

HOUSE BILL 129

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO DEVELOP AND IMPLEMENT SUPERVISION AND MONITORING PROCEDURES FOR THE HOMES OF CHILDREN TAKEN INTO CUSTODY ON GROUNDS OF ABUSE OR NEGLECT; PROVIDING A THREE-MONTH MINIMUM MONITORING PERIOD UPON THE RELEASE OF A CHILD FROM CUSTODY.

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

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

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

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

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

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

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

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

16 (c) the child has been abandoned;

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

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

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

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

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

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

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

14 D. When a child is taken into custody, the
15 department shall make active efforts to determine whether the
16 child is an Indian child as required pursuant to the Indian
17 Family Protection Act.

18 E. The department shall establish and apply
19 procedures for supervising and monitoring the home from which a
20 child is removed and taken into custody. Pursuant to this
21 subsection, the department shall monitor a child's home on a
22 monthly basis for at least three months following the child's
23 release and may extend the monitoring period if necessary to
24 ensure the child's safety.

25 [~~E.~~] F. Any person who intentionally interferes

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1 with protection of a child, as provided by Subsection A of this
2 section, is guilty of a petty misdemeanor."

3 SECTION 2. Section 32A-4-7 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 101, as amended) is amended to read:

5 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

6 A. A person taking a child into custody shall, with
7 all reasonable speed:

8 (1) release the child to the child's parent,
9 guardian or custodian and issue verbal counsel or warning as
10 may be appropriate; or

11 (2) deliver the child to the department or, in
12 the case of a child who is believed to be suffering from a
13 serious physical or mental condition or illness that requires
14 prompt treatment or diagnosis, deliver the child to a medical
15 facility. If a law enforcement officer delivers a child to a
16 medical facility, the officer shall immediately notify the
17 department that the child has been placed in the department's
18 legal custody.

19 B. When an alleged neglected or abused child is
20 delivered to the department, a department caseworker shall
21 review the need for placing the child in custody and shall
22 release the child from custody unless custody is appropriate or
23 has been ordered by the court. When a child is delivered to a
24 medical facility, a department caseworker shall review the need
25 for retention of custody within a reasonable time after

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1 delivery of the child to the facility and shall release the
2 child from custody unless custody is appropriate or has been
3 ordered by the court.

4 C. If a child is placed in the legal custody of the
5 department and is not released to the child's parent, guardian
6 or custodian, the department shall give written notice thereof
7 as soon as possible, and in no case later than twenty-four
8 hours, to the child's parent, guardian or custodian together
9 with a statement of the reason for taking the child into
10 custody.

11 D. Reasonable efforts shall be made to prevent or
12 eliminate the need for removing the child from the child's
13 home, with the paramount concern being the child's health and
14 safety. In all cases when a child is taken into custody, the
15 child shall be released to the child's parent, guardian or
16 custodian, unless the department files a petition within two
17 days from the date that the child was taken into custody.

18 E. The department may release the child at any time
19 within the two-day period after the child was taken into
20 custody if it is determined by the department that release is
21 appropriate or if release has been ordered by the court. Upon
22 release of the child, the department shall implement the
23 procedures pursuant to Subsection E of Section 1 of this 2023
24 act on a monthly basis for at least three months and may extend
25 the monitoring period if necessary to ensure the child's safety

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1 and to fulfill any supervisory duties required by court order,
2 if any."

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