

1 SENATE BILL 430

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CHILDREN; REVISING THE DEFINITION OF "NEGLECTED
12 CHILD"; PROVIDING CERTAIN REQUIREMENTS WHEN A CHILD
13 EXPERIENCING POVERTY IS PLACED IN CUSTODY.

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

16 SECTION 1. Section 32A-4-2 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 96, as amended) is amended to read:

18 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
19 Act:

20 A. "abandonment" includes instances when the
21 parent, without justifiable cause:

22 (1) left the child without provision for the
23 child's identification for a period of fourteen days; or

24 (2) left the child with others, including the
25 other parent or an agency, without provision for support and

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1 without communication for a period of:

2 (a) three months if the child was under
3 six years of age at the commencement of the three-month period;
4 or

5 (b) six months if the child was over six
6 years of age at the commencement of the six-month period;

7 B. "abused child" means a child:

8 (1) who has suffered or who is at risk of
9 suffering serious harm because of the action or inaction of the
10 child's parent, guardian or custodian;

11 (2) who has suffered physical abuse, emotional
12 abuse or psychological abuse inflicted or caused by the child's
13 parent, guardian or custodian;

14 (3) who has suffered sexual abuse or sexual
15 exploitation inflicted by the child's parent, guardian or
16 custodian;

17 (4) whose parent, guardian or custodian has
18 knowingly, intentionally or negligently placed the child in a
19 situation that may endanger the child's life or health; or

20 (5) whose parent, guardian or custodian has
21 knowingly or intentionally tortured, cruelly confined or
22 cruelly punished the child;

23 C. "aggravated circumstances" includes those
24 circumstances in which the parent, guardian or custodian has:

25 (1) attempted, conspired to cause or caused

1 great bodily harm to the child or great bodily harm or death to
2 the child's sibling;

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

6 (3) attempted, conspired to subject or has
7 subjected the child to torture, chronic abuse or sexual abuse;
8 or

9 (4) had parental rights over a sibling of the
10 child terminated involuntarily;

11 D. "educational decision maker" means an individual
12 appointed by the children's court to attend school meetings and
13 to make decisions about the child's education that a parent
14 could make under law, including decisions about the child's
15 educational setting, and the development and implementation of
16 an individual education plan for the child;

17 E. "fictive kin" means a person not related by
18 birth, adoption or marriage with whom a child has an
19 emotionally significant relationship;

20 F. "great bodily harm" means an injury to a person
21 that creates a high probability of death, that causes serious
22 disfigurement or that results in permanent or protracted loss
23 or impairment of the function of a member or organ of the body;

24 G. "neglected child":

25 (1) means a child:

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1 [~~(1)~~] (a) who has been abandoned by the
2 child's parent, guardian or custodian;

3 [~~(2)~~] (b) notwithstanding the provisions
4 of Paragraph (2) of this subsection, who is without [~~proper~~
5 ~~parental care and control or subsistence, education, medical or~~
6 ~~other care or control~~] food, shelter, clothing, education,
7 medical or mental health treatment, supervision or other care
8 or support necessary for the child's well-being because of the
9 [~~faults or habits~~] behaviors of the child's parent, guardian or
10 custodian or the failure or refusal of the parent, guardian or
11 custodian to provide such care or support, when able to do so
12 [~~to provide them~~] or when offered financial or other reasonable
13 means to enable the parent, guardian or custodian to do so;

14 [~~(3)~~] (c) who has been [~~physically or~~
15 ~~sexually~~] neglected or abused, when the child's parent,
16 guardian or custodian knew or should have known of the neglect
17 or abuse and failed to take reasonable steps to protect the
18 child from further harm;

19 [~~(4)~~] (d) whose parent, guardian or
20 custodian is unable to discharge that person's responsibilities
21 to and for the child because of incarceration, hospitalization
22 or physical or mental disorder or incapacity; or

23 [~~(5)~~] (e) who has been placed for care
24 or adoption in violation of the law; provided that nothing in
25 the Children's Code shall be construed to imply that a child

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1 who is being provided with treatment by spiritual means alone
2 through prayer, in accordance with the tenets and practices of
3 a recognized church or religious denomination, by a duly
4 accredited practitioner thereof is for that reason alone a
5 neglected child within the meaning of the Children's Code; and
6 further provided that no child shall be denied the protection
7 afforded to all children under the Children's Code; and

8 (2) does not mean a child:

9 (a) whose parent, guardian or custodian
10 is unable to provide food, shelter, clothing, education,
11 medical or mental health treatment, supervision or other care
12 or support necessary for the child's well-being due to the
13 parent's, guardian's or custodian's inadequate financial
14 resources alone;

15 (b) whose circumstances include any of
16 the following, based on the existence of the circumstance
17 alone: 1) community or family poverty; 2) geographic or social
18 isolation; 3) a parent, guardian or custodian who is single or
19 unmarried; 4) a parent, guardian or custodian who is considered
20 young or advanced in age; 5) housing that is considered crowded
21 or inadequate; or 6) substance abuse or nonconforming social
22 behavior among family or household members; or

23 (c) who is an Indian child being raised
24 in a manner or in a household that conforms to the cultural or
25 social standards that prevail in the child's Indian community;

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1 H. "physical abuse" includes any case in which the
2 child suffers strangulation or suffocation and any case in
3 which the child exhibits evidence of skin bruising, bleeding,
4 malnutrition, failure to thrive, burns, fracture of any bone,
5 subdural hematoma, soft tissue swelling or death and:

6 (1) there is not a justifiable explanation for
7 the condition or death;

8 (2) the explanation given for the condition is
9 at variance with the degree or nature of the condition;

10 (3) the explanation given for the death is at
11 variance with the nature of the death; or

12 (4) circumstances indicate that the condition
13 or death may not be the product of an accidental occurrence;

14 I. "relative" means a person related to another
15 person by birth, adoption or marriage within the fifth degree
16 of consanguinity;

17 J. "sexual abuse" includes criminal sexual contact,
18 incest or criminal sexual penetration, as those acts are
19 defined by state law;

20 K. "sexual exploitation" includes:

21 (1) allowing, permitting or encouraging a
22 child to engage in prostitution;

23 (2) allowing, permitting, encouraging or
24 engaging a child in obscene or pornographic photographing; or

25 (3) filming or depicting a child for obscene

1 or pornographic commercial purposes, as those acts are defined
2 by state law;

3 L. "sibling" means a brother or sister having one
4 or both parents in common by birth or adoption;

5 M. "strangulation" has the same meaning as set
6 forth in Section 30-3-11 NMSA 1978;

7 N. "suffocation" has the same meaning as set forth
8 in Section 30-3-11 NMSA 1978; and

9 O. "transition plan" means an individualized
10 written plan for a child, based on the unique needs of the
11 child, that outlines all appropriate services to be provided to
12 the child to increase independent living skills. The plan
13 shall also include responsibilities of the child, and any other
14 party as appropriate, to enable the child to be self-sufficient
15 upon emancipation."

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

18 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

19 A. A person taking a child into custody shall, with
20 all reasonable speed:

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

24 (2) deliver the child to the department or, in
25 the case of a child who is believed to be suffering from a

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1 serious physical or mental condition or illness that requires
2 prompt treatment or diagnosis, deliver the child to a medical
3 facility. If a law enforcement officer delivers a child to a
4 medical facility, the officer shall immediately notify the
5 department that the child has been placed in the department's
6 legal custody.

7 B. When an alleged neglected or abused child is
8 delivered to the department, a department caseworker shall
9 review the need for placing the child in custody and shall
10 release the child from custody unless custody is appropriate or
11 has been ordered by the court. When a child is delivered to a
12 medical facility, a department caseworker shall review the need
13 for retention of custody within a reasonable time after
14 delivery of the child to the facility and shall release the
15 child from custody unless custody is appropriate or has been
16 ordered by the court.

17 C. When an alleged neglected child is delivered to
18 the department, a department caseworker shall review the need
19 for placing the child in custody and shall:

20 (1) make reasonable efforts to help the
21 child's parent, guardian or custodian obtain financial and
22 other practical supports needed to provide basic needs for the
23 child, including food, shelter, clothing, education, medical or
24 mental health treatment, supervision or other care or support
25 necessary for the child's well-being; and

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1 (2) release the child from the department's
2 custody if the sole reason for placement of the child in
3 custody was the inadequate financial resources of the child's
4 parent, guardian or custodian and if, subsequent to the child's
5 placement in custody, the parent, guardian or custodian has
6 accepted resources that enable the parent, guardian or
7 custodian to meet the child's basic needs.

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

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

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

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1 [F-] G. If a child that has been taken into custody
2 and released to the child's parent, guardian or custodian is
3 taken into custody again within one year of having been taken
4 into custody, the child shall not be released from custody
5 until a department review is conducted, in consultation with
6 the children's court managing attorney, to review the child's
7 case and documents and determine whether the child should be
8 released to the child's parent, guardian or custodian or if it
9 is in the best interest of the child to file a petition
10 alleging neglect or abuse. The department's review shall be
11 conducted by a person above the level of supervisor who has
12 been authorized by the secretary of children, youth and
13 families to review such cases. If the secretary has not
14 authorized anyone to review such cases, the department's review
15 shall be conducted by the director of the protective services
16 division of the department. The three-day deadline for filing
17 the petition pursuant to Subsections [D] E and [E] F of this
18 section is extended to five days when the child's case is
19 reviewed pursuant to this subsection."

20 **SECTION 3.** Section 32A-4-22 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 116, as amended) is amended to read:

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

24 A. If not held in conjunction with the adjudicatory
25 hearing, the dispositional hearing shall be commenced within

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1 thirty days after the conclusion of the adjudicatory hearing.
2 At the conclusion of the dispositional hearing, the court shall
3 make and include in the dispositional judgment its findings on
4 the following:

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

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

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

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

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

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

25 (7) whether consideration has been given to

1 the child's familial identity and connections;

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

5 (9) the availability of services recommended
6 in the case plan prepared as a part of the predisposition study
7 in accordance with the provisions of Section 32A-4-21 NMSA
8 1978;

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

11 (11) the conditions, other than the inadequate
12 financial resources of the parent, guardian or custodian, that
13 justify continued out-of-home placement;

14 [~~(11)~~] (12) whether reasonable efforts were
15 made by the department to prevent removal of the child from the
16 home prior to placement in substitute care and whether
17 reasonable efforts were made to attempt reunification of the
18 child with the natural parent; and

19 [~~(12)~~] (13) whether reasonable efforts were
20 made by the department to place siblings in custody together,
21 unless such joint placement would be contrary to the safety or
22 well-being of any of the siblings in custody, and whether any
23 siblings not jointly placed have been provided reasonable
24 visitation or other ongoing interaction, unless visitation or
25 other ongoing interaction would be contrary to the safety or

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1 well-being of any of the siblings.

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

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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subsection, the department may appear as a party.

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