

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 135

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

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

16 G. "fictive kin" means a person:

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

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

25 (3) chosen by an Indian child who is fourteen

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1 years of age or older, regardless of when the relationship
2 between the person and the Indian child was established, when
3 it is in the best interest of the child to identify that person
4 as fictive kin; and

5 H. "foster care placement" means:

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

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

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

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

21 A. In a child custody proceeding involving an
22 Indian child, the court shall determine and make an order of
23 the domicile and residence of the Indian child and whether the
24 Indian child is under the jurisdiction of a tribal court.

25 B. The department shall communicate with the Indian

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

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

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

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

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

24 (1) document in writing the details
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; and

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

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

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

20 (2) identifying, notifying and inviting
21 representatives of the Indian child's tribe to participate in
22 family team meetings, permanency planning, resolution of
23 placement issues and providing support and services to the
24 Indian child's family;

25 (3) conducting or causing to be conducted a

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1 diligent search for the Indian child's extended family members
2 and contacting and consulting with the Indian child's extended
3 family members and adult relatives to provide family structure
4 and support for the Indian child and the Indian child's
5 parents;

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

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

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

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

24 (8) monitoring progress and participation of
25 the Indian child's parents, guardian, Indian custodian or

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

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

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

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

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

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

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

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

24 F. the court shall make a written determination at
25 the conclusion of the proceeding as to whether the department

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1 has made active efforts to maintain or reunite the Indian child
2 with the Indian child's family. The court shall make a written
3 determination based on evidence on the record as to whether the
4 department has made active efforts to provide services and
5 support to preserve and reunify the family."

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

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

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

14 (1) the pending proceedings;

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

17 (a) intervention; and

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

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

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

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1 B. In the event that the department attempts to
2 enter into discussion with an Indian tribe and the tribe does
3 not respond within the time frame provided for in the Indian
4 Family Protection Act, the department may proceed; provided
5 that the absence of a tribal response does not:

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

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

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

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

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

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

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

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

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

22 D. If the Indian child's tribe declines to accept
23 jurisdiction, the court retains jurisdiction. A parent,
24 guardian, Indian custodian or the Indian child's tribe retains
25 the right to move the court to transfer the proceeding to the

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1 tribal court at any stage of the proceeding. A transfer motion
2 may be made orally on the record or in writing.

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

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

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

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

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

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

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

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

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

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

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1 advanced stage;

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

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

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

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

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

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

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

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

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

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

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

4 (3) shall direct the department to:

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

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

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

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

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

24 B. The department may enter into a tribal-state
25 agreement with any Indian tribe outside of this state if there

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1 are children residing in this state who are members of or are
2 eligible to become members of that Indian tribe.

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

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

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

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

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

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

18 E. A tribal-state agreement shall:

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

23 (2) if services provided by the Indian tribe
24 are unavailable, provide for the department's use of community
25 services and resources developed specifically for Indian

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1 families and that have demonstrated experience and capacity to
2 provide culturally relevant and effective services to children.

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

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

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

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

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

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

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

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

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

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

21 D. A court of this state that has been asked to
22 make a temporary emergency order for temporary jurisdiction,
23 upon being informed that a child custody proceeding has been
24 commenced in, or a child custody determination has been made
25 by, a tribal court having jurisdiction shall immediately

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1 communicate with that tribal court to resolve the emergency,
2 protect the safety of the parties and the Indian child and
3 determine a period for the duration of the temporary order."

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

6 "[NEW MATERIAL] INVESTIGATIONS.--

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

10 (1) the investigation;

11 (2) the involvement of the Indian child;

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

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

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

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

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

25 and

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

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

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

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

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

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

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

24 (1) the court shall not order a foster care
 25 placement of an Indian child unless clear and convincing

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1 evidence is presented, including the testimony of one or more
2 qualified expert witnesses, demonstrating that the child's
3 continued custody by the child's parent, guardian or Indian
4 custodian is likely to result in serious emotional or physical
5 damage to the child;

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

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

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

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1 result in serious emotional or physical damage to the child.

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

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

21 E. A foster care placement or termination of
22 parental rights proceeding shall not be held until at least ten
23 days after receipt of notice by the parent, guardian or Indian
24 custodian and the Indian tribe or the secretary pursuant to
25 this section; provided that the parent, guardian or Indian

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1 custodian or the Indian tribe shall, upon request, be granted
2 up to twenty additional days to prepare for that proceeding.

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

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

12 "[NEW MATERIAL] INTERVENTION.--

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

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

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

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

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

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

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

10 A. the Indian child's tribe;

11 B. the tribal affiliations of the Indian child's
12 parents;

13 C. active efforts made to provide remedial services
14 and rehabilitative programs designed to prevent the breakup of
15 the Indian family and that these efforts were proven to be
16 unsuccessful and the reasons these efforts were unsuccessful,
17 if known;

18 D. active efforts made to comply with the notice
19 requirements pursuant to the Indian Family Protection Act,
20 including results of the contact and the names, addresses,
21 titles and telephone numbers of the persons contacted. Copies
22 of any correspondence with the Indian child's tribe shall be
23 attached as exhibits to the petition; and

24 E. active efforts made to comply with the placement
25 preferences set forth in the Indian Family Protection Act or

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1 the placement preferences of the Indian child's tribe."

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

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

6 A. The department shall keep a record of:

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

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

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

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

22 B. If the department files a petition in court, the
23 department shall inform the court of which Indian tribe or
24 tribes the Indian child is a member or eligible for membership.

25 C. If there is no dispute, the court shall make a

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1 record of the Indian child's tribe.

2 D. If there is a dispute as to which Indian tribe
3 is the Indian child's tribe, the court shall, after a hearing,
4 record the Indian tribe with which the Indian child has more
5 significant contacts, taking into consideration:

6 (1) the preference of each of the Indian
7 child's parents;

8 (2) the duration of the Indian child's current
9 or prior domicile or residence on or near the reservation of
10 each Indian tribe;

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

13 (4) the interests asserted by each Indian
14 tribe;

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

17 (6) the Indian tribe's custom and tradition;
18 and

19 (7) if the court determines that the Indian
20 child is of sufficient age and capacity to meaningfully self-
21 identify the Indian child's tribe, the self-identification of
22 the Indian child.

23 E. If an Indian child is a member of or is eligible
24 for membership in more than one Indian tribe, the court shall
25 permit an Indian tribe, in addition to the Indian child's tribe

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1 as determined pursuant to Subsection D of this section, to
2 participate in the child custody proceeding as an intervenor.

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

7 G. The Indian child's tribe or any Indian tribe
8 claiming the Indian child as a member, whether or not the
9 Indian tribe has intervened, shall have the right to examine
10 all reports or other documents filed with the court upon which
11 a decision with respect to the action may be based."

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

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

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

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

25 (1) knowledgeable about the prevailing social

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1 and cultural standards of the tribe and is familiar with the
2 family and child-rearing practices of the Indian child's tribe;
3 and

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

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

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

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

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

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

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

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

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

25 SECTION 18. A new section of the Children's Code is

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1 enacted to read:

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

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

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

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

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

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

24 (2) the Indian child's parent or guardian
25 fully understands the English language or that the voluntary

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1 placement agreement was interpreted into the primary language
2 of the Indian child's parent or guardian;

3 (3) the child is an Indian child;

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

6 (5) the Indian child's parent or guardian is
7 entering into the voluntary placement voluntarily without any
8 threat or removal of the Indian child's parent's or guardian's
9 child by the department;

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

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

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

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

22 E. The request for voluntary placement shall be
23 initiated in writing by the Indian child's parent or guardian,
24 and if good cause is shown and the requirements of Subsection D
25 of this section are met, the department may accept temporary

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1 custody or placement and care responsibility. Placement and
2 care responsibility means that the department is legally
3 accountable for the day-to-day care and protection of the
4 Indian child in foster care. Responsibility for placement and
5 care allows the department to make placement decisions about
6 the Indian child, such as where the child is placed and the
7 type of placement that is most appropriate for the Indian
8 child.

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

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

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

25 I. An Indian child shall not remain in voluntary

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1 placement for longer than one hundred eighty consecutive days
2 or for more than one hundred eighty days in a calendar year;
3 provided that a child may remain in voluntary placement up to
4 an additional one hundred eighty consecutive days upon order of
5 the court. If the Indian child's parent or guardian seeks to
6 extend the voluntary placement, the department shall file a
7 petition for an extension of voluntary placement prior to the
8 expiration of the initial one-hundred-eighty-day period. The
9 court shall hold a hearing and make a finding within the
10 initial one-hundred-eighty-day period that the extension of
11 voluntary placement is in the best interest of the Indian
12 child.

13 J. If a request for an extension is not filed with
14 the court prior the initial one-hundred-eighty-day period, the
15 agreement expires. Within thirty days of the expiration of the
16 initial agreement, the court shall hold a review hearing to
17 determine if the voluntary placement should be extended.

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

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

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

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1 following rights to:

2 (1) have visitation with the child;

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

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

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

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

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

23 (7) make decisions of substantial legal
24 significance.

25 N. If new safety concerns are identified during the

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underscored material = new
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1 voluntary placement, the department shall not extend a
2 voluntary placement agreement, but instead shall make a new
3 report of suspected abuse or neglect to be screened for
4 determination of a new department investigation.

5 O. The voluntary placement shall adhere to and be
6 in accordance with the placement preferences set forth in the
7 Indian Family Protection Act.

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

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

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

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

20 B. In a termination of parental rights proceeding
21 in court, when the court knows an Indian child is involved, the
22 party seeking to effectuate the termination of parental rights
23 shall notify the Indian child's tribe by certified mail, with
24 return receipt requested, of the pending proceedings and of its
25 right to intervene. The court shall not order a termination of

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1 parental rights proceeding until the department files
2 documentation with the court that the Indian child's tribe
3 received notice of the proceeding.

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

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

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

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

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

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

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

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

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

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

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

25 A. In the case of a foster care placement of an

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1 Indian child, except as provided in Subsection C of this
2 section, the child shall be placed in the least restrictive
3 setting that:

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) conducting a relative search;

20 (c) interviewing relatives throughout
21 the case;

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

25 (e) providing the Indian child's tribe

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1 with all information regarding family members;

2 (f) offering relatives an expedited
3 foster care license;

4 (g) assisting relatives with practical
5 supports through the licensing process and actively supporting
6 relatives in overcoming barriers for licensure;

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

10 (i) providing continued contact,
11 including visitation; and

12 (j) providing access to culturally
13 appropriate interventions.

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

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

25 F. If there is a voluntary placement agreement in

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1 which the Indian child at first was not determined to be an
2 Indian child and was later determined to be an Indian child,
3 the agreement is voided.

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

8 H. In determining whether good cause exists, the
9 court shall not permit departure from the placement preferences
10 based on:

11 (1) the socioeconomic status of the placement;

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

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

17 (4) the extent of the participation of the
18 parents or the Indian child in tribal, cultural, social,
19 religious or political activities.

20 I. In the case of a foster care placement, adoptive
21 placement or guardianship of an Indian child pursuant to the
22 Children's Code, if the Indian child's tribe establishes a
23 different order of preference, the adoption agency or court
24 effecting the placement shall follow the order of preference
25 established by the Indian child's tribe. When appropriate, the

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1 preference of the Indian child or parent may be considered;
2 provided that the court has not terminated the parental rights
3 of the Indian child's parent.

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

8 K. Whenever there is any change in the placement of
9 an Indian child, the department shall file notice of the
10 placement change with the court.

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

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

22 (1) the party that asserts good cause exists
23 not to follow the placement preferences shall state the reasons
24 for this assertion in writing to the court. The court shall
25 make a record. The party making the assertion shall provide

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1 all parties to the case and the Indian child's tribe with a
2 copy;

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

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

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

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

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

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

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

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

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

9 C. If an Indian child is placed in a household that
10 does not include a foster parent or guardian who is a member of
11 the Indian child's tribe, upon placement and at least annually
12 thereafter, the department shall provide mandatory training to
13 the foster parent. Training shall address conditions on foster
14 care placements under federal, state and tribal law. The
15 department shall work with each Indian tribe in New Mexico to
16 develop the training required in this section."

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

19 "[NEW MATERIAL] ADOPTIVE AND GUARDIANSHIP PLACEMENTS--
20 MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To ensure that the
21 Indian Family Protection Act is fully implemented and that all
22 Indian children have the opportunity to maintain strong
23 connections to their culture, if the household into which an
24 Indian child is placed for adoption or guardianship does not
25 include a parent who is a member of the Indian child's tribe,

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

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

14 "[NEW MATERIAL] TRANSITION SERVICES.--

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

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

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

7 "[NEW MATERIAL] DISCHARGE HEARING.--

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

14 B. If the court finds that the department has not
15 made active efforts to meet all of the requirements of Section
16 32A-4-25.3 NMSA 1978 and of Subsection A of this section and
17 that termination of jurisdiction would be harmful to the Indian
18 child, the court may continue to exercise its jurisdiction.
19 The court may dismiss the case at any time after the Indian
20 child's eighteenth birthday for good cause."

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

23 "[NEW MATERIAL] ABUSE OR NEGLECT PREDISPOSITION STUDIES--
24 REPORTS AND EXAMINATIONS.--If the child is an Indian child, all
25 predispositional studies and reports shall follow the

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1 requirements listed in Section 32A-4-21 NMSA 1978 and shall
2 also document:

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

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

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

16 D. whether active efforts were made by the
17 department to place siblings in custody together, unless such
18 joint placement would be contrary to the safety or well-being
19 of any of the siblings in custody, and whether any siblings not
20 jointly placed have been provided reasonable visitation or
21 other ongoing interaction, unless visitation or other ongoing
22 interaction would be contrary to the safety or well-being of
23 any of the siblings; and

24 E. whether the department has provided notification
25 to the Indian child's tribe consistent with the requirements of

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1 the Indian Family Protection Act."

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

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

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

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

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

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

22 (3) that the placement preferences set forth
23 in the Indian Family Protection Act or the placement
24 preferences of the Indian child's tribe were followed. When
25 placement preferences have not been followed, good cause for

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1 noncompliance shall be clearly stated and supported by clear
2 and convincing evidence;

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

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

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

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

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

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

22 (1) whether the placement preferences set
23 forth in the Indian Family Protection Act have been
24 incorporated into a plan for family services made pursuant to
25 Section 32A-3B-15 NMSA 1978 or in a case plan as described in

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1 Section 32A-4-21 NMSA 1978; provided that if those placement
2 preferences are not incorporated into the plan for family
3 services or the case plan, good cause for noncompliance shall
4 be clearly stated and supported by clear and convincing
5 evidence;

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

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

13 (4) whether the Indian child's tribe was
14 included in developing the transition plan for the Indian child
15 and was provided a copy of the transition plan prior to the
16 presentation of the plan to the court.

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

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

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

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

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

22 "[NEW MATERIAL] PERIODIC REVIEW OF DISPOSITIONAL
23 JUDGMENTS.--

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

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1 judicial review:

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

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

9 B. The court shall determine during review of a
10 dispositional order whether 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 and
13 whether the department has made active efforts pursuant to the
14 Indian Family Protection Act to implement the Indian child's
15 treatment plan and reunify the Indian family.

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

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

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1 dispositional order."

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

4 "[NEW MATERIAL] PERMANENT GUARDIANSHIP.--

5 A. A motion for permanent guardianship shall set
6 forth:

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

9 (2) the specific actions taken by the
10 petitioner to notify the parents' Indian tribe and the results
11 of the contacts, including the names, addresses, titles and
12 telephone numbers of the persons contacted. Copies of any
13 correspondence with the Indian tribes shall be attached as
14 exhibits to the petition;

15 (3) the specific active efforts made to comply
16 with the placement preferences set forth in the Indian Family
17 Protection Act or the placement preferences of the appropriate
18 Indian tribes and any additional requirements for that motion
19 as provided pursuant to the Indian Family Protection Act; and

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

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

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1 the Indian Family Protection Act."

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

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

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

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

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

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

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

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

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1 Act.

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

7 C. The grounds for any attempted termination shall
8 be proved beyond a reasonable doubt.

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

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

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

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

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

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

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1 (1) the petitioner has proved by clear and
2 convincing evidence that the placement preferences set forth in
3 the Indian Family Protection Act, or the placement preferences
4 established by the Indian child's tribe, have been followed or,
5 if not followed, good cause for noncompliance has been proved
6 by clear and convincing evidence; and

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

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

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

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

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

25 F. Where the court finds that the parent's consent

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1 was obtained through fraud or duress, the court shall vacate
2 the final decree of adoption, order the consent revoked and
3 order that the child be returned to the parent."

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

6 "[NEW MATERIAL] RETURN OF CUSTODY.--Whenever an Indian
7 child has been adopted and the relationship between the parent
8 and the Indian child has been severed for any reason, a
9 biological parent, guardian or prior Indian custodian may
10 petition for return of custody, and there shall be a
11 presumption that the Indian child shall be returned to the
12 biological parent, guardian or prior Indian custodian, unless
13 the return of custody is not in the best interests of the
14 Indian child. The provisions of this section shall not be
15 deemed to conflict with other provisions pertaining to return
16 of custody in the Indian Family Protection Act."

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

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

24 A. the prioritization of placement of the Indian
25 child in accordance with the placement preferences provided by

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1 the Indian Family Protection Act;

2 B. the prevention of unnecessary out-of-home
3 placement of the Indian child;

4 C. the critical importance to the Indian child of
5 establishing, developing or maintaining a political, cultural,
6 social and spiritual relationship with the Indian child's tribe
7 and tribal community and with familial ties such as clanship
8 and family with unique cultural characteristics;

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

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

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

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

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

23 B. Upon application by an Indian person who has
24 reached the age of eighteen and who was the subject of an
25 adoptive placement in this state prior to the enactment of the

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1 Indian Family Protection Act, the court that entered the final
2 decree shall inform that Indian person of the tribal
3 affiliation, if any, of the Indian person's biological parents
4 and provide any other information necessary to protect any
5 rights flowing from the Indian person's tribal relationship.

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

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

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

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

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

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

7 (2) any information relating to tribal
8 membership or eligibility for membership of the adopted Indian
9 child;

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

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

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

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

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

22 B. The attorney for the petitioner shall provide to
23 the clerk of the court a copy of the decree of adoption, an
24 adoptive placement order or any other information required by
25 the Indian Family Protection Act and a stamped envelope

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1 addressed to the secretary marked "Confidential"."

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

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

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

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

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

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

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- 1 (3) the Indian child's guardian ad litem;
- 2 (4) the attorney, including a public defender,
3 representing the Indian child in any child custody proceeding
4 pursuant to the Indian Family Protection Act;
- 5 (5) department personnel and persons or
6 entities authorized by contract with the department to review,
7 inspect or otherwise have access to records or information in
8 the department's possession;
- 9 (6) any local substitute care review board or
10 any agency contracted to implement local substitute care review
11 boards;
- 12 (7) law enforcement officials, except when use
13 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 14 (8) district attorneys, except when use
15 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 16 (9) any state social services agency in any
17 state or when, in the opinion of the department it is in the
18 best interest of the Indian child, a governmental social
19 services agency of another country;
- 20 (10) an Indian child's tribe;
- 21 (11) a foster parent, if the records are those
22 of an Indian child currently placed with that foster parent or
23 of an Indian child being considered for placement with that
24 foster parent and the records concern the cultural, social,
25 medical, psychological or educational needs of the Indian

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1 child;

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

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

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

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

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

23 (17) representatives of the federal government
24 or their contractors authorized by federal statute or
25 regulation to review, inspect, audit or otherwise have access

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1 to records and information pertaining to neglect or abuse
2 proceedings;

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

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

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

24 D. In an adoption proceeding, all hearings held
25 pursuant to the Indian Family Protection Act shall be

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1 confidential and shall be held in closed court without
2 admittance of any person other than parties and their counsel
3 and the Indian child's tribe.

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

18 F. In an adoption proceeding, all information and
19 documentation provided for the purpose of full disclosure is
20 confidential. Documentation provided for the purpose of full
21 disclosure shall remain the property of the person making full
22 disclosure when a prospective adoptive parent decides not to
23 accept a placement. Immediately upon refusal of the placement,
24 the prospective adoptive parent shall return all full
25 disclosure documentation to the person providing full

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1 disclosure. A prospective adoptive parent shall not disclose
 2 any confidential information received during the full
 3 disclosure process, except as necessary to make a placement
 4 decision or to provide information to an Indian child's
 5 guardian ad litem or attorney or the court.

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

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

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

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

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

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

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

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

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

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

21 "[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The
22 department, through discussion with the Indian nations, tribes
23 and pueblos of the state, shall promulgate rules to implement
24 the provisions of the Indian Family Protection Act. The
25 administrative office of the courts shall also discuss with the

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

4 SECTION 43. A new section of Chapter 32A, Article 1 NMSA
5 1978 is enacted to read:

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

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

18 B. A court has reason to know that a child is an
19 Indian child if:

20 (1) each party in the proceeding, officer of
21 the court involved in the proceeding, Indian tribe or Indian
22 organization or agency informs the court that the child is an
23 Indian child;

24 (2) each party at the hearing, officer of the
25 court present at the hearing, Indian tribe or Indian

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1 organization or agency informs the court that information has
2 been discovered indicating that the child is an Indian child;

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

5 (4) the court is informed that the domicile or
6 residence of the child, the child's parent, the child's
7 guardian or the child's Indian custodian is on a reservation or
8 in an Alaska native village;

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

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

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

16 (8) any other indicia provided to the court or
17 within the court's knowledge indicate that the child is an
18 Indian child.

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

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

25 (2) require the department or another party to

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

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

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

19 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

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

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

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

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1 eight years old;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~(3) the biological child of a member of an~~
25 ~~Indian tribe]~~ Indian child, or a child whom there is reason to

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1 know is an Indian child, under eighteen years of age, who is
2 neither:

3 (1) married; or

4 (2) emancipated;

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

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

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

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

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

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

18 [N.] R. "Indian tribe" means [a federally
19 recognized Indian tribe, community or group pursuant to 25
20 U.S.C. Section 1903(1)] an Indian nation, tribe, pueblo or
21 other band, organized group or community of Indians recognized
22 as eligible for the services provided to Indians by the
23 secretary because of their status as Indians, including an
24 Alaska native village as defined in 43 U.S.C. Section 1602(c)
25 or a regional corporation as defined in 43 U.S.C. Section 1606.

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1 For the purposes of notification to and communication with a
 2 tribe as required in the Indian Family Protection Act, "Indian
 3 tribe" also includes those tribal officials and staff who are
 4 responsible for child welfare and social services matters;

5 [Ø.] S. "judge", when used without further
 6 qualification, means the judge of the court;

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

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

23 [Q.] V. "parent" or "parents" [~~includes~~] means a
 24 biological or adoptive parent if the biological or adoptive
 25 parent has a constitutionally protected liberty interest in the

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1 care and custody of the child or a person who has lawfully
2 adopted an Indian child pursuant to state law or tribal law or
3 tribal custom;

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

6 (1) reunification;

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

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

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

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

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

19 [F-] Y. "plan of care" means a plan created by a
20 health care professional intended to ensure the safety and
21 well-being of a substance-exposed newborn by addressing the
22 treatment needs of the child and any of the child's parents,
23 relatives, guardians, family members or caregivers to the
24 extent those treatment needs are relevant to the safety of the
25 child;

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

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

8 [~~W.~~] BB. "relative" means a person related to
9 another person:

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

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

16 CC. "reservation" means:

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

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

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

25 [~~X.~~] DD. "reunification" means either a return of

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1 the child to the parent or to the home from which the child was
2 removed or a return to the noncustodial parent;

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

5 [~~Y.~~] FF. "tribal court" means
6 [~~(1) a court established and operated pursuant~~
7 ~~to a code or custom of an Indian tribe; or~~
8 ~~(2) any administrative body of an Indian tribe~~
9 ~~that is vested with judicial authority] a court with
10 jurisdiction over child custody proceedings that is either a
11 court of Indian offenses, a court established and operated
12 under the law or custom of an Indian tribe or any other
13 administrative body that is vested by an Indian tribe with
14 authority over child custody proceedings;~~

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

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

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

24 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
25 JURISDICTION--EXCEPTION.--

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

6 (1) a delinquent child;

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

10 (3) a neglected child;

11 (4) an abused child;

12 (5) a child subject to adoption; or

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

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

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

22 ~~[E.]~~ D. During abuse or neglect proceedings in
23 which New Mexico is the home state, pursuant to the provisions
24 of the Uniform Child-Custody Jurisdiction and Enforcement Act,
25 the court shall have jurisdiction over both parents to

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1 determine the best interest of the child and to decide all
2 matters incident to the court proceedings.

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

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

25 ~~F.]~~ E. The court may acquire jurisdiction over a

1 Motor Vehicle Code or municipal traffic code violation as set
2 forth in Section 32A-2-29 NMSA 1978."

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

5 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
6 initiating proceedings pursuant to the provisions of Chapter
7 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the
8 Matter of, a child", and shall set forth with
9 specificity:

10 A. the facts necessary to invoke the jurisdiction
11 of the court;

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

14 C. the name, birth date and residence address of
15 the child;

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

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

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1 custody;

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

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

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

10 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

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

14 (1) the ability of the parent and child to
15 share a residence;

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

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

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

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

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

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1 custodian;

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

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

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

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

14 ~~[(11) whether the placement preferences set
15 forth in the federal Indian Child Welfare Act of 1978 or the
16 placement preferences of the child's Indian tribe have been
17 incorporated into the plan. When placement preferences have
18 not been incorporated into the plan, an explanation shall be
19 clearly stated and supported;~~

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

23 ~~(13)]~~ (11) when the child is an undocumented
24 immigrant child, whether the family services plan included
25 referral to nongovernmental agencies that may be able to assist

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1 the child, and family when appropriate, in addressing
2 immigration status.

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

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

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

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

12 (a) the department;

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

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

17 (4) if the evidence indicates that the child's
18 educational needs are not being met, the local education agency
19 may be joined as a party and directed to assess the child's
20 needs within forty-five days, attempt to meet the child's
21 educational needs and document its efforts to meet the child's
22 educational needs.

23 C. Unless a child of an adjudicated family in need
24 of court-ordered services is also found to be a delinquent
25 child, the child shall not be confined in an institution

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1 established for the long-term care and rehabilitation of
2 delinquent children or in a facility for the detention of
3 alleged delinquent children.

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

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

10 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

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

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

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

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

5 (c) the child has been abandoned;

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

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

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

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

20 B. A child shall not be taken into protective
21 custody solely on the grounds that the child's parent, guardian
22 or custodian refuses to consent to the administration of a
23 psychotropic medication to the child.

24 C. When a child is taken into custody by law
25 enforcement, the department is not compelled to place the child

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1 in an out-of-home placement and may release the child to the
2 child's parent, guardian or custodian.

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

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

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

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

16 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
17 PROBABLE CAUSE.--

18 A. When a child alleged to be neglected or abused
19 has been placed in the legal custody of the department or the
20 department has petitioned the court for temporary custody, a
21 custody hearing shall be held within ten days from the date the
22 petition is filed to determine if the child should remain in or
23 be placed in the department's custody pending adjudication.
24 Upon written request of the respondent, the hearing may be held
25 earlier, but in no event shall the hearing be held sooner than

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1 two days after the date the petition was filed.

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

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

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

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

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

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

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

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

24 (1) return legal custody of the child to the
25 child's parent, guardian or custodian upon such conditions as

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1 will reasonably ensure the safety and well-being of the child,
2 including protective supervision or maintenance at home by the
3 department or participation in programs or services aimed at
4 addressing the underlying causative factors that impact the
5 safety or well-being of the child; or

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

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

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

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

24 (2) return legal custody of the child to the
25 child's parent, guardian or custodian with conditions to

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1 provide for the safety and well-being of the child; and

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

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

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

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

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1 the earliest practicable time. While an appeal pursuant to
2 this section is pending, the court shall have jurisdiction to
3 take further action in the case pursuant to Subsection B of
4 Section 32A-1-17 NMSA 1978.

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

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

10 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
11 REPORTS AND EXAMINATIONS.--

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

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

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

23 (2) a statement of how an intervention plan is
24 designed to achieve placement of the child in the least
25 restrictive setting available, consistent with the best

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1 interests and special needs of the child, including a statement
2 of the likely harm the child may suffer as a result of being
3 removed from the parent's home, including emotional harm that
4 may result due to separation from the child's parents, and a
5 statement of how the intervention plan is designed to place the
6 child in close proximity to the parent's home without causing
7 harm to the child due to separation from parents, siblings or
8 any other person who may significantly affect the child's best
9 interest;

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

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

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

24 (6) a description of the home or facility in
25 which the child is placed and the appropriateness of the

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1 child's placement;

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

4 (8) a statement of the child's medical and
5 educational background;

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

11 ~~(10)]~~ (9) a case plan that sets forth steps to
12 ensure that the child's physical, medical, cultural,
13 psychological and educational needs are met and that sets forth
14 services to be provided to the child and the child's parents to
15 facilitate permanent placement of the child in the parent's
16 home;

17 ~~[(11)]~~ (10) for children sixteen years of age
18 and older, a plan for developing the specific skills the child
19 requires for successful transition into independent living as
20 an adult, regardless of whether the child is returned to the
21 child's parent's home;

22 ~~[(12)]~~ (11) a case plan that sets forth steps
23 to ensure that the child's educational needs are met and, for a
24 child fourteen years of age or older, a case plan that
25 specifically sets forth the child's educational and post-

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1 secondary goals; and

2 [~~(13)~~] (12) a description of the child's
3 foster care placement and whether it is appropriate in terms of
4 the educational setting and proximity to the school the child
5 was enrolled in at the time of the placement, including plans
6 for travel for the child to remain in the school in which the
7 child was enrolled at the time of placement, if reasonable and
8 in the child's best interest.

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

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

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

18 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
19 CHILD.--

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

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

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

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

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

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

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

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

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

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

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

7 (11) whether reasonable efforts were made by
8 the department to prevent removal of the child from the home
9 prior to placement in substitute care and whether reasonable
10 efforts were made to attempt reunification of the child with
11 the natural parent; and

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

20 ~~(13) if the child is an Indian child, whether~~
21 ~~the placement preferences set forth in the federal Indian Child~~
22 ~~Welfare Act of 1978 or the placement preferences of the child's~~
23 ~~Indian tribe have been followed and whether the Indian child's~~
24 ~~case plan provides for maintaining the Indian child's cultural~~
25 ~~ties. When placement preferences have not been followed, good~~

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1 ~~cause for noncompliance shall be clearly stated and supported].~~

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

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

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

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

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

14 (b) the department.

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

24 (1) the efforts would be futile; or

25 (2) the parent, guardian or custodian has

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1 subjected the child to aggravated circumstances.

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

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

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

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

22 H. Prior to a child being placed in the custody or
23 protective supervision of the department, the department shall
24 be provided with reasonable oral or written notification and an
25 opportunity to be heard. At any hearing held pursuant to this

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1 subsection, the department may appear as a party.

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

7 ~~J.]~~ I. When the court determines pursuant to
 8 Subsection C of this section that no reasonable efforts at
 9 reunification are required, the court shall conduct, within
 10 thirty days, a permanency hearing as described in Section
 11 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
 12 implement and finalize the permanency plan in a timely manner."

13 **SECTION 52.** Section 32A-4-25 NMSA 1978 (being Laws 1993,
 14 Chapter 77, Section 119, as amended) is amended to read:

15 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL
 16 JUDGMENTS.--

17 A. The initial judicial review shall be held within
 18 sixty days of the disposition. At the initial judicial review,
 19 the parties shall demonstrate to the court efforts made to
 20 implement the treatment plan approved by the court in its
 21 dispositional order. The court shall determine the extent to
 22 which the treatment plan has been implemented and make
 23 supplemental orders as necessary to ensure compliance with the
 24 treatment plan and the safety of the child. Prior to the
 25 initial judicial review, the department shall submit a copy of

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1 the adjudicatory order, the dispositional order and notice of
2 the initial judicial review to the council. The staff of the
3 council, or an entity contracting with the council, shall
4 review the case. If the staff or contracting entity determines
5 that the case meets the criteria established in council rules,
6 the staff or contracting entity shall designate the case for
7 review by a substitute care review board. A representative of
8 the substitute care review board, if designated, shall be
9 permitted to attend and comment to the court.

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

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

- 25 (1) a judicial review hearing conducted by the

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1 court; or

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

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

8 (1) all parties, including:

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

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

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

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

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

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

23 E. At any subsequent judicial review hearing held
24 pursuant to Subsection B of this section, the department and
25 all parties given notice pursuant to Subsection D of this

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1 section shall have the opportunity to present evidence and to
2 cross-examine witnesses. At the hearing, the department shall
3 show that it has made reasonable effort to implement any
4 treatment plan approved by the court in its dispositional order
5 and shall present a treatment plan consistent with the purposes
6 of the Children's Code for any period of extension of the
7 dispositional order. The respondent shall demonstrate to the
8 court that efforts to comply with the treatment plan approved
9 by the court in its dispositional order and efforts to maintain
10 contact with the child were diligent and made in good faith.
11 The court shall determine the extent of compliance with the
12 treatment plan and whether progress is being made toward
13 establishing a stable and permanent placement for the child.

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

19 G. At the conclusion of any hearing held pursuant
20 to this section, the court shall make findings of fact and
21 conclusions of law.

22 ~~[H. When the child is an Indian child, the court~~
23 ~~shall determine during review of a dispositional order 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 treatment~~
2 ~~plan provides for maintaining the child's cultural ties. When~~
3 ~~placement preferences have not been followed, good cause for~~
4 ~~noncompliance shall be clearly stated and supported.~~

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

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

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

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

19 (4) transfer or continue legal custody of the
20 child to:

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

23 (b) a relative or other individual who,
24 after study by the department or other agency designated by the
25 court, is found by the court to be qualified to receive and

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1 care for the child and is appointed as a permanent guardian of
2 the child; or

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

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

13 (a) the efforts would be futile; or

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

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

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

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

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

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

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

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

21 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO
 22 INTERVENE.--

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

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1 motion for affirmative relief:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 opportunity to be heard."

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

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

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

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

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

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

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

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

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

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

8 (b) the parent-child relationship has
9 disintegrated;

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

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

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

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

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

25 D. The department shall not file a motion, and

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1 shall not join a motion filed by another party, to terminate
2 parental rights:

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

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

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

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

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1 rights, to allow the department sufficient time to provide
 2 counseling for the child and otherwise prepare the child for
 3 the adoption. The adoption decree shall conform to the
 4 requirements of the Adoption Act and shall have the same force
 5 and effect as other adoption decrees entered pursuant to that
 6 act. The court clerk shall assign an adoption case number to
 7 the adoption decree."

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

10 "32A-4-29. TERMINATION PROCEDURE.--

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

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

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

18 (2) the grounds for termination and the facts
 19 and circumstances supporting the grounds for termination;

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

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

25 (5) whether the motion is in contemplation of

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1 adoption;

2 (6) the relationship or legitimate interest of
3 the moving party to the child; and

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

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

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

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

18 C. Notice of the filing of the motion, accompanied
19 by a copy of the motion, shall be served by the moving party on
20 all other parties, the foster parent, preadoptive parent or
21 relative providing care for the child with whom the child is
22 residing, foster parents with whom the child has resided for
23 six months within the previous twelve months, the custodian of
24 the child, any person appointed to represent any party and any
25 other person the court orders. Service shall be in accordance

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1 with the Children's Court Rules for the service of motions,
2 except that foster parents and attorneys of record in this
3 proceeding shall be served by certified mail. The notice shall
4 state specifically that the person served shall file a written
5 response to the motion within twenty days if the person intends
6 to contest the termination. [~~In any case involving a child~~
7 ~~subject to the federal Indian Child Welfare Act of 1978, notice~~
8 ~~shall also be sent by certified mail to the tribes of the~~
9 ~~child's parents and upon any "Indian custodian" as that term is~~
10 ~~defined in 25 U.S.C. Section 1903(6).~~] Further notice shall not
11 be required on a parent who has been provided notice previously
12 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
13 an appearance.

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

24 E. In any action for the termination of parental
25 rights brought by a party other than the department and

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1 involving a child in the legal custody of the department, the
2 department may:

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

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

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

9 G. When a child has been in foster care for not
10 less than fifteen of the previous twenty-two months, the
11 department shall file a motion to terminate parental rights,
12 unless:

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

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

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

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1 adoptive family;

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

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

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

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

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

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

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

25 (1) the date of the first judicial finding

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1 that the child has been abused or neglected; or

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

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

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

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

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

24 [~~M.~~] L. When the court denies a motion to terminate
25 parental rights, the court shall issue appropriate orders

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1 immediately. The court shall direct the parties to file a
 2 stipulated order and interim plan or a request for hearing
 3 within thirty days of the date of the hearing denying the
 4 termination of parental rights."

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

7 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

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

10 B. A motion for permanent guardianship shall set
 11 forth:

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

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

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

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

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

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

25 ~~[(a) the tribal affiliations of the~~

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1 child's parents;

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

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

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

17 D. Notice of the filing of the motion, accompanied
18 by a copy of the motion, shall be served by the moving party on
19 any parent who has not previously been made a party to the
20 proceeding, the parents of the child, foster parents with whom
21 the child is residing, the foster parent, preadoptive parent or
22 relative providing care for the child with whom the child has
23 resided for six months, the child's custodian, the department,
24 any person appointed to represent any party, including the
25 child's guardian ad litem, and any other person the court

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1 orders provided with notice. Service shall be in accordance
2 with the Children's Court Rules for the service of motions.
3 ~~[In a case involving a child subject to the federal Indian~~
4 ~~Child Welfare Act of 1978, notice shall also be sent by~~
5 ~~certified mail to the Indian tribes of the child's parents and~~
6 ~~to any "Indian custodian" as that term is defined in 25 U.S.C.~~
7 ~~Section 1903(6).]~~ Further notice shall not be required to a
8 parent who has been provided notice previously pursuant to
9 Section 32A-4-17 NMSA 1978 and who failed to make an
10 appearance.

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

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

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

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

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

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

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

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

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

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

25 SECTION 57. Section 32A-4-33 NMSA 1978 (being Laws 1993,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~(11)]~~ (10) a foster parent, if the records are
19 those of a child currently placed with that foster parent or of
20 a child being considered for placement with that foster parent
21 and the records concern the social, medical, psychological or
22 educational needs of the child;

23 ~~[(12)]~~ (11) school personnel involved with the
24 child if the records concern the child's social or educational
25 needs;

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1 [~~(13)~~] (12) a grandparent, parent of a
2 sibling, relative or fictive kin, if the records or information
3 pertain to a child being considered for placement with that
4 grandparent, parent of a sibling, relative or fictive kin and
5 the records or information concern the social, medical,
6 psychological or educational needs of the child;

7 [~~(14)~~] (13) health care or mental health
8 professionals involved in the evaluation or treatment of the
9 child or of the child's parents, guardian, custodian or other
10 family members;

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

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

19 [~~(17)~~] (16) representatives of the federal
20 government or their contractors authorized by federal statute
21 or regulation to review, inspect, audit or otherwise have
22 access to records and information pertaining to neglect or
23 abuse proceedings;

24 [~~(18)~~] (17) any person or entity attending a
25 meeting arranged by the department to discuss the safety,

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1 well-being and permanency of a child, when the parent or child,
2 or parent or legal custodian on behalf of a child younger than
3 fourteen years of age, has consented to the disclosure; and
4 ~~[(19)]~~ (18) any other person or entity, by
5 order of the court, having a legitimate interest in the case or
6 the work of the court.

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

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

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1 of Section 31-19-1 NMSA 1978.

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

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

8 "32A-5-7. CLERK OF THE COURT--DUTIES.--

9 A. The clerk of the court shall file pleadings
10 captioned pursuant to the provisions of Section 32A-5-9 NMSA
11 1978. The clerk of the court shall not file incorrectly
12 captioned pleadings.

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

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

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1 D. The clerk of the court shall mail a copy of the
2 decree of adoption to the department within one working day of
3 the entry of the decree of adoption. The attorney for the
4 petitioner shall provide to the clerk of the court a copy of
5 the decree of adoption and a stamped envelope addressed to the
6 department as specified in department ~~[regulation]~~ rules.

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

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

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

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

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

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

3 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
4 PLACEMENT ORDER--CERTIFICATION.--

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

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

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

20 D. The pre-placement study shall be conducted by an
21 agency or a person certified by the department to conduct the
22 study. A person or agency that wants to be certified to
23 perform pre-placement studies shall file documents verifying
24 their qualifications with the department. The department shall
25 publish a list of persons or agencies certified to conduct a

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1 pre-placement study. If necessary to defray additional costs
2 associated with compiling the list, the department may assess
3 and charge a reasonable administrative fee to the person or
4 agency listed.

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

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

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

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

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

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

22 (5) if the adoptee has been born, the places
23 where the adoptee has lived within the past three years and the
24 names and addresses of the persons with whom the adoptee has
25 lived. If the adoptee is in the custody of an agency or the

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1 department, the address shall be the address of the agency or
2 the county office of the department from which the child was
3 placed;

4 (6) the existence of any court orders that are
5 known to the petitioner and that regulate custody, visitation
6 or access to the adoptee, copies of which shall be attached to
7 the request for placement as exhibits; if copies of any such
8 court orders are unavailable at the time of filing the request
9 for placement, the copies shall be filed prior to the issuance
10 of the order of placement;

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

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

17 (9) whether the adoptee is subject to the
18 [~~federal Indian Child Welfare Act of 1978~~] Indian Family
19 Protection Act, and, if so, the petition shall allege the
20 actions taken to comply with the [~~federal Indian Child Welfare~~
21 ~~Act of 1978~~] Indian Family Protection Act and all other
22 allegations required pursuant to that act;

23 (10) whether the adoption is subject to the
24 Interstate Compact on the Placement of Children and what
25 specific actions have been taken to comply with the Interstate

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1 Compact on the Placement of Children; and

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

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

10 H. A hearing and the court decision on the request
11 for placement shall occur within thirty days of the filing of
12 the request.

13 I. As part of any court order authorizing placement
14 under this section, the court shall find whether the pre-
15 placement study complies with Section 32A-5-14 NMSA 1978 and
16 that the time requirements concerning placement set forth in
17 this section have been met."

18 **SECTION 60.** Section 32A-5-15 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 142, as amended) is amended to read:

20 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

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

25 B. The court shall terminate parental rights with

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1 respect to a child when:

2 (1) the child has been abandoned by the
3 parents;

4 (2) the child has been a neglected or abused
5 child and the court finds that the conditions and causes of the
6 neglect and abuse are unlikely to change in the foreseeable
7 future; or

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

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

13 (b) the parent-child relationship has
14 disintegrated;

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

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

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

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

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

5 [~~D. The termination of parental rights involving an~~
6 ~~Indian child shall comply with the requirements of the federal~~
7 ~~Indian Child Welfare Act of 1978.]"~~

8 SECTION 61. Section 32A-5-16 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 143, as amended) is amended to read:

10 "32A-5-16. TERMINATION PROCEDURES.--

11 A. A proceeding to terminate parental rights may be
12 initiated in connection with or prior to an adoption
13 proceeding. Venue shall be in the court for the county in
14 which the child is physically present or in the county from
15 which the child was placed. The proceeding may be initiated by
16 any of the following:

- 17 (1) the department;
18 (2) an agency; or
19 (3) any other person having a legitimate
20 interest in the matter, including a petitioner for adoption,
21 the child's guardian, the child's guardian ad litem or attorney
22 in another action, a foster parent, a relative of the child or
23 the child.

24 B. A petition for termination of parental rights
25 shall be signed and verified by the petitioner, be filed with

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1 the court and set forth:

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

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

6 (3) the names and addresses of the person,
7 authorized agency or agency officer to whom custody might be
8 transferred;

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

10 (5) that the petition is in contemplation of
11 adoption;

12 (6) the relationship or legitimate interest of
13 the applicant to the child; and

14 (7) whether the child is an Indian child [~~and,~~
15 ~~if so,~~

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

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

3 C. Notice of the filing of the petition,
4 accompanied by a copy of the petition, shall be served by the
5 petitioner on the parents of the child, the child's guardian,
6 the legal custodian of the child, the person with whom the
7 child is residing, the individuals with whom the child has
8 resided within the past six months and the department. Service
9 shall be in accordance with the Rules of Civil Procedure for
10 the District Courts for the service of process in a civil
11 action in this state, with the exception that the department
12 may be served by certified mail. The notice shall state
13 specifically that the person served shall file a written
14 response to the petition within twenty days if the person
15 intends to contest the termination. ~~[In any case involving an~~
16 ~~Indian child, notice shall also be served on the child's Indian~~
17 ~~tribe pursuant to the federal Indian Child Welfare Act of~~
18 ~~1978.]~~

19 D. If the identification or whereabouts of a parent
20 is unknown, the petitioner shall file a motion for an order
21 granting service by publication or an order stating that
22 service by publication is not required. A motion for an order
23 granting service by publication shall be supported by the
24 affidavit of the petitioner, the agency or the petitioner's
25 attorney detailing the efforts made to locate the parent. Upon

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1 being satisfied that reasonable efforts to locate the parent
2 have been made and that information as to the identity or
3 whereabouts of the parent is still insufficient to effect
4 service in accordance with SCRA, Rule 1-004, the court shall
5 order service by publication or order that publication is not
6 required because the parent's consent is not required pursuant
7 to the provisions of Section 32A-5-19 NMSA 1978.

8 E. The court shall, upon request, appoint counsel
9 for an indigent parent who is unable to obtain counsel or if,
10 in the court's discretion, appointment of counsel for an
11 indigent parent is required in the interest of justice.
12 Payment for the appointed counsel shall be made by the
13 petitioner pursuant to the rate determined by the supreme court
14 of New Mexico for court-appointed attorneys.

15 F. The court shall appoint a guardian ad litem for
16 the child in all contested proceedings for termination of
17 parental rights. If the child is fourteen years of age or
18 older and in the custody of the department, the child's
19 attorney appointed pursuant to the Abuse and Neglect Act shall
20 represent the child in any proceedings for termination of
21 parental rights under this section.

22 G. Within thirty days after the filing of a
23 petition to terminate parental rights, the petitioner shall
24 request a hearing on the petition. The hearing date shall be
25 at least thirty days after service is effected upon the parent

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1 of the child or completion of publication.

2 H. The grounds for any attempted termination shall
3 be proved by clear and convincing evidence. [~~In any proceeding
4 involving an Indian child, the grounds for any attempted
5 termination shall be proved beyond a reasonable doubt and meet
6 the requirements set forth in the federal Indian Child Welfare
7 Act of 1978.~~]

8 I. If the court terminates parental rights, it
9 shall appoint a custodian for the child. Upon entering an
10 order terminating the parental rights of a parent, the court
11 may commit the child to the custody of the department, the
12 petitioner or an agency willing to accept custody for the
13 purpose of placing the child for adoption. [~~In any termination
14 proceeding involving an Indian child, the court shall, in any
15 termination order, make specific findings that the requirements
16 of the federal Indian Child Welfare Act of 1978 were met].~~]

17 J. A judgment of the court terminating parental
18 rights divests the parent of all legal rights. Termination of
19 parental rights shall not affect the child's right of
20 inheritance through the former parent."

21 SECTION 62. Section 32A-5-17 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 144, as amended) is amended to read:

23 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
24 REQUIRED.--

25 A. Consent to adoption or relinquishment of

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1 parental rights to the department or an agency licensed by the
2 state of New Mexico shall be required of the following:

3 (1) the adoptee, if fourteen years of age or
4 older, except when the court finds that the adoptee does not
5 have the mental capacity to give consent;

6 (2) the adoptee's mother;

7 (3) the adoptee's proposed adoptive parent;

8 (4) the presumed father of the adoptee;

9 (5) the adoptee's acknowledged father;

10 (6) the department or the agency to whom the
11 adoptee has been relinquished that has placed the adoptee for
12 adoption or the department or the agency that has custody of
13 the adoptee; provided, however, that the court may grant the
14 adoption without the consent of the department or the agency if
15 the court finds the adoption is in the best interests of the
16 adoptee and that the withholding of consent by the department
17 or the agency is unreasonable; and

18 (7) the guardian of the adoptee's parent when,
19 pursuant to provisions of the Uniform Probate Code, that
20 guardian has express authority to consent to adoption.

21 ~~[B. In any adoption involving an Indian child,~~
22 ~~consent to adoption by the petitioner or relinquishment of~~
23 ~~parental rights shall be obtained from an "Indian custodian",~~
24 ~~as required pursuant to the provisions of the federal Indian~~
25 ~~Child Welfare Act of 1978.~~

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1 6.] B. A consent or relinquishment executed by a
2 parent who is a minor shall not be subject to avoidance or
3 revocation solely by reason of the parent's minority."

4 **SECTION 63.** Section 32A-5-21 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 148, as amended) is amended to read:

6 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

7 A. Except when consent or relinquishment is
8 implied, a consent or relinquishment by a parent shall be in
9 writing, signed by the parent consenting or relinquishing and
10 shall state the following:

11 (1) the date, place and time of execution;

12 (2) the date and place of birth of the adoptee
13 and any names by which the adoptee has been known;

14 (3) if a consent to adoption is being
15 executed, the identity of the petitioner, if known, or when the
16 adoption is an independent adoption and the identity of the
17 petitioner is unknown, how the petitioner was selected by the
18 consenting parent;

19 (4) if a relinquishment of parental rights is
20 being executed, the name and address of the agency or the
21 department;

22 (5) that the person executing the consent or
23 relinquishment has been counseled, as provided in Section
24 32A-5-22 NMSA 1978, by a certified counselor of the person's
25 choice and with this knowledge the person is voluntarily and

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1 unequivocally consenting to the adoption of the named adoptee;

2 (6) that the consenting party has been advised
3 of the legal consequences of the relinquishment or consent
4 either by independent legal counsel or a judge;

5 (7) if the adoption is closed, that all
6 parties understand that the court will not enforce any contact,
7 regardless of any informal agreements that have made between
8 the parties;

9 (8) that the consent to or relinquishment for
10 adoption cannot be withdrawn;

11 (9) that the person executing the consent or
12 relinquishment has received or been offered a copy of the
13 consent or relinquishment;

14 (10) that a counseling narrative has been
15 prepared pursuant to department [~~regulations~~] rules and is
16 attached to the consent or relinquishment;

17 (11) that the person who performed the
18 counseling meets the requirements set forth in the Adoption
19 Act; and

20 (12) that the person executing the consent or
21 relinquishment waives further notice of the adoption
22 proceedings.

23 B. The consent of an adoptee, if fourteen years of
24 age or older, shall be in writing, signed by the adoptee,
25 consenting to the adoption and shall state the following:

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- 1 (1) the date, place and time of execution;
- 2 (2) the date and place of birth of the adoptee
- 3 and any names by which the adoptee has been known;
- 4 (3) the name of the petitioner;
- 5 (4) that the adoptee has been counseled
- 6 regarding the consent pursuant to department [~~regulation~~]
- 7 rules;
- 8 (5) that the adoptee has been advised of the
- 9 legal consequences of the consent;
- 10 (6) that the adoptee is voluntarily and
- 11 unequivocally consenting to the adoption;
- 12 (7) that the consent or relinquishment cannot
- 13 be withdrawn;
- 14 (8) that a counseling narrative has been
- 15 prepared pursuant to department [~~regulation~~] rules and is
- 16 attached to the consent; and
- 17 (9) that the person who performed the
- 18 counseling meets the requirements set forth in the Adoption
- 19 Act.

20 C. In cases when the consent or relinquishment is
21 in English and English is not the first language of the
22 consenting or relinquishing person, the person taking the
23 consent or relinquishment shall certify in writing that the
24 document has been read and explained to the person whose
25 consent or relinquishment is being taken in that person's first

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underscoring material = new
[bracketed material] = delete

1 language, by whom the document was so read and explained and
 2 that the meaning and implications of the document are fully
 3 understood by the person giving the consent or relinquishment.

4 D. Unconditional consents or relinquishments are
 5 preferred, and, therefore, conditional consents or
 6 relinquishments shall be for good cause and approved by the
 7 court. However, if the condition is for a specific petitioner
 8 or the condition requires the other parent to consent before
 9 the decree of adoption is entered, the condition shall be
 10 deemed for good cause. In any event, all conditions permitted
 11 under this subsection shall be met within one hundred eighty
 12 days of the execution of the conditional consent or
 13 relinquishment or the conclusion of any litigation concerning
 14 the petition for adoption. The court may grant an extension of
 15 this time for good cause.

16 E. Agency or department consents required pursuant
 17 to the provisions of Section 32A-5-17 NMSA 1978 shall state the
 18 following:

- 19 (1) the date, place and time of execution;
- 20 (2) the date and place of birth of the adoptee
 21 and any names by which the adoptee has been known;
- 22 (3) the name of the petitioner; and
- 23 (4) the consent of the agency or department.

24 F. A consent or relinquishment taken by an
 25 individual appointed to take consents or relinquishments by an

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1 agency shall be notarized, except that a consent or
2 relinquishment signed in the presence of a judge need not be
3 notarized. A hearing before the court for the purpose of
4 taking a consent or relinquishment shall be heard by the court
5 within seven days of request for setting.

6 G. No consent to adoption or relinquishment of
7 parental rights shall be valid if executed within forty-eight
8 hours after the adoptee's birth. [~~Consent to adoption or~~
9 ~~relinquishment of parental rights involving an Indian child~~
10 ~~shall comply with the more stringent requirements of the~~
11 ~~federal Indian Child Welfare Act of 1978.~~

12 H. ~~The requirements of a consent to adoption or~~
13 ~~relinquishment of parental rights involving an Indian child~~
14 ~~and the rights of a parent of an Indian child to withdraw the~~
15 ~~consent or relinquishment shall be governed by the relevant~~
16 ~~provisions of the federal Indian Child Welfare Act of 1978.~~

17 ~~F.]~~ H. A consent to or relinquishment for adoption
18 shall not be withdrawn prior to the entry of a decree of
19 adoption unless the court finds, after notice and opportunity
20 to be heard is afforded to the petitioner, to the person
21 seeking the withdrawal and to the agency placing a child for
22 adoption, that the consent or relinquishment was obtained by
23 fraud. In no event shall a consent or relinquishment be
24 withdrawn after the entry of a decree of adoption."

25 SECTION 64. Section 32A-5-26 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,
2 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended
3 to read:

4 "32A-5-26. PETITION--CONTENT.--A petition for adoption
5 shall be filed and verified by the petitioner and shall allege:

6 A. the full name, age and place and duration of
7 residence of the petitioner and, if married, the place and date
8 of marriage; the date and place of any prior marriage,
9 separation or divorce; and the name of any present or prior
10 spouse;

11 B. the date and place of birth of the adoptee, if
12 known;

13 C. the places where the adoptee has lived within
14 the past three years and the names and addresses of the persons
15 with whom the adoptee has lived, unless the adoptee is in the
16 custody of an agency or the department, in which case the
17 petitioner shall state the name and address of the agency or
18 the department's county office from which the child was placed;

19 D. the birth name of the adoptee, any other names
20 by which the adoptee has been known and the adoptee's proposed
21 new name; provided that in the case of an agency adoption, if
22 the petitioner and the biological parents have not agreed to
23 the release of the adoptee's identity to the other person, the
24 birth name and any other names by which the adoptee has been
25 known shall be filed with the court as separate documents at

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1 the time the petition is filed;

2 E. where the adoptee is residing at the time of the
3 filing of the petition and, if the adoptee is not living with
4 the petitioner, when the adoptee will commence living with the
5 petitioner;

6 F. that the petitioner desires to establish a
7 parent and child relationship with the adoptee and that the
8 petitioner is a fit and proper person able to care and provide
9 for the adoptee's welfare;

10 G. the existence of any court orders, including
11 placement orders, that are known to the petitioner and that
12 regulate custody, visitation or access to the adoptee, copies
13 of which shall accompany and be attached to the petition as
14 exhibits;

15 H. the relationship, if any, of the petitioner to
16 the adoptee;

17 I. the name and address of the placing agency, if
18 any;

19 J. the names and addresses of all persons from whom
20 consents or relinquishments are required, attaching copies of
21 those obtained and alleging the facts that excuse or imply the
22 consents or relinquishments of the others; provided that if the
23 petitioner has not agreed to the release of [~~his~~] the
24 petitioner's identity to the parent or if the parent has not
25 agreed to the release of [~~his~~] the parent's identity to the

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1 petitioner, the names and addresses of all persons from whom
2 consents or relinquishments are required shall be filed with
3 the court as separate documents at the time the petition for
4 adoption is filed;

5 K. whether the adoption will be an open adoption,
6 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

7 L. when consent of the child's father is alleged to
8 be unnecessary, the results of a search of the putative father
9 registry;

10 M. whether the adoptee is an Indian child [~~and, if~~
11 ~~so, the petition shall allege:~~

12 ~~(1) the tribal affiliation of the adoptee's~~
13 ~~parents;~~

14 ~~(2) what specific actions have been taken and~~
15 ~~by whom to notify the parents' tribe and the results of the~~
16 ~~contact, including the names, addresses, titles and telephone~~
17 ~~numbers of the persons contacted. Copies of any correspondence~~
18 ~~with the Indian tribe shall be attached as exhibits to the~~
19 ~~petition; and~~

20 ~~(3) what specific efforts were made to comply~~
21 ~~with the placement preferences set forth in the federal Indian~~
22 ~~Child Welfare Act of 1978 or the placement preferences of the~~
23 ~~appropriate Indian tribe];~~

24 N. whether the adoption is subject to the
25 Interstate Compact on the Placement of Children and, if so, a

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1 copy of the interstate compact form indicating approval shall
2 be attached as an exhibit to the petition;

3 O. whether the adoptee is foreign-born and, if so,
4 copies of the child's passport and United States visa and of
5 all documents demonstrating that the adoptee is legally free
6 for adoption, including a certificate from the United States
7 secretary of state that certifies that the adoption is a
8 convention adoption;

9 P. whether the adoption is a convention adoption
10 and, if so, the petition shall allege:

11 (1) that the country in which the child has
12 been residing is a party to the Hague Convention on Protection
13 of Children and Co-operation in Respect of Intercountry
14 Adoption;

15 (2) that the agency or person who is providing
16 the adoption service has been approved as an accrediting
17 entity; and

18 (3) that the certificate issued by the United
19 States secretary of state that certifies the adoption as a
20 convention adoption has been filed with the court; and

21 Q. the name, address and telephone number of the
22 agency or individual who has agreed to conduct the post-
23 placement report in accordance with Section 32A-5-31 NMSA 1978,
24 if different than the agency or individual who prepared the
25 pre-placement study in accordance with Section 32A-5-13 NMSA

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1 1978."

2 SECTION 65. Section 32A-5-27 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 154, as amended) is amended to read:

4 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

5 A. The petition for adoption shall be served by the
6 petitioner on the following, unless it has been previously
7 waived in writing:

8 (1) the department, by providing a copy to the
9 court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

10 (2) any person, agency or institution whose
11 consent or relinquishment is required by Section 32A-5-17 NMSA
12 1978, unless the notice has been previously waived;

13 (3) any acknowledged father of the adoptee;

14 (4) the legally appointed custodian or
15 guardian of the adoptee;

16 (5) the spouse of any petitioner who has not
17 joined in the petition;

18 (6) the spouse of the adoptee;

19 (7) the surviving parent of a deceased parent
20 of the adoptee;

21 (8) any person known to the petitioner having
22 custody of or visitation with the adoptee under a court order;

23 (9) any person in whose home the child has
24 resided for at least two months within the preceding six
25 months;

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1 (10) the agency or individual authorized to
2 investigate the adoption under Section 32A-5-13 NMSA 1978; and

3 (11) any other person designated by the court.

4 B. Notice shall not be served on the following:

5 (1) an alleged father; and

6 (2) a person whose parental rights have been
7 relinquished or terminated.

8 C. The petitioner shall provide the clerk of the
9 court with a copy of the petition for adoption, to be mailed to
10 the department pursuant to the provisions of Section 32A-5-7
11 NMSA 1978.

12 ~~[D. In an adoption in which the adoptee is an~~
13 ~~Indian child, in addition to the notice required pursuant to~~
14 ~~Subsection A of this section, notice of pendency of the~~
15 ~~adoption proceeding shall be served by the petitioner on the~~
16 ~~appropriate Indian tribe and on an "Indian custodian" pursuant~~
17 ~~to the provisions of the federal Indian Child Welfare Act of~~
18 ~~1978.~~

19 E.] D. The notice shall state that the person
20 served shall respond to the petition within twenty days if the
21 person intends to contest the adoption and shall state that the
22 failure to so respond shall be treated as a default and the
23 person's consent to the adoption shall not be required.

24 Provided, however, that this provision shall not apply to an
25 agency, the department or an investigator preparing the post-

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1 placement report pursuant to Section 32A-5-31 NMSA 1978. If an
2 agency, the department or an investigator preparing the post-
3 placement report wants to contest the adoption, it shall notify
4 the court within twenty days after completion of the post-
5 placement report.

6 ~~[F.]~~ E. Service shall be made pursuant to the Rules
7 of Civil Procedure for the District Courts. If the whereabouts
8 of a parent whose consent is required is unknown, the
9 investigator, department or agency charged with investigating
10 the adoption under Section 32A-5-13 NMSA 1978 shall investigate
11 the whereabouts of the parent and shall file by affidavit the
12 results of the investigation with the court. Upon a finding by
13 the court that information as to the whereabouts of a parent
14 has been sufficiently investigated and is still insufficient to
15 effect service in accordance with the Rules of Civil Procedure
16 for the District Courts, the court shall issue an order
17 providing for service by publication.

18 ~~[G.]~~ F. As to any other person for whom notice is
19 required under Subsection A of this section, service by
20 certified mail, return receipt requested, shall be sufficient.
21 If the service cannot be completed after two attempts, the
22 court shall issue an order providing for service by
23 publication.

24 ~~[H.]~~ G. The notice required by this section may be
25 waived in writing by the person entitled to notice.

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1 ~~[F.]~~ H. Proof of service of the notice on all
2 persons for whom notice is required by this section shall be
3 filed with the court before any hearing adjudicating the rights
4 of the persons."

5 SECTION 66. Section 32A-5-28 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 155) is amended to read:

7 "32A-5-28. RESPONSE TO PETITION.--

8 A. Any person responding to a notice of a petition
9 for adoption shall file a verified response to the petition
10 within the time limits specified in Section ~~[32-5-25]~~ 32A-5-25
11 NMSA 1978.

12 B. The verified response shall follow the Rules of
13 Civil Procedure for the District Courts and shall allege:

14 (1) the existence of any court orders known to
15 the respondent that regulate custody, visitation or access to
16 the adoptee but have not been filed with the court at the time
17 the response is filed and copies of which shall be attached to
18 the response;

19 (2) the relationship, if any, of the
20 respondent to the adoptee;

21 (3) whether the adoptee is an Indian child;
22 ~~[and, if so, the response shall set forth all allegations~~
23 ~~required under the federal Indian Child Welfare Act of 1978]~~

24 (4) whether the adoption is subject to the
25 Interstate Compact on the Placement of Children; and

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1 (5) whether the adoption is an open adoption."

2 SECTION 67. Section 32A-5-36 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,
4 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended
5 to read:

6 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
7 ADOPTION.--

8 A. The court shall conduct hearings on the petition
9 for adoption so as to determine the rights of the parties in a
10 manner that protects confidentiality. The petitioner and the
11 adoptee shall attend the hearing unless the court for good
12 cause waives a party's appearance. Good cause may include
13 burdensome travel requirements.

14 B. The petitioner shall file all documents required
15 pursuant to the Adoption Act and serve the department with
16 copies of the documents simultaneously with the request for
17 hearing on the petition for adoption.

18 C. If any person who claims to be the biological
19 father of the adoptee has appeared before the court and filed a
20 written petition or response seeking custody and assuming
21 financial responsibility of the adoptee, the court shall hear
22 evidence as to the merits of the petition. If the court
23 determines by a preponderance of the evidence that the person
24 is not the biological father of the adoptee or that the child
25 was conceived through an act of rape or incest, the petition

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1 shall be dismissed and the person shall no longer be a party to
2 the adoption. If the court determines that the person is the
3 biological father of the adoptee, the court shall further
4 determine whether the person qualifies as a presumed or
5 acknowledged father whose consent is necessary for adoption,
6 pursuant to Section 32A-5-17 NMSA 1978. If the court
7 determines that the person is the biological father, but does
8 not qualify as a presumed or acknowledged father, the court
9 shall adjudicate the person's rights pursuant to the provisions
10 of the Adoption Act.

11 D. If the mother or father of the adoptee has
12 appeared before the court and filed a written petition that
13 alleges the invalidity of the mother's or father's own consent
14 or relinquishment for adoption previously filed in the adoption
15 proceeding, the court shall hear evidence as to the merits of
16 the petition. If the court determines that the allegations
17 have not been proved by a preponderance of the evidence, the
18 petition shall be dismissed. If the court determines that the
19 allegations of the petition are true, the consent or
20 relinquishment for adoption shall be held invalid, and the
21 court shall determine, in the best interests of the adoptee,
22 the person who shall have custody of the child.

23 E. The petitioner shall present and prove each
24 allegation set forth in the petition for adoption by clear and
25 convincing evidence.

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1 F. The court shall grant a decree of adoption if it
2 finds that the petitioner has proved by clear and convincing
3 evidence that:

4 (1) the court has jurisdiction to enter a
5 decree of adoption affecting the adoptee;

6 (2) the adoptee has been placed with the
7 petitioner for a period of ninety days if the adoptee is under
8 the age of one year at the time of placement or for a period of
9 one hundred eighty days if the adoptee is one year of age or
10 older at the time of placement, unless, for good cause shown,
11 the requirement is waived by the court;

12 (3) all necessary consents, relinquishments,
13 terminations or waivers have been obtained;

14 (4) the post-placement report required by
15 Section 32A-5-31 NMSA 1978 has been filed with the court;

16 (5) service of the petition for adoption has
17 been made or dispensed with as to all persons entitled to
18 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

19 (6) at least ninety days have passed since the
20 filing of the petition for adoption, except the court may
21 shorten or waive this period of time in cases in which the
22 child is being adopted by a stepparent, a relative or a person
23 named in the child's deceased parent's will pursuant to
24 provisions of Section 32A-5-12 NMSA 1978;

25 (7) the petitioner is a suitable adoptive

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1 parent and the best interests of the adoptee are served by the
2 adoption;

3 (8) if visitation between the biological
4 family and the adoptee is contemplated, that the visitation is
5 in the child's best interests;

6 (9) if the adoptee is foreign-born, the child
7 is legally free for adoption and a certificate issued by the
8 United States secretary of state that certifies the adoption as
9 a convention adoption has been filed with the court;

10 (10) the results of the criminal records check
11 required pursuant to provisions of the Adoption Act have been
12 received and considered;

13 ~~[(11) if the adoptee is an Indian child, the~~
14 ~~requirements set forth in the federal Indian Child Welfare Act~~
15 ~~of 1978 have been met;~~

16 ~~(12) when the child is an Indian child, the~~
17 ~~placement preferences set forth in the federal Indian Child~~
18 ~~Welfare Act of 1978 or the placement preferences of the~~
19 ~~appropriate Indian tribes have been followed or, if not~~
20 ~~followed, good cause for noncompliance has been clearly stated~~
21 ~~and supported, as required by the federal Indian Child Welfare~~
22 ~~Act of 1978, and provision has been made to ensure that the~~
23 ~~Indian child's cultural ties to the Indian child's tribe are~~
24 ~~protected and fostered]; and~~

25 ~~[(13)]~~ (11) if the adoption involves the

1 interstate placement of the adoptee, the requirements of the
2 Interstate Compact on the Placement of Children have been met.

3 G. In addition to the findings required by
4 Subsection F of this section, the court in any decree of
5 adoption shall make findings with respect to each allegation of
6 the petition.

7 H. If the court determines that any of the
8 requirements for a decree of adoption pursuant to provisions of
9 Subsections E and F of this section have not been met or that
10 the adoption is not in the best interests of the adoptee, the
11 court shall deny the petition and determine, in the best
12 interests of the adoptee, the person who shall have custody of
13 the child.

14 I. The decree of adoption shall include the new
15 name of the adoptee and shall not include any other name by
16 which the adoptee has been known or the names of the former
17 parents. The decree of adoption shall order that from the date
18 of the decree, the adoptee shall be the child of the petitioner
19 and accorded the status set forth in Section 32A-5-37 NMSA
20 1978.

21 J. A decree of adoption shall be entered within six
22 months of the filing of the petition if the adoptee is under
23 the age of one year at the time of placement or twelve months
24 if the adoptee is one year of age or older at the time of
25 placement, except that the time may be extended by the court

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1 upon request of any of the parties or upon the court's own
2 motion for good cause shown.

3 K. A decree of adoption may not be attacked upon
4 the expiration of one year from the entry of the decree.
5 ~~[provided, however, that in any adoption involving an Indian~~
6 ~~child, the Indian child's parent or Indian custodian may~~
7 ~~petition the court pursuant to the provisions of the federal~~
8 ~~Indian Child Welfare Act of 1978 to invalidate the adoption.~~

9 L. ~~In any adoption involving an Indian child, the~~
10 ~~clerk of the court shall provide the secretary of the interior~~
11 ~~with a copy of any decree of adoption or adoptive placement~~
12 ~~order and other information as required by the federal Indian~~
13 ~~Child Welfare Act of 1978.]"~~

14 SECTION 68. Section 32A-5-40 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 167, as amended) is amended to read:

16 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

17 A. After the decree of adoption has been entered,
18 all court files containing records of judicial proceedings
19 conducted pursuant to the provisions of the Adoption Act and
20 records submitted to the court in the proceedings shall be kept
21 in separate locked files withheld from public inspection. Upon
22 application to the clerk of the court, the records shall be
23 open to inspection by a former parent if the adoptee is
24 eighteen years of age or older, by an adoptee if the adoptee is
25 eighteen years of age or older at the time application is made

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1 for inspection, by the adoptive parent if the adoptee is under
2 eighteen years of age at the time application is made for
3 inspection, by the attorney of any party, by any agency that
4 has exercised guardianship over or legal custody of a child who
5 was the adoptee in the particular proceeding, by the department
6 or by an adoptee's sibling; provided that the identity of the
7 former parents and of the adoptee shall be kept confidential
8 unless the former parents and the adoptee have consented to the
9 release of identity. In the absence of consent to release
10 identity, the inspection shall be limited to the following
11 nonidentifying information:

12 (1) the health and medical histories of the
13 adoptee's biological parents;

14 (2) the health and medical history of the
15 adoptee;

16 (3) the adoptee's general family background,
17 including ancestral information, without name references or
18 geographical designations;

19 (4) physical descriptions; and

20 (5) the length of time the adoptee was in the
21 care and custody of persons other than the petitioner.

22 B. After the entry of the decree of adoption, at
23 any time, a former parent may file with the court, with the
24 placing agency or with the department:

25 (1) a consent or refusal or an amended consent

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1 or refusal to be contacted;

2 (2) a release of the former parent's identity
3 to the adoptee if the adoptee is eighteen years of age or older
4 or to the adoptive parent if the adoptee is under eighteen
5 years of age; or

6 (3) information regarding the former parent's
7 location or changes in background information.

8 C. Any changes to post-adoption access to records
9 referred to in Subsection B of this section shall be filed with
10 the court, the placing agency and the department.

11 D. The consent or refusal referred to in Subsection
12 B of this section shall be honored by the court, the placing
13 agency or the department unless for good cause the court orders
14 to the contrary.

15 E. At any time, an adoptee who is eighteen years of
16 age or older may file with the court, a placing agency or the
17 department:

18 (1) information regarding the adoptee's
19 location; or

20 (2) a consent or refusal regarding opening of
21 the adoptee's adoption file to the adoptee's former parents.

22 F. If mutual authorizations for release of
23 identifying information by the parties are not available, an
24 adoptee who is eighteen years of age or older, the biological
25 parents if the adoptee is eighteen years of age or older or the

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1 adoptive parents if the adoptee is under the age of eighteen
2 years may file a motion with the court to obtain the release of
3 identifying information for good cause shown. When hearing the
4 motion, the court shall give primary consideration to the best
5 interests of the adoptee, but shall also give due consideration
6 to the interests of the members of the adoptee's former and
7 adoptive families. In determining whether good cause exists
8 for the release of identifying information, the court shall
9 consider:

10 (1) the reason the information is sought;

11 (2) any procedure available for satisfying the
12 petitioner's request without disclosing the name or identity of
13 another individual, including appointment of a confidential
14 intermediary to contact the individual and request specific
15 information;

16 (3) whether the individual about whom
17 identifying information is sought is alive;

18 (4) the preference, to the extent known, of
19 the adoptee, the adoptive parents, the former parents and other
20 members of the adoptee's former and adoptive families and the
21 likely effect of disclosure on those individuals;

22 (5) the age, maturity and expressed needs of
23 the adoptee;

24 (6) the report or recommendation of any
25 individual appointed by the court to assess the request for

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1 identifying information; and

2 (7) any other factor relevant to an assessment
3 of whether the benefit to the adoptee of releasing the
4 information sought will be greater than the benefit to any
5 other individual of not releasing the information.

6 ~~[G. An adoptee shall have the right, for the
7 purpose of enrolling in the adoptee's tribe of origin, to
8 access information kept by the department. Information needed
9 by an adoptee to enroll in his tribe of origin may be requested
10 from the department by the following persons:~~

11 ~~(1) the adoptee, after he reaches eighteen
12 years of age;~~

13 ~~(2) when the adoptee is a child, his adoptive
14 parent or guardian; or~~

15 ~~(3) an adoptee's descendant or, if the
16 adoptee's descendant is a child, an adult representative for
17 the descendant.~~

18 ~~H. When the department receives a request for
19 information regarding an adoptee's tribe of origin, the
20 department shall examine its records to determine if the
21 adoptee is of Indian descent. If the department establishes
22 that an adoptee is of Indian descent, the department shall~~

23 ~~(1) provide the requester with the tribal
24 affiliation of the adoptee's biological parents;~~

25 ~~(2) submit to the tribe information necessary~~

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1 ~~to establish tribal enrollment for the adoptee and to protect~~
2 ~~any rights flowing from the adoptee's tribal relationship; and~~
3 ~~(3) provide notice to the requester of the~~
4 ~~department's submission of information to the adoptee's~~
5 ~~tribe.]"~~

6 SECTION 69. Section 40-10B-5 NMSA 1978 (being Laws 2001,
7 Chapter 167, Section 5, as amended) is amended to read:

8 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

11 (1) a kinship caregiver;

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

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

19 (a) the purpose and effect of the
20 guardianship;

21 (b) that the parent has the right to be
22 served with the petition and notices of hearings in the action;
23 and

24 (c) that the parent may appear in court
25 to contest the guardianship.

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

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

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

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

12 (4) the name and address of the petitioner;

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

15 (6) the names and addresses of the parents of
16 the child;

17 (7) the names and addresses of persons having
18 legal custody of the child;

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

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

23 (10) the existence of any matters pending
24 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978
25 and, if so, a statement that the children, youth and families

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1 department consents to the relief requested in the petition;

2 (11) whether the child is an Indian child or
 3 there is reason to know that the child is an Indian child, and
 4 subject to provisions of the [~~federal Indian Child Welfare Act~~
 5 ~~of 1978~~] Indian Family Protection Act and, if so:

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

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

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

15 **SECTION 70.** Section 40-10B-6 NMSA 1978 (being Laws 2001,
 16 Chapter 167, Section 6, as amended) is amended to read:

17 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

18 A. The court shall set a date for hearing on the
 19 petition, which date shall be no less than thirty and no more
 20 than ninety days from the date of filing the petition.

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

23 (1) the children, youth and families
 24 department if there is any pending matter relating to the child
 25 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

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

3 (3) the parents of the child;

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

6 (5) if the child is an Indian child or there
7 is reason to know the child is an Indian child as defined in
8 the ~~[federal Indian Child Welfare Act of 1978]~~ Children's Code,
9 the ~~[appropriate]~~ Indian tribe and ~~[any]~~ the child's parent or
10 "Indian custodian", together with a notice of pendency of the
11 guardianship proceedings ~~[pursuant to the provisions of the~~
12 ~~federal Indian Child Welfare Act of 1978]~~.

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

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

21 SECTION 71. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
22 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
23 2005, Chapter 189, Section 37, as amended) are repealed.

24 SECTION 72. SEVERABILITY.--If any provision of the Indian
25 Family Protection Act, related provisions in other sections of

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1 New Mexico law or the application of such laws to any person or
2 circumstances is held invalid for any reason in a court of
3 competent jurisdiction, the invalidity does not affect other
4 provisions of the Indian Family Protection Act and related
5 laws.

6 **SECTION 73. APPLICABILITY.**--The provisions of Section 8
7 of this act apply to tribal-state agreements that become
8 effective on or after July 1, 2022.

9 **SECTION 74. EFFECTIVE DATE.**--The effective date of the
10 provisions of this act is July 1, 2022.

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