

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

March 13, 2025

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE JUDICIARY COMMITTEE  
SUBSTITUTE FOR HOUSE BILL  
131

Amendment sponsored by Representative

1. On page 1, line 14, after the semicolon, insert:

"REQUIRING CRIMINAL BACKGROUND CHECKS AND SEX OFFENDER REGISTRY CHECKS BEFORE RETURNING A CHILD TO A PERSON, INCLUDING A PARENT, LEGAL GUARDIAN OR CUSTODIAN, IF THE CHILD IS IN THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT BECAUSE OF ABUSE OR NEGLECT; REQUIRING CRIMINAL BACKGROUND CHECKS AND SEX OFFENDER REGISTRY CHECKS BEFORE PLACING A CHILD IN FOSTER CARE WITH A RELATIVE OF THE CHILD IF THE CHILD IS IN THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT BECAUSE OF ABUSE OR NEGLECT;"

2. On page 9, between lines 1 and 2, insert:

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

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 2

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

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

(c) the child has been abandoned;

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

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

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

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

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

C. When a child is taken into custody by law enforcement, the department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian; provided that if a child that is taken into custody pursuant to Subsection A of this section because of evidence that

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 3

the child has been subjected to abuse or neglect, before the child is released to a person, including the child's parent, guardian or custodian, that person shall submit to a criminal background check provided for by the department using standard departmental procedures, and the department shall conduct a search in the department of public safety's central registry of sex offenders or the Dru Sjodin national sex offender public website regarding that person; and provided further that the department shall determine the release of the child based on the results of the background check and sex offender registry check and shall not release the child to the person if the person has been convicted of any of the following felonies:

(1) kidnapping, false imprisonment, aggravated assault or aggravated battery, including aggravated battery of a household member;

(2) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses related to minors; or

(3) crimes involving child abuse, neglect or exploitation.

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

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

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

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HFL/HJC/HB 131

Page 4

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

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

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

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

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

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

D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home,

.231931.2

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 5

with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within three days from the date that the child was taken into custody.

E. The department may release the child at any time within the three-day period after the child was taken into custody:

(1) if it is determined by the department that release is appropriate; provided that if a child in the custody of the department was taken into custody pursuant to Subsection B of this section, before releasing the child to a person, including the child's parent, legal guardian or custodian, that person shall submit to a criminal background check provided by the department using standard departmental procedures, and the department shall conduct a search of the department of public safety's central registry of sex offenders or the Dru Sjodin national sex offender public website regarding that person; and provided further that the department shall determine the release of the child based on the results of the background check and the sex offender registry check and shall not release the child to the person if the person has been convicted of any of the following felonies:

(a) kidnapping, false imprisonment, aggravated assault or aggravated battery, including aggravated battery of a household member;

(b) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses related to minors; or

(c) crimes involving child abuse, neglect or exploitation; or

(2) if release has been ordered by the court.

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 6

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

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

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

A. Unless a child alleged to be neglected or abused is also alleged or adjudicated delinquent:

(1) the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children; and

(2) there shall be a preference that the child be placed in the home of a relative of the child when a relative is available to provide foster care; provided that:

(a) before the child is released to a person,

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 7

including a relative of the child, that person shall submit to a criminal background check provided by the department using standard departmental procedures, and the department shall conduct a search of the department of public safety's central registry of sex offenders or the Dru Sjodin national sex offender public website regarding that person; and provided further that the department shall determine the release of the child based on the results of the background check and the sex offender registry check and shall not release the child to the person if the person has been convicted of any of the following felonies: 1) kidnapping, false imprisonment, aggravated assault or aggravated battery, including aggravated battery of a household member; 2) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses related to minors; or 3) crimes involving child abuse, neglect or exploitation;

~~[(a)]~~ (b) placement with a relative is in the best interest of the child;

~~[(b)]~~ (c) the relative signs a sworn statement that the relative will not return the child to or allow unsupervised visits with the parent, guardian or custodian who is alleged to have committed the abuse or neglect, unless otherwise directed by the department or the court; and

~~[(e)]~~ (d) within three days of accepting custody of the child, the relative completes an application form for licensure to operate a foster home pursuant to the Children's Code.

B. The department shall make reasonable efforts to locate a relative of the child to provide foster care. If a relative is not available to provide foster care, the child may be placed in:

(1) a licensed foster home or any home authorized under the law for the provision of foster care or group care or use as a protective residence;

.231931.2

State of New Mexico  
House of Representatives

FIFTY-SEVENTH LEGISLATURE  
FIRST SESSION

HF1/HJC/HB 131

Page 8

(2) a facility operated by a licensed child welfare services agency; or

(3) a facility provided for in the Children's Shelter Care Act."".

3. Renumber the succeeding sections accordingly.

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_