

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 107

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

AN ACT

RELATING TO CHILDREN; REVISING THE CHILDREN'S CODE; EXTENDING  
THE PERIOD FOR FILING A PETITION; RESTRICTING THE RETURN OF A  
CHILD IF TAKEN INTO CUSTODY MORE THAN ONCE IN SIX MONTHS;  
REVISING PROVISIONS FOR CUSTODY HEARINGS; DECLARING AN  
EMERGENCY.

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

SECTION 1. Section 32A-4-4 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 98, as amended) is amended to read:

"32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

A. Reports alleging neglect or abuse shall be  
referred to the department, which shall conduct an  
investigation to determine the best interests of the child with  
regard to any action to be taken. The name and information  
regarding the person making the report shall not be disclosed

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1 absent the consent of the informant or a court order.

2 B. If a report alleging neglect or abuse meets the  
3 criteria established pursuant to Section 32A-4-4.1 NMSA 1978,  
4 the department may assign the case to the multilevel response  
5 system.

6 C. During the investigation of a report alleging  
7 neglect or abuse, the matter may be referred to another  
8 appropriate agency and conferences may be conducted for the  
9 purpose of effecting adjustments or agreements that will  
10 obviate the necessity for filing a petition. A representative  
11 of the department shall, at the initial time of contact with  
12 the party subject to the investigation, advise the party of the  
13 reports or allegations made, in a manner that is consistent  
14 with laws protecting the rights of the informant. The parties  
15 shall be advised of their basic rights and no party may be  
16 compelled to appear at any conference, to produce any papers or  
17 to visit any place. The investigation shall be completed  
18 within a reasonable period of time from the date the report was  
19 made.

20 D. After completion of the investigation on a  
21 neglect or abuse report, the department shall either recommend  
22 or refuse to recommend the filing of a petition.

23 E. When a child is taken into custody, the  
24 department shall file a petition within [~~two~~] three days,  
25 unless the provisions of Subsection F of Section 32A-4-7 NMSA

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1 1978 apply, in which case the petition shall be filed within  
2 five days. If a petition is not filed in a timely manner, the  
3 child shall be released to the child's parent, guardian or  
4 custodian."

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

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

8 A. A person taking a child into custody shall, with  
9 all reasonable speed:

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

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

21 B. When an alleged neglected or abused child is  
22 delivered to the department, a department caseworker shall  
23 review the need for placing the child in custody and shall  
24 release the child from custody unless custody is appropriate or  
25 has been ordered by the court. When a child is delivered to a

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1 medical facility, a department caseworker shall review the need  
2 for retention of custody within a reasonable time after  
3 delivery of the child to the facility and shall release the  
4 child from custody unless custody is appropriate or has been  
5 ordered by the court.

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

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

20 E. The department may release the child at any time  
21 within the [~~two-day~~] three-day period after the child was taken  
22 into custody if it is determined by the department that release  
23 is appropriate or if release has been ordered by the court.

24 F. If a child that has been taken into custody and  
25 released to the child's parent, guardian or custodian is taken

.224667.5

1 into custody again within six months of having been taken into  
 2 custody, the child shall not be released from custody until a  
 3 department executive manager or acting department executive  
 4 manager, in consultation with the children's court managing  
 5 attorney, reviews the child's case and documents and determines  
 6 whether the child should be released to the child's parent,  
 7 guardian or custodian or if it is in the best interest of the  
 8 child to file a petition alleging neglect or abuse. The  
 9 three-day deadline for filing the petition pursuant to  
 10 Subsections D and E of this section is extended to five days  
 11 when the child's case is reviewed pursuant to this subsection."

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

14 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--  
 15 PROBABLE CAUSE.--

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

25 A. When a child alleged to be neglected or abused

.224667.5

1 has been placed in the temporary custody of the department, or  
2 the department has petitioned the court alleging abuse or  
3 neglect, a custody hearing shall be held no more than five days  
4 after the petition is filed to determine if probable cause  
5 exists that the child should remain in or be placed in the  
6 custody of the department pending the sixty-day adjudication  
7 hearing. The court may grant one continuance that does not  
8 exceed five days.

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

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

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

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

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

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

25 (5) the parent, guardian or custodian is not

1 able or willing to provide adequate supervision and care for  
2 the child.

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

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

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

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

25 F. At the conclusion of the custody hearing, if the

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1 court determines that probable cause does not exist pursuant to  
2 Subsection C of this section, the court shall:

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

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

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

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

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

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1 hearings.

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

12 SECTION 4. EMERGENCY.--It is necessary for the public  
13 peace, health and safety that this act take effect immediately.

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