 ~~[D. The termination of parental rights involving an~~  
22 ~~Indian child shall comply with the requirements of the federal~~  
23 ~~Indian Child Welfare Act of 1978.]"~~

24 SECTION 60. Section 32A-5-16 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 143, as amended) is amended to read:

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1 "32A-5-16. TERMINATION PROCEDURES.--

2 A. A proceeding to terminate parental rights may be  
3 initiated in connection with or prior to an adoption  
4 proceeding. Venue shall be in the court for the county in  
5 which the child is physically present or in the county from  
6 which the child was placed. The proceeding may be initiated by  
7 any of the following:

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

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

- 18 (1) the date, place of birth and marital  
19 status of the child, if known;  
20 (2) the grounds for termination and the facts  
21 and circumstances supporting the grounds for termination;  
22 (3) the names and addresses of the person,  
23 authorized agency or agency officer to whom custody might be  
24 transferred;  
25 (4) the basis for the court's jurisdiction;

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1 (5) that the petition is in contemplation of  
2 adoption;

3 (6) the relationship or legitimate interest of  
4 the applicant to the child; and

5 (7) whether the child is an Indian child ~~[and,~~  
6 ~~if so,~~

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

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

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

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

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1 the District Courts for the service of process in a civil  
2 action in this state, with the exception that the department  
3 may be served by certified mail. The notice shall state  
4 specifically that the person served shall file a written  
5 response to the petition within twenty days if the person  
6 intends to contest the termination. [~~In any case involving an~~  
7 ~~Indian child, notice shall also be served on the child's Indian~~  
8 ~~tribe pursuant to the federal Indian Child Welfare Act of~~  
9 ~~1978.~~]

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

24 E. The court shall, upon request, appoint counsel  
25 for an indigent parent who is unable to obtain counsel or if,

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1 in the court's discretion, appointment of counsel for an  
2 indigent parent is required in the interest of justice.  
3 Payment for the appointed counsel shall be made by the  
4 petitioner pursuant to the rate determined by the supreme court  
5 of New Mexico for court-appointed attorneys.

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

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

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

24 I. If the court terminates parental rights, it  
25 shall appoint a custodian for the child. Upon entering an

1 order terminating the parental rights of a parent, the court  
2 may commit the child to the custody of the department, the  
3 petitioner or an agency willing to accept custody for the  
4 purpose of placing the child for adoption. [~~In any termination~~  
5 ~~proceeding involving an Indian child, the court shall, in any~~  
6 ~~termination order, make specific findings that the requirements~~  
7 ~~of the federal Indian Child Welfare Act of 1978 were met~~].

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

12 SECTION 61. Section 32A-5-17 NMSA 1978 (being Laws 1993,  
13 Chapter 77, Section 144, as amended) is amended to read:

14 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE  
15 REQUIRED.--

16 A. Consent to adoption or relinquishment of  
17 parental rights to the department or an agency licensed by the  
18 state of New Mexico shall be required of the following:

19 (1) the adoptee, if fourteen years of age or  
20 older, except when the court finds that the adoptee does not  
21 have the mental capacity to give consent;

22 (2) the adoptee's mother;

23 (3) the adoptee's proposed adoptive parent;

24 (4) the presumed father of the adoptee;

25 (5) the adoptee's acknowledged father;

1 (6) the department or the agency to whom the  
2 adoptee has been relinquished that has placed the adoptee for  
3 adoption or the department or the agency that has custody of  
4 the adoptee; provided, however, that the court may grant the  
5 adoption without the consent of the department or the agency if  
6 the court finds the adoption is in the best interests of the  
7 adoptee and that the withholding of consent by the department  
8 or the agency is unreasonable; and

9 (7) the guardian of the adoptee's parent when,  
10 pursuant to provisions of the Uniform Probate Code, that  
11 guardian has express authority to consent to adoption.

12 ~~[B. In any adoption involving an Indian child,~~  
13 ~~consent to adoption by the petitioner or relinquishment of~~  
14 ~~parental rights shall be obtained from an "Indian custodian",~~  
15 ~~as required pursuant to the provisions of the federal Indian~~  
16 ~~Child Welfare Act of 1978.~~

17 ~~C.]~~ B. A consent or relinquishment executed by a  
18 parent who is a minor shall not be subject to avoidance or  
19 revocation solely by reason of the parent's minority."

20 SECTION 62. Section 32A-5-21 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 148, as amended) is amended to read:

22 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

23 A. Except when consent or relinquishment is  
24 implied, a consent or relinquishment by a parent shall be in  
25 writing, signed by the parent consenting or relinquishing and



1 shall state the following:

2 (1) the date, place and time of execution;

3 (2) the date and place of birth of the adoptee  
4 and any names by which the adoptee has been known;

5 (3) if a consent to adoption is being  
6 executed, the identity of the petitioner, if known, or when the  
7 adoption is an independent adoption and the identity of the  
8 petitioner is unknown, how the petitioner was selected by the  
9 consenting parent;

10 (4) if a relinquishment of parental rights is  
11 being executed, the name and address of the agency or the  
12 department;

13 (5) that the person executing the consent or  
14 relinquishment has been counseled, as provided in Section  
15 32A-5-22 NMSA 1978, by a certified counselor of the person's  
16 choice and with this knowledge the person is voluntarily and  
17 unequivocally consenting to the adoption of the named adoptee;

18 (6) that the consenting party has been advised  
19 of the legal consequences of the relinquishment or consent  
20 either by independent legal counsel or a judge;

21 (7) if the adoption is closed, that all  
22 parties understand that the court will not enforce any contact,  
23 regardless of any informal agreements that have made between  
24 the parties;

25 (8) that the consent to or relinquishment for

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1 adoption cannot be withdrawn;

2 (9) that the person executing the consent or  
3 relinquishment has received or been offered a copy of the  
4 consent or relinquishment;

5 (10) that a counseling narrative has been  
6 prepared pursuant to department [~~regulations~~] rules and is  
7 attached to the consent or relinquishment;

8 (11) that the person who performed the  
9 counseling meets the requirements set forth in the Adoption  
10 Act; and

11 (12) that the person executing the consent or  
12 relinquishment waives further notice of the adoption  
13 proceedings.

14 B. The consent of an adoptee, if fourteen years of  
15 age or older, shall be in writing, signed by the adoptee,  
16 consenting to the adoption and shall state the following:

17 (1) the date, place and time of execution;

18 (2) the date and place of birth of the adoptee  
19 and any names by which the adoptee has been known;

20 (3) the name of the petitioner;

21 (4) that the adoptee has been counseled  
22 regarding the consent pursuant to department [~~regulation~~]  
23 rules;

24 (5) that the adoptee has been advised of the  
25 legal consequences of the consent;

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1 (6) that the adoptee is voluntarily and  
2 unequivocally consenting to the adoption;

3 (7) that the consent or relinquishment cannot  
4 be withdrawn;

5 (8) that a counseling narrative has been  
6 prepared pursuant to department [~~regulation~~] rules and is  
7 attached to the consent; and

8 (9) that the person who performed the  
9 counseling meets the requirements set forth in the Adoption  
10 Act.

11 C. In cases when the consent or relinquishment is  
12 in English and English is not the first language of the  
13 consenting or relinquishing person, the person taking the  
14 consent or relinquishment shall certify in writing that the  
15 document has been read and explained to the person whose  
16 consent or relinquishment is being taken in that person's first  
17 language, by whom the document was so read and explained and  
18 that the meaning and implications of the document are fully  
19 understood by the person giving the consent or relinquishment.

20 D. Unconditional consents or relinquishments are  
21 preferred, and, therefore, conditional consents or  
22 relinquishments shall be for good cause and approved by the  
23 court. However, if the condition is for a specific petitioner  
24 or the condition requires the other parent to consent before  
25 the decree of adoption is entered, the condition shall be

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1 deemed for good cause. In any event, all conditions permitted  
2 under this subsection shall be met within one hundred eighty  
3 days of the execution of the conditional consent or  
4 relinquishment or the conclusion of any litigation concerning  
5 the petition for adoption. The court may grant an extension of  
6 this time for good cause.

7 E. Agency or department consents required pursuant  
8 to the provisions of Section 32A-5-17 NMSA 1978 shall state the  
9 following:

- 10 (1) the date, place and time of execution;  
11 (2) the date and place of birth of the adoptee  
12 and any names by which the adoptee has been known;  
13 (3) the name of the petitioner; and  
14 (4) the consent of the agency or department.

15 F. A consent or relinquishment taken by an  
16 individual appointed to take consents or relinquishments by an  
17 agency shall be notarized, except that a consent or  
18 relinquishment signed in the presence of a judge need not be  
19 notarized. A hearing before the court for the purpose of  
20 taking a consent or relinquishment shall be heard by the court  
21 within seven days of request for setting.

22 G. No consent to adoption or relinquishment of  
23 parental rights shall be valid if executed within forty-eight  
24 hours after the adoptee's birth. ~~[Consent to adoption or~~  
25 ~~relinquishment of parental rights involving an Indian child~~

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1 ~~shall comply with the more stringent requirements of the~~  
2 ~~federal Indian Child Welfare Act of 1978.~~

3 ~~H. The requirements of a consent to adoption or~~  
4 ~~relinquishment of parental rights involving an Indian child~~  
5 ~~and the rights of a parent of an Indian child to withdraw the~~  
6 ~~consent or relinquishment shall be governed by the relevant~~  
7 ~~provisions of the federal Indian Child Welfare Act of 1978.~~

8 ~~F.]~~ H. A consent to or relinquishment for adoption  
9 shall not be withdrawn prior to the entry of a decree of  
10 adoption unless the court finds, after notice and opportunity  
11 to be heard is afforded to the petitioner, to the person  
12 seeking the withdrawal and to the agency placing a child for  
13 adoption, that the consent or relinquishment was obtained by  
14 fraud. In no event shall a consent or relinquishment be  
15 withdrawn after the entry of a decree of adoption."

16 **SECTION 63.** Section 32A-5-26 NMSA 1978 (being Laws 1993,  
17 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,  
18 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended  
19 to read:

20 "32A-5-26. PETITION--CONTENT.--A petition for adoption  
21 shall be filed and verified by the petitioner and shall allege:

22 A. the full name, age and place and duration of  
23 residence of the petitioner and, if married, the place and date  
24 of marriage; the date and place of any prior marriage,  
25 separation or divorce; and the name of any present or prior

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1 spouse;

2 B. the date and place of birth of the adoptee, if  
3 known;

4 C. the places where the adoptee has lived within  
5 the past three years and the names and addresses of the persons  
6 with whom the adoptee has lived, unless the adoptee is in the  
7 custody of an agency or the department, in which case the  
8 petitioner shall state the name and address of the agency or  
9 the department's county office from which the child was placed;

10 D. the birth name of the adoptee, any other names  
11 by which the adoptee has been known and the adoptee's proposed  
12 new name; provided that in the case of an agency adoption, if  
13 the petitioner and the biological parents have not agreed to  
14 the release of the adoptee's identity to the other person, the  
15 birth name and any other names by which the adoptee has been  
16 known shall be filed with the court as separate documents at  
17 the time the petition is filed;

18 E. where the adoptee is residing at the time of the  
19 filing of the petition and, if the adoptee is not living with  
20 the petitioner, when the adoptee will commence living with the  
21 petitioner;

22 F. that the petitioner desires to establish a  
23 parent and child relationship with the adoptee and that the  
24 petitioner is a fit and proper person able to care and provide  
25 for the adoptee's welfare;

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1 G. the existence of any court orders, including  
2 placement orders, that are known to the petitioner and that  
3 regulate custody, visitation or access to the adoptee, copies  
4 of which shall accompany and be attached to the petition as  
5 exhibits;

6 H. the relationship, if any, of the petitioner to  
7 the adoptee;

8 I. the name and address of the placing agency, if  
9 any;

10 J. the names and addresses of all persons from whom  
11 consents or relinquishments are required, attaching copies of  
12 those obtained and alleging the facts that excuse or imply the  
13 consents or relinquishments of the others; provided that if the  
14 petitioner has not agreed to the release of [~~his~~] the  
15 petitioner's identity to the parent or if the parent has not  
16 agreed to the release of [~~his~~] the parent's identity to the  
17 petitioner, the names and addresses of all persons from whom  
18 consents or relinquishments are required shall be filed with  
19 the court as separate documents at the time the petition for  
20 adoption is filed;

21 K. whether the adoption will be an open adoption,  
22 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

23 L. when consent of the child's father is alleged to  
24 be unnecessary, the results of a search of the putative father  
25 registry;

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1 M. whether the adoptee is an Indian child ~~[and, if~~  
2 ~~so, the petition shall allege:~~

3 ~~(1) the tribal affiliation of the adoptee's~~  
4 ~~parents;~~

5 ~~(2) what specific actions have been taken and~~  
6 ~~by whom to notify the parents' tribe and the results of the~~  
7 ~~contact, including the names, addresses, titles and telephone~~  
8 ~~numbers of the persons contacted. Copies of any correspondence~~  
9 ~~with the Indian tribe shall be attached as exhibits to the~~  
10 ~~petition; and~~

11 ~~(3) what specific efforts were made to comply~~  
12 ~~with the placement preferences set forth in the federal Indian~~  
13 ~~Child Welfare Act of 1978 or the placement preferences of the~~  
14 ~~appropriate Indian tribe];~~

15 N. whether the adoption is subject to the  
16 Interstate Compact on the Placement of Children and, if so, a  
17 copy of the interstate compact form indicating approval shall  
18 be attached as an exhibit to the petition;

19 O. whether the adoptee is foreign-born and, if so,  
20 copies of the child's passport and United States visa and of  
21 all documents demonstrating that the adoptee is legally free  
22 for adoption, including a certificate from the United States  
23 secretary of state that certifies that the adoption is a  
24 convention adoption;

25 P. whether the adoption is a convention adoption

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1 and, if so, the petition shall allege:

2 (1) that the country in which the child has  
3 been residing is a party to the Hague Convention on Protection  
4 of Children and Co-operation in Respect of Intercountry  
5 Adoption;

6 (2) that the agency or person who is providing  
7 the adoption service has been approved as an accrediting  
8 entity; and

9 (3) that the certificate issued by the United  
10 States secretary of state that certifies the adoption as a  
11 convention adoption has been filed with the court; and

12 Q. the name, address and telephone number of the  
13 agency or individual who has agreed to conduct the post-  
14 placement report in accordance with Section 32A-5-31 NMSA 1978,  
15 if different than the agency or individual who prepared the  
16 pre-placement study in accordance with Section 32A-5-13 NMSA  
17 1978."

18 SECTION 64. Section 32A-5-27 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 154, as amended) is amended to read:

20 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

21 A. The petition for adoption shall be served by the  
22 petitioner on the following, unless it has been previously  
23 waived in writing:

24 (1) the department, by providing a copy to the  
25 court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

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1 (2) any person, agency or institution whose  
2 consent or relinquishment is required by Section 32A-5-17 NMSA  
3 1978, unless the notice has been previously waived;

4 (3) any acknowledged father of the adoptee;

5 (4) the legally appointed custodian or  
6 guardian of the adoptee;

7 (5) the spouse of any petitioner who has not  
8 joined in the petition;

9 (6) the spouse of the adoptee;

10 (7) the surviving parent of a deceased parent  
11 of the adoptee;

12 (8) any person known to the petitioner having  
13 custody of or visitation with the adoptee under a court order;

14 (9) any person in whose home the child has  
15 resided for at least two months within the preceding six  
16 months;

17 (10) the agency or individual authorized to  
18 investigate the adoption under Section 32A-5-13 NMSA 1978; and

19 (11) any other person designated by the court.

20 B. Notice shall not be served on the following:

21 (1) an alleged father; and

22 (2) a person whose parental rights have been  
23 relinquished or terminated.

24 C. The petitioner shall provide the clerk of the  
25 court with a copy of the petition for adoption, to be mailed to

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1 the department pursuant to the provisions of Section 32A-5-7  
2 NMSA 1978.

3 ~~[D. In an adoption in which the adoptee is an~~  
4 ~~Indian child, in addition to the notice required pursuant to~~  
5 ~~Subsection A of this section, notice of pendency of the~~  
6 ~~adoption proceeding shall be served by the petitioner on the~~  
7 ~~appropriate Indian tribe and on an "Indian custodian" pursuant~~  
8 ~~to the provisions of the federal Indian Child Welfare Act of~~  
9 ~~1978.~~

10 ~~E.]~~ D. The notice shall state that the person  
11 served shall respond to the petition within twenty days if the  
12 person intends to contest the adoption and shall state that the  
13 failure to so respond shall be treated as a default and the  
14 person's consent to the adoption shall not be required.  
15 Provided, however, that this provision shall not apply to an  
16 agency, the department or an investigator preparing the post-  
17 placement report pursuant to Section 32A-5-31 NMSA 1978. If an  
18 agency, the department or an investigator preparing the post-  
19 placement report wants to contest the adoption, it shall notify  
20 the court within twenty days after completion of the post-  
21 placement report.

22 ~~[F.]~~ E. Service shall be made pursuant to the Rules  
23 of Civil Procedure for the District Courts. If the whereabouts  
24 of a parent whose consent is required is unknown, the  
25 investigator, department or agency charged with investigating

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1 the adoption under Section 32A-5-13 NMSA 1978 shall investigate  
2 the whereabouts of the parent and shall file by affidavit the  
3 results of the investigation with the court. Upon a finding by  
4 the court that information as to the whereabouts of a parent  
5 has been sufficiently investigated and is still insufficient to  
6 effect service in accordance with the Rules of Civil Procedure  
7 for the District Courts, the court shall issue an order  
8 providing for service by publication.

9 ~~[G.]~~ F. As to any other person for whom notice is  
10 required under Subsection A of this section, service by  
11 certified mail, return receipt requested, shall be sufficient.  
12 If the service cannot be completed after two attempts, the  
13 court shall issue an order providing for service by  
14 publication.

15 ~~[H.]~~ G. The notice required by this section may be  
16 waived in writing by the person entitled to notice.

17 ~~[I.]~~ H. Proof of service of the notice on all  
18 persons for whom notice is required by this section shall be  
19 filed with the court before any hearing adjudicating the rights  
20 of the persons."

21 **SECTION 65.** Section 32A-5-28 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 155) is amended to read:

23 "32A-5-28. RESPONSE TO PETITION.--

24 A. Any person responding to a notice of a petition  
25 for adoption shall file a verified response to the petition

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1 within the time limits specified in Section ~~[32-5-25]~~ 32A-5-25  
2 NMSA 1978.

3 B. The verified response shall follow the Rules of  
4 Civil Procedure for the District Courts and shall allege:

5 (1) the existence of any court orders known to  
6 the respondent that regulate custody, visitation or access to  
7 the adoptee but have not been filed with the court at the time  
8 the response is filed and copies of which shall be attached to  
9 the response;

10 (2) the relationship, if any, of the  
11 respondent to the adoptee;

12 (3) whether the adoptee is an Indian child;  
13 ~~[and, if so, the response shall set forth all allegations~~  
14 ~~required under the federal Indian Child Welfare Act of 1978]~~

15 (4) whether the adoption is subject to the  
16 Interstate Compact on the Placement of Children; and

17 (5) whether the adoption is an open adoption."

18 SECTION 66. Section 32A-5-36 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,  
20 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended  
21 to read:

22 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF  
23 ADOPTION.--

24 A. The court shall conduct hearings on the petition  
25 for adoption so as to determine the rights of the parties in a

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1 manner that protects confidentiality. The petitioner and the  
2 adoptee shall attend the hearing unless the court for good  
3 cause waives a party's appearance. Good cause may include  
4 burdensome travel requirements.

5 B. The petitioner shall file all documents required  
6 pursuant to the Adoption Act and serve the department with  
7 copies of the documents simultaneously with the request for  
8 hearing on the petition for adoption.

9 C. If any person who claims to be the biological  
10 father of the adoptee has appeared before the court and filed a  
11 written petition or response seeking custody and assuming  
12 financial responsibility of the adoptee, the court shall hear  
13 evidence as to the merits of the petition. If the court  
14 determines by a preponderance of the evidence that the person  
15 is not the biological father of the adoptee or that the child  
16 was conceived through an act of rape or incest, the petition  
17 shall be dismissed and the person shall no longer be a party to  
18 the adoption. If the court determines that the person is the  
19 biological father of the adoptee, the court shall further  
20 determine whether the person qualifies as a presumed or  
21 acknowledged father whose consent is necessary for adoption,  
22 pursuant to Section 32A-5-17 NMSA 1978. If the court  
23 determines that the person is the biological father, but does  
24 not qualify as a presumed or acknowledged father, the court  
25 shall adjudicate the person's rights pursuant to the provisions

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1 of the Adoption Act.

2 D. If the mother or father of the adoptee has  
3 appeared before the court and filed a written petition that  
4 alleges the invalidity of the mother's or father's own consent  
5 or relinquishment for adoption previously filed in the adoption  
6 proceeding, the court shall hear evidence as to the merits of  
7 the petition. If the court determines that the allegations  
8 have not been proved by a preponderance of the evidence, the  
9 petition shall be dismissed. If the court determines that the  
10 allegations of the petition are true, the consent or  
11 relinquishment for adoption shall be held invalid, and the  
12 court shall determine, in the best interests of the adoptee,  
13 the person who shall have custody of the child.

14 E. The petitioner shall present and prove each  
15 allegation set forth in the petition for adoption by clear and  
16 convincing evidence.

17 F. The court shall grant a decree of adoption if it  
18 finds that the petitioner has proved by clear and convincing  
19 evidence that:

20 (1) the court has jurisdiction to enter a  
21 decree of adoption affecting the adoptee;

22 (2) the adoptee has been placed with the  
23 petitioner for a period of ninety days if the adoptee is under  
24 the age of one year at the time of placement or for a period of  
25 one hundred eighty days if the adoptee is one year of age or

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1 older at the time of placement, unless, for good cause shown,  
2 the requirement is waived by the court;

3 (3) all necessary consents, relinquishments,  
4 terminations or waivers have been obtained;

5 (4) the post-placement report required by  
6 Section 32A-5-31 NMSA 1978 has been filed with the court;

7 (5) service of the petition for adoption has  
8 been made or dispensed with as to all persons entitled to  
9 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

10 (6) at least ninety days have passed since the  
11 filing of the petition for adoption, except the court may  
12 shorten or waive this period of time in cases in which the  
13 child is being adopted by a stepparent, a relative or a person  
14 named in the child's deceased parent's will pursuant to  
15 provisions of Section 32A-5-12 NMSA 1978;

16 (7) the petitioner is a suitable adoptive  
17 parent and the best interests of the adoptee are served by the  
18 adoption;

19 (8) if visitation between the biological  
20 family and the adoptee is contemplated, that the visitation is  
21 in the child's best interests;

22 (9) if the adoptee is foreign-born, the child  
23 is legally free for adoption and a certificate issued by the  
24 United States secretary of state that certifies the adoption as  
25 a convention adoption has been filed with the court;



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1 (10) the results of the criminal records check  
2 required pursuant to provisions of the Adoption Act have been  
3 received and considered;

4 ~~[(11) if the adoptee is an Indian child, the~~  
5 ~~requirements set forth in the federal Indian Child Welfare Act~~  
6 ~~of 1978 have been met;~~

7 ~~(12) when the child is an Indian child, the~~  
8 ~~placement preferences set forth in the federal Indian Child~~  
9 ~~Welfare Act of 1978 or the placement preferences of the~~  
10 ~~appropriate Indian tribes have been followed or, if not~~  
11 ~~followed, good cause for noncompliance has been clearly stated~~  
12 ~~and supported, as required by the federal Indian Child Welfare~~  
13 ~~Act of 1978, and provision has been made to ensure that the~~  
14 ~~Indian child's cultural ties to the Indian child's tribe are~~  
15 ~~protected and fostered]; and~~

16 ~~[(13)]~~ (11) if the adoption involves the  
17 interstate placement of the adoptee, the requirements of the  
18 Interstate Compact on the Placement of Children have been met.

19 G. In addition to the findings required by  
20 Subsection F of this section, the court in any decree of  
21 adoption shall make findings with respect to each allegation of  
22 the petition.

23 H. If the court determines that any of the  
24 requirements for a decree of adoption pursuant to provisions of  
25 Subsections E and F of this section have not been met or that

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1 the adoption is not in the best interests of the adoptee, the  
2 court shall deny the petition and determine, in the best  
3 interests of the adoptee, the person who shall have custody of  
4 the child.

5 I. The decree of adoption shall include the new  
6 name of the adoptee and shall not include any other name by  
7 which the adoptee has been known or the names of the former  
8 parents. The decree of adoption shall order that from the date  
9 of the decree, the adoptee shall be the child of the petitioner  
10 and accorded the status set forth in Section 32A-5-37 NMSA  
11 1978.

12 J. A decree of adoption shall be entered within six  
13 months of the filing of the petition if the adoptee is under  
14 the age of one year at the time of placement or twelve months  
15 if the adoptee is one year of age or older at the time of  
16 placement, except that the time may be extended by the court  
17 upon request of any of the parties or upon the court's own  
18 motion for good cause shown.

19 K. A decree of adoption may not be attacked upon  
20 the expiration of one year from the entry of the decree.

21 ~~[provided, however, that in any adoption involving an Indian~~  
22 ~~child, the Indian child's parent or Indian custodian may~~  
23 ~~petition the court pursuant to the provisions of the federal~~  
24 ~~Indian Child Welfare Act of 1978 to invalidate the adoption.~~

25 L. ~~In any adoption involving an Indian child, the~~

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1 ~~clerk of the court shall provide the secretary of the interior~~  
2 ~~with a copy of any decree of adoption or adoptive placement~~  
3 ~~order and other information as required by the federal Indian~~  
4 ~~Child Welfare Act of 1978.]"~~

5 SECTION 67. Section 32A-5-40 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 167, as amended) is amended to read:

7 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

8 A. After the decree of adoption has been entered,  
9 all court files containing records of judicial proceedings  
10 conducted pursuant to the provisions of the Adoption Act and  
11 records submitted to the court in the proceedings shall be kept  
12 in separate locked files withheld from public inspection. Upon  
13 application to the clerk of the court, the records shall be  
14 open to inspection by a former parent if the adoptee is  
15 eighteen years of age or older, by an adoptee if the adoptee is  
16 eighteen years of age or older at the time application is made  
17 for inspection, by the adoptive parent if the adoptee is under  
18 eighteen years of age at the time application is made for  
19 inspection, by the attorney of any party, by any agency that  
20 has exercised guardianship over or legal custody of a child who  
21 was the adoptee in the particular proceeding, by the department  
22 or by an adoptee's sibling; provided that the identity of the  
23 former parents and of the adoptee shall be kept confidential  
24 unless the former parents and the adoptee have consented to the  
25 release of identity. In the absence of consent to release

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1 identity, the inspection shall be limited to the following  
2 nonidentifying information:

3 (1) the health and medical histories of the  
4 adoptee's biological parents;

5 (2) the health and medical history of the  
6 adoptee;

7 (3) the adoptee's general family background,  
8 including ancestral information, without name references or  
9 geographical designations;

10 (4) physical descriptions; and

11 (5) the length of time the adoptee was in the  
12 care and custody of persons other than the petitioner.

13 B. After the entry of the decree of adoption, at  
14 any time, a former parent may file with the court, with the  
15 placing agency or with the department:

16 (1) a consent or refusal or an amended consent  
17 or refusal to be contacted;

18 (2) a release of the former parent's identity  
19 to the adoptee if the adoptee is eighteen years of age or older  
20 or to the adoptive parent if the adoptee is under eighteen  
21 years of age; or

22 (3) information regarding the former parent's  
23 location or changes in background information.

24 C. Any changes to post-adoption access to records  
25 referred to in Subsection B of this section shall be filed with

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1 the court, the placing agency and the department.

2 D. The consent or refusal referred to in Subsection  
3 B of this section shall be honored by the court, the placing  
4 agency or the department unless for good cause the court orders  
5 to the contrary.

6 E. At any time, an adoptee who is eighteen years of  
7 age or older may file with the court, a placing agency or the  
8 department:

9 (1) information regarding the adoptee's  
10 location; or

11 (2) a consent or refusal regarding opening of  
12 the adoptee's adoption file to the adoptee's former parents.

13 F. If mutual authorizations for release of  
14 identifying information by the parties are not available, an  
15 adoptee who is eighteen years of age or older, the biological  
16 parents if the adoptee is eighteen years of age or older or the  
17 adoptive parents if the adoptee is under the age of eighteen  
18 years may file a motion with the court to obtain the release of  
19 identifying information for good cause shown. When hearing the  
20 motion, the court shall give primary consideration to the best  
21 interests of the adoptee, but shall also give due consideration  
22 to the interests of the members of the adoptee's former and  
23 adoptive families. In determining whether good cause exists  
24 for the release of identifying information, the court shall  
25 consider:

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- 1 (1) the reason the information is sought;
- 2 (2) any procedure available for satisfying the
- 3 petitioner's request without disclosing the name or identity of
- 4 another individual, including appointment of a confidential
- 5 intermediary to contact the individual and request specific
- 6 information;
- 7 (3) whether the individual about whom
- 8 identifying information is sought is alive;
- 9 (4) the preference, to the extent known, of
- 10 the adoptee, the adoptive parents, the former parents and other
- 11 members of the adoptee's former and adoptive families and the
- 12 likely effect of disclosure on those individuals;
- 13 (5) the age, maturity and expressed needs of
- 14 the adoptee;
- 15 (6) the report or recommendation of any
- 16 individual appointed by the court to assess the request for
- 17 identifying information; and
- 18 (7) any other factor relevant to an assessment
- 19 of whether the benefit to the adoptee of releasing the
- 20 information sought will be greater than the benefit to any
- 21 other individual of not releasing the information.

22 ~~[G. An adoptee shall have the right, for the~~  
23 ~~purpose of enrolling in the adoptee's tribe of origin, to~~  
24 ~~access information kept by the department. Information needed~~  
25 ~~by an adoptee to enroll in his tribe of origin may be requested~~

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1 ~~from the department by the following persons:~~

2 ~~(1) the adoptee, after he reaches eighteen~~  
3 ~~years of age;~~

4 ~~(2) when the adoptee is a child, his adoptive~~  
5 ~~parent or guardian; or~~

6 ~~(3) an adoptee's descendant or, if the~~  
7 ~~adoptee's descendant is a child, an adult representative for~~  
8 ~~the descendant.~~

9 ~~H. When the department receives a request for~~  
10 ~~information regarding an adoptee's tribe of origin, the~~  
11 ~~department shall examine its records to determine if the~~  
12 ~~adoptee is of Indian descent. If the department establishes~~  
13 ~~that an adoptee is of Indian descent, the department shall~~

14 ~~(1) provide the requester with the tribal~~  
15 ~~affiliation of the adoptee's biological parents;~~

16 ~~(2) submit to the tribe information necessary~~  
17 ~~to establish tribal enrollment for the adoptee and to protect~~  
18 ~~any rights flowing from the adoptee's tribal relationship; and~~

19 ~~(3) provide notice to the requester of the~~  
20 ~~department's submission of information to the adoptee's~~  
21 ~~tribe.]"~~

22 SECTION 68. Section 40-10B-5 NMSA 1978 (being Laws 2001,  
23 Chapter 167, Section 5, as amended) is amended to read:

24 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

25 A. A petition seeking the appointment of a guardian

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1 pursuant to the Kinship Guardianship Act may be filed only by:

2 (1) a kinship caregiver;

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

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

10 (a) the purpose and effect of the  
11 guardianship;

12 (b) that the parent has the right to be  
13 served with the petition and notices of hearings in the action;  
14 and

15 (c) that the parent may appear in court  
16 to contest the guardianship.

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

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

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

25 (3) the legal residence of the child and the



1 place where the child resides, if different from the legal  
2 residence;

3 (4) the name and address of the petitioner;

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

6 (6) the names and addresses of the parents of  
7 the child;

8 (7) the names and addresses of persons having  
9 legal custody of the child;

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

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

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

18 (11) whether the child is an Indian child or  
19 there is reason to know that the child is an Indian child, and  
20 subject to provisions of the [~~federal Indian Child Welfare Act~~  
21 ~~of 1978~~] Indian Family Protection Act and, if so:

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

24 (b) the specific actions taken by the  
25 petitioner to notify the parents' tribes and the results of the

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1 contacts, including the names, addresses, titles and telephone  
2 numbers of the persons contacted, and copies of correspondence  
3 with the tribe; and

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

6 SECTION 69. Section 40-10B-6 NMSA 1978 (being Laws 2001,  
7 Chapter 167, Section 6, as amended) is amended to read:

8 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

9 A. The court shall set a date for hearing on the  
10 petition, which date shall be no less than thirty and no more  
11 than ninety days from the date of filing the petition.

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

14 (1) the children, youth and families  
15 department if there is any pending matter relating to the child  
16 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

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

19 (3) the parents of the child;

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

22 (5) if the child is an Indian child or there  
23 is reason to know the child is an Indian child as defined in  
24 the [~~federal Indian Child Welfare Act of 1978~~] Children's Code,  
25 the [~~appropriate~~] Indian tribe and [~~any~~] the child's parent or

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1 "Indian custodian", together with a notice of pendency of the  
2 guardianship proceedings [~~pursuant to the provisions of the~~  
3 ~~federal Indian Child Welfare Act of 1978~~].

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

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

12 SECTION 70. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1  
13 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws  
14 2005, Chapter 189, Section 37, as amended) are repealed.

15 SECTION 71. SEVERABILITY.--If any provision of the Indian  
16 Family Protection Act, related provisions in other sections of  
17 New Mexico law or the application of such laws to any person or  
18 circumstances is held invalid for any reason in a court of  
19 competent jurisdiction, the invalidity does not affect other  
20 provisions of the Indian Family Protection Act and related  
21 laws.

22 SECTION 72. APPLICABILITY.--The provisions of Section 8  
23 of this act apply to tribal-state agreements that become  
24 effective on or after July 1, 2022.

25 SECTION 73. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is July 1, 2022.

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