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HOUSE BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILD WELFARE; AMENDING SECTIONS OF THE CHILDREN'S  
CODE TO ESTABLISH PREFERENCE AND NOTICE REQUIREMENTS FOR A  
CHILD'S RELATIVES UPON REMOVAL AND PLACEMENT OF THE CHILD.

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

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

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

A. "adult" means a person who is eighteen years of  
age or older;

B. "child" means a person who is less than eighteen  
years old;

C. "court", when used without further  
qualification, means the children's court division of the  
district court and includes the judge, special master or

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1 commissioner appointed pursuant to the provisions of the  
2 Children's Code or supreme court rule;

3 D. "court-appointed special advocate" or "CASA"  
4 means a person appointed as a CASA, pursuant to the provisions  
5 of the Children's Court Rules, who assists the court in  
6 determining the best interests of the child by investigating  
7 the case and submitting a report to the court;

8 E. "custodian" means an adult with whom the child  
9 lives who is not a parent or guardian of the child;

10 F. "department" means the children, youth and  
11 families department, unless otherwise specified;

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

16 H. "foster parent" means a person, including a  
17 relative of the child, licensed or certified by the department  
18 or a child placement agency to provide care for children in the  
19 custody of the department or agency;

20 I. "guardian" means a person appointed as a  
21 guardian by a court or Indian tribal authority or a person  
22 authorized to care for the child by a parental power of  
23 attorney as permitted by law;

24 J. "guardian ad litem" means an attorney appointed  
25 by the children's court to represent and protect the best

1 interests of the child in a court proceeding; provided that no  
2 party or employee or representative of a party to the  
3 proceeding shall be appointed to serve as a guardian ad litem;

4 K. "Indian child" means an unmarried person who is:

5 (1) less than eighteen years old;

6 (2) a member of an Indian tribe or is eligible  
7 for membership in an Indian tribe; and

8 (3) the biological child of a member of an  
9 Indian tribe;

10 L. "Indian child's tribe" means:

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

13 (2) in the case of an Indian child who is a  
14 member or eligible for membership in more than one tribe, the  
15 Indian tribe with which the Indian child has more significant  
16 contacts;

17 M. "Indian tribe" means a federally recognized  
18 Indian tribe, community or group pursuant to 25 U.S.C. Section  
19 1903(1);

20 N. "judge", when used without further  
21 qualification, means the judge of the court;

22 O. "legal custody" means a legal status created by  
23 order of the court or other court of competent jurisdiction or  
24 by operation of statute that vests in a person, department or  
25 agency the right to determine where and with whom a child shall

1 live; the right and duty to protect, train and discipline the  
2 child and to provide the child with food, shelter, personal  
3 care, education and ordinary and emergency medical care; the  
4 right to consent to major medical, psychiatric, psychological  
5 and surgical treatment and to the administration of legally  
6 prescribed psychotropic medications pursuant to the Children's  
7 Mental Health and Developmental Disabilities Act; and the right  
8 to consent to the child's enlistment in the armed forces of the  
9 United States;

10 P. "parent" or "parents" includes a biological or  
11 adoptive parent if the biological or adoptive parent has a  
12 constitutionally protected liberty interest in the care and  
13 custody of the child;

14 Q. "permanency plan" means a determination by the  
15 court that the child's interest will be served best by:

16 (1) reunification;

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

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

22 (4) placement in the legal custody of the  
23 department with the child placed in the home of a fit and  
24 willing relative; or

25 (5) placement in the legal custody of the

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1 department under a planned permanent living arrangement;

2 R. "person" means an individual or any other form  
3 of entity recognized by law;

4 S. "preadoptive parent" means a person with whom a  
5 child has been placed for adoption;

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

11 U. "relative" means an individual, other than a  
12 custodial parent, related to a child by at least a fifth degree  
13 of kinship by blood or adoption;

14 [~~U.~~] V. "reunification" means either a return of  
15 the child to the parent or to the home from which the child was  
16 removed or a return to the noncustodial parent;

17 [~~V.~~] W. "tribal court" means:

18 (1) a court established and operated pursuant  
19 to a code or custom of an Indian tribe; or

20 (2) any administrative body of an Indian tribe  
21 that is vested with judicial authority;

22 [~~W.~~] X. "tribal court order" means a document  
23 issued by a tribal court that is signed by an appropriate  
24 authority, including a judge, governor or tribal council  
25 member, and that orders an action that is within the tribal

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1 court's jurisdiction; and

2 [X-] Y. "tribunal" means any judicial forum other  
3 than the court."

4 SECTION 2. Section 32A-3B-5 NMSA 1978 (being Laws 1993,  
5 Chapter 77, Section 77, as amended) is amended to read:

6 "32A-3B-5. NOTIFICATION TO FAMILY--RELEASE FROM  
7 PROTECTIVE CUSTODY.--

8 A. When the department takes a child into  
9 protective custody and the child is not released to the child's  
10 parent, guardian or custodian, the department shall provide  
11 written notice as soon as possible, and in no case later than  
12 twenty-four hours, to the child's parent, guardian or  
13 custodian, with a statement of the reasons for taking the child  
14 into protective custody.

15 B. When the department releases a child placed in  
16 protective custody to the family, the department shall refer  
17 the family for voluntary family services.

18 C. When the department releases a child from  
19 protective custody and the child's parent, guardian or  
20 custodian refuses to allow the child to return home, the  
21 department shall file a petition pursuant to the provisions of  
22 the Abuse and Neglect Act.

23 D. If the department is not releasing the child to  
24 the parent, guardian or custodian within two days, the  
25 department shall notify ~~[the tribe if the child is an Indian~~

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1 child]:

2 (1) a relative of the child; and

3 (2) if the child is an Indian child, the  
4 child's tribe or tribes."

5 SECTION 3. Section 32A-3B-6 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 78) is amended to read:

7 "32A-3B-6. PLACE OF CUSTODY--PREFERENCE.--

8 A. Unless a child from a family in need of services  
9 who has been placed in department custody is also alleged or  
10 adjudicated delinquent, the child shall not be held in a jail  
11 or other facility intended or used for the incarceration of  
12 adults charged with criminal offenses or for the detention of  
13 children alleged to be delinquent children [~~but may be placed~~  
14 ~~in the following community-based shelter-care facilities~~].

15 B. The department shall give preference to the  
16 placement of a child from a family in need of services who has  
17 been placed in department custody in the home of a relative of  
18 the child if:

19 (1) the relative provides the court with a  
20 sworn statement that the relative will not return the child to  
21 the dangerous surroundings that prompted protective custody for  
22 the child;

23 (2) the relative meets all required child  
24 protection standards, including the following requirements:

25 (a) the relative does not have a pending

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1 charge, past conviction or plea of guilty or nolo contendere  
2 for family or domestic violence; and

3 (b) there is no true finding of child  
4 maltreatment by that relative in the child maltreatment central  
5 registry; and

6 (3) it is in the best interests of the child  
7 to be placed with the relative.

8 C. In the event that the department cannot locate  
9 for placement of a child any relative of the child, the  
10 department may place the child in one of the following  
11 community-based shelter facilities:

12 [A.] (1) a licensed foster-care home or any  
13 home authorized under the law for the provision of foster care  
14 or group care or use as a protective residence;

15 [B.] (2) a facility operated by a licensed  
16 child welfare services agency; or

17 [C.] (3) a facility provided for in the  
18 Children's Shelter Care Act [or

19 ~~D. in a home of a relative of the child, when the~~  
20 ~~relative provides the court with a sworn statement that the~~  
21 ~~relative will not return the child to the dangerous~~  
22 ~~surroundings that prompted protective custody for the child]."~~

23 SECTION 4. Section 32A-3B-6.1 NMSA 1978 (being Laws 2005,  
24 Chapter 189, Section 37, as amended) is amended to read:

25 "32A-3B-6.1. INDIAN CHILD PLACEMENT--PREFERENCES.--

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1           A. An Indian child accepted [~~in~~] into department  
2 custody shall be placed in the least restrictive setting that  
3 most closely approximates a family in which the child's special  
4 needs, if any, may be met. The Indian child shall be placed  
5 within reasonable proximity to the child's home, taking into  
6 account any special needs of the child. Preference shall be  
7 given to placement with [~~(1)~~] a relative, as defined in  
8 Subsection U of Section 32A-1-4 NMSA 1978, or other member of  
9 the Indian child's extended family.

10           B. In the event that the department cannot locate  
11 for placement of an Indian child a relative or member of the  
12 Indian child's extended family, the department shall give  
13 preference to placing the child in one of the following:

14                   [~~(2)~~] (1) a foster care home licensed,  
15 approved and specified by the Indian child's tribe;

16                   [~~(3)~~] (2) an Indian foster care home licensed  
17 or approved by an authorized non-Indian licensing authority; or

18                   [~~(4)~~] (3) an institution for children approved  
19 by the Indian child's tribe or operated by an Indian  
20 organization that has a program suitable to meet the Indian  
21 child's needs.

22           [~~B-~~] C. When the placement preferences set forth in  
23 Subsection A or B of this section are not followed or if the  
24 Indian child is placed in an institution, a plan shall be  
25 developed to ensure that the Indian child's cultural ties are

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1 protected and fostered."

2 SECTION 5. Section 32A-4-8 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 102) is amended to read:

4 "32A-4-8. PLACE OF TEMPORARY CUSTODY--PREFERENCE.--

5 A. Unless a child alleged to be neglected or abused  
6 is also alleged or adjudicated delinquent, the child shall not  
7 be held in a jail or other facility intended or used for the  
8 incarceration of adults charged with criminal offenses or for  
9 the detention of children alleged to be delinquent children  
10 [~~but may be placed in the following community-based shelter-~~  
11 ~~care facilities:~~

12 ~~A. with a relative of the child who is willing to~~  
13 ~~guarantee to the court that the child will not be returned to~~  
14 ~~the alleged abusive or neglectful parent, guardian or custodian~~  
15 ~~without the prior approval of the court].~~

16 B. The department shall give preference to the  
17 placement of a child in the home of a relative of the child if:

18 (1) the relative provides the court with a  
19 sworn statement that the child will not be returned to the  
20 alleged abusive or neglectful parent, guardian or custodian  
21 without the prior approval of the court;

22 (2) the relative meets all required child  
23 protection standards, including the following requirements:

24 (a) the relative does not have a pending  
25 charge, past conviction or plea of guilty or nolo contendere

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1 for family or domestic violence; and

2 (b) there is no true finding of child  
3 maltreatment by that relative in the child maltreatment central  
4 registry; and

5 (3) it is in the best interests of the child  
6 to be placed with the relative.

7 C. In the event that the department cannot locate  
8 for placement of a child any relative of the child, the  
9 department may place the child in one of the following  
10 community-based shelter facilities:

11 [~~B-~~] (1) a licensed foster home or any home  
12 authorized under the law for the provision of foster care or  
13 group care or use as a protective residence;

14 [~~G-~~] (2) a facility operated by a licensed  
15 child welfare services agency; or

16 [~~D-~~] (3) a facility provided for in the  
17 Children's Shelter Care Act."

18 **SECTION 6.** Section 32A-4-9 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 103) is amended to read:

20 "32A-4-9. INDIAN CHILD PLACEMENT--PREFERENCES.--

21 A. An Indian child accepted for foster care or pre-  
22 adoptive placement shall be placed in the least restrictive  
23 setting that most closely approximates a family in which [~~his~~]  
24 the child's special needs, if any, may be met. The Indian  
25 child shall also be placed within reasonable proximity to the

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1 Indian child's home, taking into account any special needs of  
2 the Indian child. In any foster care or pre-adoptive  
3 placement, a preference shall be given, in the absence of good  
4 cause to the contrary, to a placement with [~~1~~] a relative of  
5 the child, as defined in Subsection U of Section 32A-1-4 NMSA  
6 1978 or with a member of the Indian child's extended family.

7 B. In the event that the department cannot locate  
8 for placement of an Indian child a relative or member of the  
9 Indian child's extended family, the department shall give  
10 preference to placing the child in one of the following:

11 [~~2~~] (1) a foster care home licensed,  
12 approved and specified by the Indian child's tribe;

13 [~~3~~] (2) an Indian foster care home licensed  
14 or approved by an authorized non-Indian licensing authority; or

15 [~~4~~] (3) an institution for children approved  
16 by the Indian child's tribe or operated by an Indian  
17 organization that has a program suitable to meet the Indian  
18 child's needs.

19 [~~B-~~] C. When the placement preferences set forth in  
20 Subsection A or B of this section are not followed or if the  
21 Indian child is placed in an institution, a plan shall be  
22 developed to ensure that the Indian child's cultural ties are  
23 protected and fostered."