

1 SENATE BILL 252

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Phil A. Griego

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9  
10 AN ACT

11 RELATING TO THE CHILDREN'S CODE; AMENDING THE ABUSE AND NEGLECT  
12 ACT AND RELATED PROVISIONS; CHANGING DEFINITIONS IN THE  
13 CHILDREN'S CODE; CHANGING DEFINITIONS IN THE ABUSE AND NEGLECT  
14 ACT; CHANGING REQUIREMENTS FOR REPORTS OF ABUSE AND NEGLECT;  
15 AMENDING CONDITIONS SURROUNDING CUSTODY; ALLOWING ALTERNATIVE  
16 SANCTIONS IF AN ADJUDICATORY HEARING ON NEGLECT AND ABUSE  
17 PROCEEDINGS IS NOT COMMENCED TIMELY; AMENDING THE CONDUCT OF  
18 ABUSE AND NEGLECT HEARINGS; AMENDING THE CONTENT OF NEGLECT OR  
19 ABUSE PREDISPOSITION STUDIES, REPORTS AND EXAMINATIONS;  
20 AMENDING THE REQUIREMENTS FOR DISPOSITION IN A PROCEEDING FOR  
21 AN UNDOCUMENTED IMMIGRANT CHILD; AMENDING THE CONDUCT OF  
22 PERMANENCY AND DISCHARGE HEARINGS; CHANGING TERMINATION  
23 PROCEDURES; CHANGING CONFIDENTIALITY PROVISIONS; CHANGING  
24 TERMINOLOGY; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

2 SECTION 1. Section 32A-1-3 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 12, as amended) is amended to read:

4 "32A-1-3. PURPOSE OF ACT.--The Children's Code shall be  
5 interpreted and construed to effectuate the following  
6 legislative purposes:

7 A. first to provide for the care, protection and  
8 ~~[wholesome]~~ mental and physical development of children coming  
9 within the provisions of the Children's Code and then to  
10 preserve the unity of the family whenever possible. A child's  
11 health and safety shall be the paramount concern. Permanent  
12 separation of a child from the child's family, however, would  
13 especially be considered when the child or another child of the  
14 parent has suffered permanent or severe injury or repeated  
15 abuse. It is the intent of the legislature that, to the  
16 maximum extent possible, children in New Mexico shall be reared  
17 as members of a family unit;

18 B. to provide judicial and other procedures through  
19 which the provisions of the Children's Code are executed and  
20 enforced and in which the parties are assured a fair hearing  
21 and their constitutional and other legal rights are recognized  
22 and enforced;

23 C. to provide a continuum of services for children  
24 and their families, from prevention to treatment, considering  
25 whenever possible prevention, diversion and early intervention,

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1 particularly in the schools;

2 D. to provide children with services that are  
3 sensitive to their cultural needs;

4 E. to reduce overrepresentation of minority  
5 children and families in the juvenile justice, family services  
6 and abuse and neglect systems through early intervention,  
7 linkages to community support services and the elimination of  
8 discrimination;

9 F. to provide for the cooperation and coordination  
10 of the civil and criminal systems for investigation,  
11 intervention and disposition of cases, to minimize interagency  
12 conflicts and to enhance the coordinated response of all  
13 agencies to achieve the best interests of a child victim; and

14 G. to provide continuity for children and families  
15 appearing before the children's court by assuring that,  
16 whenever possible, a single judge hears all successive cases or  
17 proceedings involving a child or family."

18 SECTION 2. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 13, as amended) is amended to read:

20 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

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

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

25 C. "court", when used without further

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1 qualification, means the children's court division of the  
2 district court and includes the judge, special master or  
3 commissioner appointed pursuant to the provisions of the  
4 Children's Code or supreme court rule;

5 D. "court-appointed special advocate" or "CASA"  
6 means a person appointed as a CASA, pursuant to the provisions  
7 of the Children's Court Rules, 10-164 NMRA, who assists the  
8 court in determining the best interests of the child by  
9 investigating the case and submitting a report to the court;

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

12 F. "department" means the children, youth and  
13 families department, unless otherwise specified;

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

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

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

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1 J. "guardian ad litem" means an attorney appointed  
2 by the children's court to represent and protect the best  
3 interests of the child in a court proceeding; [~~provided that no~~  
4 ~~party or employee or representative of a party to the~~  
5 ~~proceeding shall be appointed to serve as a guardian ad litem]~~

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

7 (1) less than eighteen years old;

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

10 (3) the biological child of a member of an  
11 Indian tribe;

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

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

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

19 M. "Indian tribe" means a federally recognized  
20 Indian tribe, community or group pursuant to 25 U.S.C. Section  
21 1903(1);

22 [~~N. "judge", when used without further~~  
23 ~~qualification, means the judge of the court;~~

24 ~~θ.]~~ N. "legal custody" means a legal status created  
25 by order of the court or other court of competent jurisdiction

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1 or by operation of statute that vests in a person or department  
2 [~~or agency~~] the right to determine where and with whom a child  
3 shall live; the right and duty to protect, train and discipline  
4 the child and to provide the child with food, shelter, personal  
5 care, education and ordinary and emergency medical care; the  
6 right to consent to major medical, psychiatric, psychological  
7 and surgical treatment and to the administration of legally  
8 prescribed psychotropic medications pursuant to the Children's  
9 Mental Health and Developmental Disabilities Act; and the right  
10 to consent to the child's enlistment in the armed forces of the  
11 United States;

12 [P-] O. "parent" or "parents" includes a biological  
13 or adoptive parent if the biological or adoptive parent has a  
14 constitutionally protected liberty interest in the care and  
15 custody of the child;

16 [Q-] P. "permanency plan" means a determination by  
17 the court that the child's interest will be served best by:

18 (1) reunification;

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

22 (3) placement with a person who will be the  
23 child's permanent guardian; or

24 [~~(4) placement in the legal custody of the~~  
25 ~~department with the child placed in the home of a fit and~~

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1 ~~willing relative; or~~

2 ~~(5)]~~ (4) placement in the legal custody of the  
3 department under a planned permanent living arrangement;

4 [R-] Q. "person" means an individual or any other  
5 form of entity recognized by law;

6 [S-] R. "preadoptive parent" means a person with  
7 whom a child has been placed for adoption;

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

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

16 [V-] U. "tribal court" means:

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

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

21 [W-] V. "tribal court order" means a document  
22 issued by a tribal court that is signed by an appropriate  
23 authority, including a judge, governor or tribal council  
24 member, and that orders an action that is within the tribal  
25 court's jurisdiction; and

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1           [~~X-~~] W. "tribunal" means any judicial forum other  
2 than the court."

3           **SECTION 3.** Section 32A-1-7 NMSA 1978 (being Laws 1993,  
4 Chapter 77, Section 16, as amended) is amended to read:

5           "32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

6           A. A guardian ad litem shall zealously represent  
7 the child's best interests in the proceeding for which the  
8 guardian ad litem has been appointed and in any subsequent  
9 appeals.

10           B. Unless excused by a court, a guardian ad litem  
11 appointed to represent a child's best interests shall continue  
12 the representation in any subsequent appeals.

13           C. Any party may petition the court for an order to  
14 remove a guardian ad litem on the grounds that the guardian ad  
15 litem has a conflict of interest or is unwilling or unable to  
16 zealously represent the child's best interests.

17           D. After consultation with the child, a guardian ad  
18 litem shall convey the child's declared position to the court  
19 at every hearing.

20           E. Unless a child's circumstances render the  
21 following duties and responsibilities unreasonable, a guardian  
22 ad litem shall:

23                   (1) meet with and interview the child prior to  
24 custody hearings, adjudicatory hearings, dispositional  
25 hearings, judicial reviews and any other hearings scheduled in

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1 accordance with the provisions of the Children's Code;

2 (2) communicate with health care, mental  
3 health care and other professionals involved with the child's  
4 case;

5 (3) review medical and psychological reports  
6 relating to the child and the respondents;

7 (4) contact the child prior to any proposed  
8 change in the child's placement;

9 (5) contact the child after changes in the  
10 child's placement;

11 (6) attend local substitute care review board  
12 hearings concerning the child and if unable to attend the  
13 hearings, forward to the board a letter setting forth the  
14 child's status during the period since the last local  
15 substitute care review board review and include an assessment  
16 of the department's permanency and ~~[treatment]~~ case plans;

17 (7) report to the court on the child's  
18 adjustment to placement, the department's and respondent's  
19 compliance with prior court orders and ~~[treatment]~~ case plans  
20 and the child's degree of participation during visitations; and

21 (8) represent and protect the cultural needs  
22 of the child.

23 F. A guardian ad litem may retain separate counsel  
24 to represent the child in a tort action on a contingency fee  
25 basis or any other cause of action in proceedings that are

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1 outside the jurisdiction of the children's court. When a  
2 guardian ad litem retains separate counsel to represent the  
3 child, the guardian ad litem shall provide the court with  
4 written notice within ten days of retaining the separate  
5 counsel. A guardian ad litem shall not retain or subsequently  
6 obtain any pecuniary interest in an action filed on behalf of  
7 the child outside of the jurisdiction of the children's court.

8 G. In the event of a change of venue, the  
9 originating guardian ad litem shall remain on the case until a  
10 new guardian ad litem is appointed by the court in the new  
11 venue and the new guardian ad litem has communicated with and  
12 received all pertinent information from the former guardian ad  
13 litem.

14 H. A guardian ad litem shall receive notices,  
15 pleadings or other documents required to be provided to or  
16 served upon a party. A guardian ad litem may file motions and  
17 other pleadings and take other actions consistent with the  
18 guardian ad litem's powers and duties.

19 I. A guardian ad litem shall not serve concurrently  
20 as both the child's delinquency attorney and guardian ad  
21 litem."

22 SECTION 4. Section 32A-1-15 NMSA 1978 (being Laws 1993,  
23 Chapter 77, Section 24) is amended to read:

24 "32A-1-15. RELEASE [~~OR DELIVERY~~] FROM CUSTODY.--In all  
25 cases begun pursuant to the provisions of the Children's Code,  
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1 when a child is taken into custody, the child shall be released  
2 to the child's parent, guardian or custodian in accordance with  
3 the conditions and time limits set forth in the Children's  
4 Court Rules [~~and Forms~~]."

5 SECTION 5. Section 32A-4-2 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 96, as amended) is amended to read:

7 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect  
8 Act:

9 A. "abandonment" includes instances when the  
10 parent, without justifiable cause:

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

13 (2) left the child with others, including the  
14 other parent or an agency, without provision for support and  
15 without communication for a period of:

16 (a) three months if the child was under  
17 six years of age at the commencement of the three-month period;  
18 or

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

21 B. "abused child" means a child:

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

25 (2) who has suffered physical abuse, emotional

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1 abuse or psychological abuse inflicted or caused by the child's  
2 parent, guardian or custodian;

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

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

9 (5) whose parent, guardian or custodian has  
10 knowingly or intentionally tortured, cruelly confined or  
11 cruelly punished the child;

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

14 (1) attempted, conspired to cause or caused  
15 great bodily harm to the child or great bodily harm or death to  
16 the child's sibling;

17 (2) attempted, conspired to cause or caused  
18 great bodily harm or death to another parent, guardian or  
19 custodian of the child;

20 (3) attempted, conspired to subject or has  
21 subjected the child or another child to torture, chronic abuse  
22 or sexual abuse; [~~or~~]

23 (4) been required to register with a sex  
24 offender registry under state or federal law; or

25 [~~(4)~~] (5) had parental rights over a sibling

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1 of the child terminated involuntarily;

2 D. "great bodily harm" means an injury to a person  
3 that creates a high probability of death, that causes serious  
4 disfigurement or that results in permanent or protracted loss  
5 or impairment of the function of a member or organ of the body;

6 E. "neglected child" means a child:

7 (1) who has been abandoned by the child's  
8 parent, guardian or custodian;

9 (2) who is without proper parental care and  
10 control or subsistence, education, medical or other care or  
11 control necessary for the child's well-being because of the  
12 faults or habits of the child's parent, guardian or custodian  
13 or the failure or refusal of the parent, guardian or custodian,  
14 when able to do so, to provide them;

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

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

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

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1 being provided with treatment by spiritual means alone through  
2 prayer, in accordance with the tenets and practices of a  
3 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;

8 F. "physical abuse" includes but is not limited to  
9 any case in which the child exhibits evidence of skin bruising,  
10 bleeding, malnutrition, failure to thrive, burns, fracture of  
11 any bone, subdural hematoma, soft tissue swelling or death and:

12 (1) there is not a justifiable explanation for  
13 the condition or death;

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

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

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

20 G. "sexual abuse" includes but is not limited to  
21 criminal sexual contact, incest or criminal sexual penetration,  
22 as those acts are defined by state law;

23 H. "sexual exploitation" includes but is not  
24 limited to:

25 (1) allowing, permitting or encouraging a

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1 child to engage in prostitution;

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

4 (3) filming or depicting a child for obscene  
5 or pornographic commercial purposes, as those acts are defined  
6 by state law; and

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

14 SECTION 6. Section 32A-4-3 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 97, as amended) is amended to read:

16 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD  
17 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--  
18 PENALTY.--

19 A. Every person, including a licensed physician; a  
20 resident or an intern examining, attending or treating a child;  
21 a law enforcement officer; a judge presiding during a  
22 proceeding; a registered nurse; a visiting nurse; a  
23 schoolteacher; a school official; a social worker acting in an  
24 official capacity; or a member of the clergy who has  
25 information that is not privileged as a matter of law, who

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1 knows or has a reasonable suspicion that a child is an abused  
2 or a neglected child shall report the matter immediately to:

- 3 (1) a local law enforcement agency;  
4 (2) the department; or  
5 (3) a tribal law enforcement or social  
6 services agency for any Indian child residing in Indian  
7 country.

8 B. A law enforcement agency receiving the report  
9 shall immediately transmit the facts of the report and the  
10 name, address and phone number of the reporter ~~[by telephone]~~  
11 to the department ~~[and shall transmit the same information in~~  
12 ~~writing within forty-eight hours]~~. The department shall  
13 immediately transmit the facts of the report and the name,  
14 address and phone number of the reporter ~~[by telephone]~~ to a  
15 local law enforcement agency ~~[and shall transmit the same~~  
16 ~~information in writing within forty-eight hours]~~. The written  
17 report shall contain the names and addresses of the child and  
18 the child's parents, guardian or custodian, the child's age,  
19 the nature and extent of the child's injuries, including any  
20 evidence of previous injuries, and other information that the  
21 maker of the report believes might be helpful in establishing  
22 the cause of the injuries and the identity of the person  
23 responsible for the injuries. ~~[The written report shall be~~  
24 ~~submitted upon a standardized form agreed to by the law~~  
25 ~~enforcement agency and the department.]~~

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1 C. The recipient of a report under Subsection A of  
2 this section shall take immediate steps to ensure prompt  
3 investigation of the report. The investigation shall ensure  
4 that immediate steps are taken to protect the health or welfare  
5 of the alleged abused or neglected child, as well as that of  
6 any other child under the same care who may be in danger of  
7 abuse or neglect. The department or a local law enforcement  
8 officer trained in the investigation of child abuse and  
9 neglect, ~~[is]~~ or both, are responsible for investigating  
10 reports of alleged child abuse or neglect at schools, ~~[daycare~~  
11 ~~facilities or]~~ child care facilities, shelter care homes or  
12 residential facilities.

13 D. If the child alleged to be abused or neglected  
14 is in the care or control of or in a facility administratively  
15 connected to the department, the report shall be investigated  
16 by the department or a local law enforcement officer trained in  
17 the investigation of child abuse and neglect, or both. The  
18 investigation shall ensure that immediate steps are taken to  
19 protect the health or welfare of the alleged abused or  
20 neglected child, as well as that of any other child under the  
21 same care who may be in danger of abuse or neglect.

22 E. A law enforcement agency or the department  
23 shall have access to any of the records pertaining to a child  
24 abuse or neglect case maintained by any of the persons  
25 enumerated in Subsection A of this section, except as otherwise

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1 provided in the Abuse and Neglect Act.

2 F. A person who violates the provisions of  
3 Subsection A of this section is guilty of a misdemeanor and  
4 shall be sentenced pursuant to the provisions of Section  
5 31-19-1 NMSA 1978."

6 SECTION 7. Section 32A-4-4 NMSA 1978 (being Laws 1993,  
7 Chapter 77, Section 98, as amended) is amended to read:

8 "32A-4-4. COMPLAINTS--REFERRAL--~~[PRELIMINARY INQUIRY]~~  
9 INVESTIGATION--

10 A. The department shall conduct investigations of  
11 reports alleging neglect or abuse [~~shall be referred to the~~  
12 ~~department, which shall conduct an investigation~~] to determine  
13 the best interests of the child with regard to any action to be  
14 taken. The name and information regarding the person making  
15 the report shall not be disclosed absent the consent of the  
16 informant or a court order.

17 B. [~~During the investigation of a report alleging~~  
18 ~~neglect or abuse, the matter may be referred to another~~  
19 ~~appropriate agency and conferences may be conducted for the~~  
20 ~~purpose of effecting adjustments or agreements that will~~  
21 ~~obviate the necessity for filing a petition.~~] A representative  
22 of the department shall, at the initial time of contact with  
23 the party subject to the investigation, advise the party of the  
24 reports or allegations made, in a manner that is consistent  
25 with laws protecting the rights of the informant. The parties

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1 shall be advised of their basic rights, and no party may be  
2 compelled to appear at any conference, to produce any papers or  
3 to visit any place. The investigation shall be completed  
4 within a reasonable period of time from the date the report was  
5 made.

6 ~~[G. After completion of the investigation on a~~  
7 ~~neglect or abuse report, the department shall either recommend~~  
8 ~~or refuse to recommend the filing of a petition.~~

9 ~~D.]~~ C. When a child is taken into custody, the  
10 department shall file a petition within two days. ~~[If a~~  
11 ~~petition is not filed in a timely manner, the child shall be~~  
12 ~~released to the child's parent, guardian or custodian.]"~~

13 SECTION 8. Section 32A-4-5 NMSA 1978 (being Laws 1993,  
14 Chapter 77, Section 99, as amended) is amended to read:

15 "32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY  
16 OF REPORTING PERSON--INVESTIGATION OF REPORT.--

17 A. In any proceeding alleging neglect or abuse  
18 under the Children's Code resulting from a report required by  
19 Section 32A-4-3 NMSA 1978 or in any proceeding in which that  
20 report or any of its contents are sought to be introduced in  
21 evidence, the report or its contents or any other facts related  
22 thereto or to the condition of the child who is the subject of  
23 the report shall not be excluded on the ground that the matter  
24 is or may be the subject of a physician-patient privilege or  
25 similar privilege or rule against disclosure.

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1           B. Anyone reporting an instance of alleged child  
2 neglect or abuse or participating in a judicial proceeding  
3 brought as a result of a report required by Section 32A-4-3  
4 NMSA 1978 is presumed to be acting in good faith and shall be  
5 immune from liability, civil or criminal, that might otherwise  
6 be incurred or imposed by the law, unless the person acted in  
7 bad faith or with malicious purpose.

8           C. After properly verifying the identity of the  
9 public official, any school personnel or other person who has  
10 the duty to report child abuse pursuant to Section 32A-4-3 NMSA  
11 1978 shall permit a member of a law enforcement agency,  
12 including tribal police officers, an employee of the district  
13 attorney's office, an investigative interviewer for a program  
14 described in Subsection E of this section or an employee of the  
15 department, to interview a child privately, when deemed  
16 appropriate by the interviewer, with respect to a report  
17 without the permission of the child's parent or guardian. Any  
18 person permitting an interview pursuant to this subsection is  
19 presumed to be acting in good faith and shall be immune from  
20 liability, civil or criminal, that might otherwise be incurred  
21 or imposed by law, unless the person acted in bad faith or with  
22 malicious purpose.

23           D. An investigation may be conducted by law  
24 enforcement, the district attorney's office, a program  
25 described in Subsection E of this section and the department.

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1 Interviews shall be conducted in a manner and place that  
2 protects the child and family from unnecessary trauma and  
3 embarrassment. The investigating entity shall conduct the  
4 investigation in a manner that will protect the privacy of the  
5 child and the family, with the paramount consideration being  
6 the safety of the child. All interactions with child victims  
7 and child witnesses shall be conducted in a child-sensitive  
8 manner, taking into consideration the special needs of the  
9 child and the child's abilities, age and intellectual maturity.  
10 The interviews shall be conducted in a place where the child  
11 feels secure and in a language that the child uses and  
12 understands.

13 E. If a community has a program for child abuse  
14 investigation that includes an [~~investigation~~] investigative  
15 interview of the alleged victim or child witness, the  
16 investigation may be conducted at a site designated by the  
17 community program. The alleged child abuse victim or child  
18 witness shall, when possible, be interviewed in an environment  
19 where the alleged abuse perpetrator will not be present.

20 F. Prior to the department interviewing [~~a~~] an  
21 alleged child victim or child witness, the department shall  
22 notify the parent or guardian of the child who is being  
23 interviewed, unless the department determines that notification  
24 would adversely affect the safety of the child about whom the  
25 report has been made or compromise the investigation."

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1           SECTION 9. Section 32A-4-7 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 101, as amended) is amended to read:

3           "32A-4-7. RELEASE [~~OR DELIVERY~~] FROM CUSTODY.--

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

6                   (1) release the child to one of the child's  
7 [~~parent, guardian or custodian and issue verbal counsel or~~  
8 ~~warning as may be appropriate]~~ parents, guardians or  
9 custodians; or

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

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

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1 ~~the facility and shall release the child from custody unless~~  
2 ~~custody is appropriate or has been ordered by the court.]~~

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

10 D. Reasonable efforts shall be made to prevent or  
11 eliminate the need for removing the child from the child's  
12 home, with the paramount concern being the child's health and  
13 safety. In all cases when a child is taken into custody, the  
14 child shall be released to the child's parent, guardian or  
15 custodian, unless the department files a petition within two  
16 days from the date that the child was taken into custody. The  
17 department may release the child at any time within the two-day  
18 period after the child was taken into custody if it is  
19 determined by the department that release is appropriate or if  
20 release has been ordered by the court.

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

25 SECTION 10. Section 32A-4-8 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 102) is amended to read:

2 "32A-4-8. [~~PLACE OF TEMPORARY CUSTODY~~] PLACEMENT.--

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

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

14 ~~B. a licensed foster home or any home authorized~~  
15 ~~under the law for the provision of foster care, group care or~~  
16 ~~use as a protective residence;~~

17 ~~C. a facility operated by a licensed child welfare~~  
18 ~~services agency; or~~

19 ~~D. a facility provided for in the Children's~~  
20 ~~Shelter Care Act].~~

21 B. A child in the department's legal custody shall  
22 be placed in a licensed or approved home or facility."

23 SECTION 11. Section 32A-4-11 NMSA 1978 (being Laws 1993,  
24 Chapter 77, Section 105) is amended to read:

25 "32A-4-11. USE IMMUNITY.--

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1           A. At any stage of a proceeding under the Abuse and  
2 Neglect Act, the children's court attorney may apply for use  
3 immunity for a respondent for in-court testimony. The in-court  
4 testimony of an immunized respondent shall not be used against  
5 that respondent in a criminal prosecution; provided, however,  
6 that the respondent may be prosecuted for perjury that occurs  
7 during the respondent's testimony in children's court.

8           B. At any stage of a proceeding under the Abuse and  
9 Neglect Act, the children's court attorney may apply for use  
10 immunity for any records, documents or other physical objects  
11 produced by the immunized respondent in that children's court  
12 proceeding, production of which was compelled by a court order.

13           C. At any stage of a proceeding under the Abuse and  
14 Neglect Act, the children's court attorney may apply for use  
15 immunity for a respondent for any statement that a respondent  
16 makes in the course of a court-ordered psychological evaluation  
17 or treatment program to the professional designated ~~[by the~~  
18 ~~department in furtherance of the court's order]~~ to perform or  
19 provide such evaluation or treatment. Such immunity shall  
20 attach only to those statements made during the course of the  
21 actual evaluation or treatment and specifically does not attach  
22 to statements made to other department employees, agents or  
23 other representatives in the course of the investigation of  
24 alleged child abuse or neglect.

25           D. Any other information available to the

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1 professional designated by the department to perform the court-  
2 ordered evaluation or provide treatment shall not be the  
3 subject of any application or order for immunity.

4 E. All immunized statements referred to in  
5 Subsection C of this section that are subsequently reduced to  
6 writing shall be deleted before any report is released to law  
7 enforcement officers or district attorneys.

8 F. Use immunity orders shall not be entered nunc  
9 pro tunc.

10 G. The children's court attorney shall request a  
11 hearing on any application for immunity and shall give at least  
12 forty-eight hours notice to all parties and to the district  
13 attorney for the county in which the alleged abuse or neglect  
14 occurred. The district attorney shall have standing to object  
15 to the order for immunity."

16 SECTION 12. Section 32A-4-16 NMSA 1978 (being Laws 1993,  
17 Chapter 77, Section 110) is amended to read:

18 "32A-4-16. EX-PARTE CUSTODY ORDERS.--

19 A. At the time a petition is filed or any time  
20 thereafter, the children's court or the district court may  
21 issue an ex-parte custody order upon a sworn written statement  
22 of facts showing probable cause exists to believe that the  
23 child is abused or neglected and that custody under the  
24 criteria set forth in Section [~~32-4-16~~] 32A-4-18 NMSA 1978 is  
25 necessary.

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1           ~~[B. The ex-parte custody order shall be served on~~  
2 ~~the respondent by a person authorized to serve arrest warrants~~  
3 ~~and shall direct the officer to take custody of the child and~~  
4 ~~deliver him to a place designated by the court.~~

5           G.] B. The Rules of Evidence do not apply to the  
6 issuance of an ex-parte custody order."

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

9           "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--  
10 PROBABLE CAUSE.--

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

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

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

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

4 (2) the child is in immediate danger from the  
5 child's surroundings, and removal from those surroundings is  
6 necessary for the child's safety or well-being;

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

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

11 (5) the parent, guardian or custodian is not  
12 able or willing to provide adequate supervision and care for  
13 the child.

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

17 (1) return legal custody of the child to the  
18 child's parent, guardian or custodian upon such conditions as  
19 will reasonably ensure the safety and well-being of the child,  
20 including protective supervision by the department; or

21 (2) award legal custody of the child to the  
22 department.

23 E. Reasonable efforts shall be made to preserve and  
24 reunify the family, with the paramount concern being the  
25 child's health and safety. The department shall make

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1 reasonable efforts to identify and locate relatives for the  
2 placement of the child and shall conduct home studies on  
3 appropriate relatives who express an interest in providing  
4 placement for the child.

5 F. At the conclusion of the custody hearing, if the  
6 court determines that probable cause does not exist pursuant to  
7 Subsection C of this section, the court shall:

8 (1) retain jurisdiction and, unless the court  
9 permits otherwise, order that the respondent and child remain  
10 in the jurisdiction of the court pending the adjudication;

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

14 (3) order that the child's parent, guardian or  
15 custodian allow the child necessary contact with the child's  
16 guardian ad litem or attorney.

17 G. At the conclusion of the custody hearing, the  
18 court may order the respondent or the child alleged to be  
19 neglected or abused, or both, to undergo appropriate diagnostic  
20 examinations or evaluations. If the court determines that  
21 probable cause does not exist, the court may order the  
22 respondent or the child alleged to be neglected or abused, or  
23 both, to undergo appropriate diagnostic examinations or  
24 evaluations as necessary to protect the child's best interests,  
25 based upon the allegations in the petition and the evidence

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1 presented at the custody hearing. Copies of any diagnostic or  
2 evaluation reports ordered by the court shall be provided to  
3 the parties at least five days before the adjudicatory hearing  
4 is scheduled. The reports shall not be sent to the court.

5 H. The Rules of Evidence shall not apply to custody  
6 hearings.

7 I. Nothing in this section shall be construed to  
8 abridge the rights of Indian children pursuant to the federal  
9 Indian Child Welfare Act of 1978."

10 SECTION 14. Section 32A-4-19 NMSA 1978 (being Laws 1993,  
11 Chapter 77, Section 113, as amended) is amended to read:

12 "32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

13 A. The adjudicatory hearing in a neglect or abuse  
14 proceeding shall be commenced within sixty days after the date  
15 of service of the petition on the respondent.

16 B. Prior to the adjudicatory hearing, all parties  
17 to the hearing shall attend a mandatory meeting and attempt to  
18 settle issues attendant to the adjudicatory hearing and develop  
19 a proposed [~~treatment~~] case plan that serves the child's best  
20 interest.

21 C. The children's court attorney shall represent  
22 the state at the adjudicatory hearing.

23 D. When the adjudicatory hearing on any petition is  
24 not commenced within the time period specified in Subsection A  
25 of this section or within the period of any extension granted,

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1 the petition [~~shall~~] may be dismissed with prejudice, or the  
2 court may consider other sanctions as appropriate."

3 SECTION 15. Section 32A-4-20 NMSA 1978 (being Laws 1993,  
4 Chapter 77, Section 114, as amended) is amended to read:

5 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--  
6 DISPOSITIONAL MATTERS--PENALTY.--

7 A. The proceedings shall be recorded by  
8 stenographic notes or by electronic, mechanical or other  
9 appropriate means.

10 B. All abuse and neglect hearings shall be closed  
11 to the general public.

12 C. Only the parties, their counsel, witnesses and  
13 other persons approved by the court may be present at a closed  
14 hearing. The foster parent, preadoptive parent or relative  
15 providing care for the child shall be given notice and an  
16 opportunity to be heard at the dispositional phase. Those  
17 other persons the court finds to have a proper interest in the  
18 case or in the work of the court may be admitted by the court  
19 to closed hearings on the condition that they refrain from  
20 divulging any information that would identify the child or  
21 family involved in the proceedings.

22 D. Accredited representatives of the news media  
23 shall be allowed to be present at closed hearings, subject to  
24 the condition that they refrain from divulging information that  
25 would identify any child involved in the proceedings or the

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1 parent, guardian or custodian of that child and subject to  
2 enabling regulations as the court finds necessary for the  
3 maintenance of order and decorum and for the furtherance of the  
4 purposes of the Children's Code. A child who is the subject of  
5 an abuse and neglect proceeding [~~and is present at a hearing~~]  
6 may object to the presence of the media. The court may exclude  
7 the media if it finds that the presence of the media is  
8 contrary to the best interests of the child.

9 E. If the court finds that it is in the best  
10 interest of a child under fourteen years of age, the child may  
11 be excluded from a hearing under the Abuse and Neglect Act. A  
12 child fourteen years of age or older may be [~~excluded~~] excused  
13 from a hearing if the child chooses not to attend, or the child  
14 may be excluded from a hearing by the court only if the court  
15 makes a finding that there is a compelling reason to exclude  
16 the child and states the factual basis for the finding. The  
17 court may compel the attendance of any child at any hearing.

18 F. Those persons or parties granted admission to a  
19 closed hearing who intentionally divulge information in  
20 violation of this section are guilty of a petty misdemeanor.

21 G. The court shall determine if the allegations of  
22 the petition are admitted or denied. If the allegations are  
23 denied, the court shall proceed to hear evidence on the  
24 petition. The court, after hearing all of the evidence bearing  
25 on the allegations of neglect or abuse, shall make and record



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1 its findings on whether the child is a neglected child, an  
2 abused child or both. If the petition alleges that the parent,  
3 guardian or custodian has subjected the child to aggravated  
4 circumstances, then the court shall also make and record its  
5 findings on whether the aggravated circumstances have been  
6 proven.

7 H. If the court finds on the basis of a valid  
8 admission of the allegations of the petition or on the basis of  
9 clear and convincing evidence, competent, material and relevant  
10 in nature, that the child is neglected or abused, the court may  
11 proceed immediately or at a [~~postponed~~] later hearing to make  
12 disposition of the case. If the court does not find that the  
13 child is neglected or abused, the court shall dismiss the  
14 petition and may refer the family to the department for  
15 appropriate services.

16 I. In that part of the hearings held under the  
17 Children's Code on dispositional issues, all relevant and  
18 material evidence helpful in determining the questions  
19 presented, including oral and written reports, may be received  
20 by the court and may be relied upon to the extent of its  
21 probative value even though not competent had it been offered  
22 during the part of the hearings on adjudicatory issues.

23 J. On the court's motion or that of a party, the  
24 court may continue the hearing on the petition for a period not  
25 to exceed thirty days to receive reports and other evidence in

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1 connection with disposition. The court shall continue the  
2 hearing pending the receipt of the predisposition study and  
3 report if that document has not been prepared and received.  
4 During any continuances under this subsection, the court shall  
5 make an appropriate order for legal custody."

6 SECTION 16. Section 32A-4-21 NMSA 1978 (being Laws 1993,  
7 Chapter 77, Section 115, as amended) is amended to read:

8 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,  
9 REPORTS AND EXAMINATIONS.--

10 A. Prior to holding a dispositional hearing, the  
11 court shall direct that a predisposition study and report be  
12 submitted in writing to the court by the department.

13 B. The predisposition study required pursuant to  
14 Subsection A of this section shall contain the following  
15 information:

16 (1) a statement of the specific reasons for  
17 intervention by the department or for placing the child in the  
18 department's custody and a statement of the parent's ability to  
19 care for the child in the parent's home without causing harm to  
20 the child;

21 (2) a statement of [~~how an intervention plan~~  
22 ~~is designed to achieve placement of the child in the least~~  
23 ~~restrictive setting available, consistent with the best~~  
24 ~~interests and special needs of the child, including a statement~~  
25 ~~of]~~ the likely harm the child may suffer as a result of being

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1 removed from the parent's home, including emotional harm that  
2 may result due to separation from the child's parents [~~and a~~  
3 ~~statement of how the intervention plan is designed to place the~~  
4 ~~child in close proximity to the parent's home without causing~~  
5 ~~harm to the child due to separation from parents]~~ or siblings  
6 or any other person who may significantly affect the child's  
7 best interest and how the case plan is designed to mitigate  
8 such harm;

9 (3) the wishes of the child as to the child's  
10 custodian;

11 [~~(4) whether the child has a family member~~  
12 ~~who, subsequent to study by the department, is determined to be~~  
13 ~~qualified to care for the child;]~~

14 (4) what efforts the department has made to  
15 identify and locate relatives for placement of the child and  
16 whether the department is conducting home studies on  
17 appropriate relatives who express an interest in providing  
18 placement for the child;

19 (5) a description of services offered to the  
20 child, the child's family and the child's foster care family  
21 and a summary of reasonable efforts made to prevent removal of  
22 the child from the child's family [~~or~~] and reasonable efforts  
23 made to reunite the child with the child's family;

24 (6) a description of the home or facility in  
25 which the child is placed and the appropriateness of the

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1 child's placement to ensure that the placement is in the least  
2 restrictive setting and is in close proximity to the child's  
3 home consistent with the best interest and special needs of the  
4 child;

5 (7) the results of any diagnostic examination  
6 or evaluation ordered at the custody hearing;

7 (8) a statement of the child's medical and  
8 educational [~~background~~] history;

9 (9) if the child is an Indian child, whether  
10 the placement preferences set forth in the federal Indian Child  
11 Welfare Act of 1978 or the placement preferences of the child's  
12 Indian tribe were followed and whether the child's [~~treatment~~]  
13 case plan provides for maintaining the child's cultural ties;

14 (10) a [~~treatment~~] case plan that sets forth  
15 steps to ensure that the child's physical, medical and  
16 psychological [~~and educational~~] needs are met and that sets  
17 forth services to be provided to the child and the child's  
18 parents to facilitate permanent placement of the child [~~in the~~  
19 ~~parent's home~~];

20 (11) for children sixteen years of age and  
21 older, a transition plan for developing the specific skills the  
22 child requires for successful transition [~~into~~] to independent  
23 living as an adult, regardless of whether the child is returned  
24 to the child's parent's home; [~~and~~]

25 (12) for children seventeen years of age, a

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1 transition plan that shall include specific options for meeting  
2 the child's needs after the child's eighteenth birthday,  
3 including housing, education, employment or income, physical  
4 and mental health, local opportunities for mentors and  
5 continuing support services;

6 [~~(12)~~] (13) a [~~treatment~~] case plan that sets  
7 forth steps to ensure that the child's educational needs are  
8 met and, for a child fourteen years of age or older, a  
9 [~~treatment~~] case plan that specifically sets forth the child's  
10 educational and post-secondary goals; and

11 [~~(13)~~] (14) a description of the child's  
12 foster care placement and whether it is appropriate in terms of  
13 the educational setting and proximity to the school the child  
14 was enrolled in at the time of [~~the~~] each placement, including  
15 plans for travel for the child to remain in the school in which  
16 the child was enrolled at the time of placement, if reasonable  
17 and in the child's best interest.

18 C. A copy of the predisposition report shall be  
19 provided by the department to counsel for all parties five days  
20 before the dispositional hearing.

21 D. If the child is an adjudicated abused or  
22 neglected child, any temporary custody orders shall remain in  
23 effect until the [~~court has received and considered the~~  
24 ~~predispositional study at~~] conclusion of the dispositional  
25 hearing."

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1           SECTION 17. Section 32A-4-22 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 116, as amended) is amended to read:

3           "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED  
4 CHILD.--

5           A. If not held in conjunction with the adjudicatory  
6 hearing, the dispositional hearing shall be commenced within  
7 thirty days after the conclusion of the adjudicatory hearing.  
8 At the conclusion of the dispositional hearing, the court shall  
9 make and include in the dispositional judgment its findings on  
10 the following:

11                       ~~[(1) the interaction and interrelationship of~~  
12 ~~the child with the child's parent, siblings and any other~~  
13 ~~person who may significantly affect the child's best interest;~~

14                       ~~(2) the child's adjustment to the child's~~  
15 ~~home, school and community;~~

16                       ~~(3) the mental and physical health of all~~  
17 ~~individuals involved;~~

18                       ~~(4) the wishes of the child as to the child's~~  
19 ~~placement;~~

20                       ~~(5) the wishes of the child's parent, guardian~~  
21 ~~or custodian as to the child's custody;~~

22                       ~~(6) whether there exists a relative of the~~  
23 ~~child or other individual who, after study by the department,~~  
24 ~~is found to be qualified to receive and care for the child;~~

25                       ~~(7)]~~ (1) the availability of services

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1 recommended in the [~~treatment~~] case plan prepared as a part of  
2 the predisposition study in accordance with the provisions of  
3 Section 32A-4-21 NMSA 1978;

4 [~~(8)~~] (2) the ability of the parent to care  
5 for the child in the home so that no harm will result to the  
6 child;

7 [~~(9)~~] (3) whether reasonable efforts were used  
8 by the department to prevent removal of the child from the home  
9 prior to placement in substitute care and whether reasonable  
10 efforts were used to attempt reunification of the child with  
11 the natural parent;

12 [~~(10)~~] (4) whether reasonable efforts were  
13 made by the department to place siblings in custody together,  
14 unless such joint placement would be contrary to the safety or  
15 well-being of any of the siblings in custody, and whether any  
16 siblings not jointly placed have been provided reasonable  
17 visitation or other ongoing interaction, unless visitation or  
18 other ongoing interaction would be contrary to the safety or  
19 well-being of any of the siblings; and

20 [~~(11)~~] (5) if the child is an Indian child,  
21 whether the placement preferences set forth in the federal  
22 Indian Child Welfare Act of 1978 or the placement preferences  
23 of the child's Indian tribe have been followed and whether the  
24 Indian child's [~~treatment~~] case plan provides for maintaining  
25 the Indian child's cultural ties. When placement preferences

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1 have not been followed, good cause for noncompliance shall be  
2 clearly stated and supported.

3 B. If a child is found to be neglected or abused,  
4 the court may enter [~~its~~] a judgment making any of the  
5 following dispositions to protect the welfare of the child:

6 (1) permit the child to remain with the  
7 child's parent, guardian or custodian, subject to those  
8 conditions and limitations the court may prescribe;

9 (2) place the child under protective  
10 supervision of the department; or

11 (3) transfer legal custody of the child to any  
12 of the following:

13 (a) the noncustodial parent, if it is  
14 found to be in the child's best interest;

15 (b) an agency responsible for the care  
16 of neglected or abused children; or

17 (c) a child-placement agency willing and  
18 able to assume responsibility for the education, care and  
19 maintenance of the child and licensed or otherwise authorized  
20 by law to receive and provide care for the child.

21 C. In arriving at an appropriate disposition for a  
22 child, the court shall consider the following factors:

23 (1) the interaction and interrelationship of  
24 the child with the child's parents and siblings and any other  
25 person who may significantly affect the child's best interest;

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

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

5                   (4) the wishes of the child as to the child's  
6 placement;

7                   (5) the wishes of the child's parent, guardian  
8 or custodian as to the child's custody; and

9                   (6) whether there exists a relative of the  
10 child or other individual who, after study by the department,  
11 is found to be qualified to receive and care for the child.

12                   ~~[G-]~~ D. If a child is found to be neglected or  
13 abused, in its dispositional judgment the court shall also  
14 order the department to implement and the child's parent,  
15 guardian or custodian to cooperate with any ~~[treatment]~~ case  
16 plan approved by the court. Reasonable efforts shall be made  
17 to preserve and reunify the family, with the paramount concern  
18 being the child's health and safety. The court may determine  
19 that reasonable efforts are not required to be made when the  
20 court finds that:

21                   (1) the efforts would be futile; or

22                   (2) the parent, guardian or custodian has  
23 subjected the child to aggravated circumstances.

24                   ~~[D-]~~ E. Any parent, guardian or custodian of a  
25 child who is placed in the legal custody of the department or

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1 other person pursuant to Subsection B of this section shall  
2 have reasonable rights of visitation with the child as  
3 determined by the court, unless the court finds that the best  
4 interests of the child preclude any visitation.

5 ~~[E.]~~ F. The court may order reasonable visitation  
6 between a child placed in the custody of the department and the  
7 child's siblings or any other person who may significantly  
8 affect the child's best interest, if the court finds the  
9 visitation to be in the child's best interest.

10 ~~[F.]~~ G. Unless a child found to be neglected or  
11 abused is also found to be delinquent, the child shall not be  
12 confined in an institution established for the long-term care  
13 and rehabilitation of delinquent children.

14 ~~[G.]~~ H. When the court vests legal custody in an  
15 agency, institution or department, the court shall transmit  
16 with the dispositional judgment copies of the clinical reports,  
17 the predisposition study and report and any other information  
18 it has pertinent to the care and treatment of the child.

19 ~~[H.]~~ I. Prior to a child being placed in the  
20 custody or protective supervision of the department, the  
21 department shall be provided with reasonable oral or written  
22 notification and an opportunity to be heard. At any hearing  
23 held pursuant to this subsection, the department may appear as  
24 a party.

25 ~~[I.]~~ J. When a child is placed in the custody of

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1 the department, the department shall investigate whether the  
2 child is eligible for enrollment as a member of an Indian tribe  
3 and, if so, the department shall pursue the enrollment on the  
4 child's behalf.

5 ~~[J-]~~ K. When the court determines pursuant to  
6 Subsection ~~[G]~~ D of this section that no reasonable efforts at  
7 reunification are required, the court shall conduct, within  
8 thirty days, a permanency hearing as described in Section  
9 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to  
10 implement and finalize the permanency plan in a timely manner."

11 **SECTION 18.** Section 32A-4-23 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 117, as amended) is amended to read:

13 "32A-4-23. DISPOSITION OF A CHILD WITH A MENTAL DISORDER  
14 OR A DEVELOPMENTAL DISABILITY IN A PROCEEDING UNDER THE ABUSE  
15 AND NEGLECT ACT.--

16 A. If in a hearing, at any stage of a proceeding on  
17 a neglect or abuse petition, the evidence indicates that a  
18 child has a mental disorder or a developmental disability, the  
19 court shall adjudicate the issue of neglect or abuse under the  
20 provisions of the Children's Code.

21 B. When a child in department custody needs  
22 involuntary placement for residential mental health or  
23 developmental disability services as a result of a mental  
24 disorder or developmental disability, the department shall  
25 petition for that child's placement pursuant to the provisions

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1 of the Children's Mental Health and Developmental Disabilities  
2 Act.

3 C. Any child in department custody who is placed  
4 for residential treatment or habilitation pursuant to the  
5 provisions of the Children's Mental Health and Developmental  
6 Disabilities Act shall remain in the legal custody of the  
7 department while in residential treatment or habilitation or  
8 until further order of the court.

9 D. A court hearing for consideration of an  
10 involuntary placement of a child for residential treatment or  
11 habilitation, when the child is subject to the provisions of  
12 the Abuse and Neglect Act, may be heard by the court as part of  
13 the abuse or neglect proceedings or may be heard in a separate  
14 proceeding. All parties to the abuse or neglect proceedings  
15 shall be provided with notice of the involuntary placement  
16 hearing.

17 E. A guardian ad litem appointed pursuant to the  
18 Abuse and Neglect Act shall serve as a guardian ad litem for a  
19 child for the purposes of the Children's Mental Health and  
20 Developmental Disabilities Act. When a child is fourteen years  
21 of age or older, the child shall be represented by an attorney  
22 unless, after consultation between the child and the child's  
23 attorney, the child elects to be represented by counsel  
24 appointed in the proceedings under the Children's Mental Health  
25 and Developmental Disabilities Act.

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1 F. When a child is subject to the provisions of the  
2 Abuse and Neglect Act and is receiving residential treatment or  
3 habilitation services, any documentation required pursuant to  
4 the Children's Mental Health and Developmental Disabilities Act  
5 shall be filed with the court as part of the abuse or neglect  
6 proceeding. A review of the child's placement in a residential  
7 treatment or habilitation program shall occur in the same  
8 manner and within the same time requirements as provided in the  
9 Children's Mental Health and Developmental Disabilities Act.

10 G. The clerk of the court shall maintain a separate  
11 section within an abuse or neglect file for documents  
12 pertaining to actions taken under the Children's Mental Health  
13 and Developmental Disabilities Act.

14 H. A child subject to the provisions of the Abuse  
15 and Neglect Act who receives treatment in a residential  
16 treatment or habilitation program shall ~~[enjoy]~~ be entitled to  
17 all the substantive and procedural rights set forth in the  
18 Children's Mental Health and Developmental Disabilities Act."

19 SECTION 19. Section 32A-4-23.1 NMSA 1978 (being Laws  
20 2009, Chapter 239, Section 43) is amended to read:

21 "32A-4-23.1. DISPOSITION OF AN UNDOCUMENTED IMMIGRANT  
22 CHILD IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

23 A. ~~[Whenever the court adjudicates that a child is~~  
24 ~~abused or neglected, the department shall determine the child's~~  
25 ~~immigration status.]~~ At the ~~[first judicial review]~~

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1 dispositional hearing, the department shall report the child's  
2 immigration status to the court. Services to children alleged  
3 to have been abused, neglected or abandoned must be provided  
4 without regard to the immigration status of the child except  
5 where immigration status is explicitly set forth as a statutory  
6 or regulatory condition of coverage or eligibility.

7 B. If the child is an undocumented immigrant, the  
8 department shall include in the [~~treatment~~] case plan a  
9 recommendation as to whether the permanency plan for the child  
10 includes reuniting the child with the child's parents and  
11 whether it is in the child's best interest to be returned to  
12 the child's country of origin. If the permanency plan does not  
13 include reunification and the department does not recommend  
14 that the child be returned to the country of origin, the  
15 department shall determine whether the child may be eligible  
16 for special immigrant juvenile status under federal law.

17 C. If the child is eligible for special immigrant  
18 juvenile status, the department shall move the court for a  
19 special immigrant juvenile status order containing the  
20 necessary findings to establish that the child meets the  
21 criteria for federal special immigrant juvenile status. The  
22 department's motion shall include a statement of the express  
23 wishes of the child, as expressed by the child or the child's  
24 guardian ad litem or attorney.

25 D. After consultation with the child and the

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1 child's guardian ad litem or attorney, the department shall  
2 determine whether the child's best interests would be served by  
3 the filing of a petition for special immigrant juvenile status  
4 and application for adjustment of status. [~~and~~] If it is  
5 determined to be in the child's best interest, within sixty  
6 days after an entry of the special immigrant juvenile status  
7 order, the department shall file a petition for special  
8 immigrant juvenile status and an application for adjustment of  
9 status on behalf of the child.

10 E. If a petition and application have been filed  
11 and the petition and application have not been granted by the  
12 time the child reaches eighteen years of age, the court may  
13 retain jurisdiction over the case for the sole purpose of  
14 ensuring that the child continues to satisfy the requirements  
15 for classification as a special immigrant juvenile.

16 F. Review hearings for the child shall be set  
17 solely for the purpose of confirming that the child continues  
18 to satisfy such requirements and determining the status of the  
19 petition and application.

20 G. The court's jurisdiction terminates upon the  
21 final decision of the federal authorities or upon the child's  
22 twenty-first birthday, whichever occurs first.

23 H. Retention of jurisdiction in this instance does  
24 not affect the transition services available to the child.

25 [~~I. The court may not retain jurisdiction of the~~

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1 ~~case after the immigrant child's twenty-first birthday.~~

2           ~~F.]~~ I. In a judicial review report provided to the  
3 court for a child for whom the court has granted the special  
4 immigrant juvenile status order described in Subsection C of  
5 this section, the court shall be advised of the status of the  
6 petition and application process concerning the child."

7           **SECTION 20.** Section 32A-4-24 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 118, as amended) is amended to read:

9           "32A-4-24. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--  
10 MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

11           A. A judgment vesting legal custody of a child in  
12 ~~[an agency]~~ the department shall remain in force for an  
13 indeterminate period not exceeding two years from the date  
14 entered.

15           ~~[B. A judgment vesting legal custody of a child in~~  
16 ~~an individual, other than the child's parent or permanent~~  
17 ~~guardian, shall remain in force for two years from the date~~  
18 ~~entered, unless sooner terminated by court order.~~

19           ~~G.]~~ B. A judgment vesting legal custody of a child  
20 in the child's parent or a permanent guardian shall remain in  
21 force for an indeterminate period from the date entered until  
22 terminated by court order or until the child is emancipated or  
23 reaches the age of majority.

24           ~~[D.]~~ C. At any time prior to expiration, a judgment  
25 vesting legal custody or granting protective supervision may be

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1 modified, revoked or extended on motion by any party, including  
2 the child by and through the child's guardian ad litem or  
3 attorney.

4 [~~E.~~] D. Prior to the expiration of a judgment  
5 transferring legal custody to [~~an agency~~] the department, the  
6 court may extend the judgment for additional periods of one  
7 year if it finds that the extension is necessary to safeguard  
8 the welfare of the child or the public interest.

9 [~~F.~~] E. When a child reaches eighteen years of age,  
10 all neglect and abuse orders affecting the child then in force  
11 automatically terminate except as provided in Section  
12 32A-4-23.1 NMSA 1978 and Subsection D of Section 32A-4-25.3  
13 NMSA 1978. The termination of the orders shall not disqualify  
14 a child from eligibility for transitional services."

15 **SECTION 21.** Section 32A-4-25 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 119, as amended) is amended to read:

17 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

18 A. The initial judicial review shall be held within  
19 sixty days of the [~~disposition~~] dispositional hearing. At the  
20 initial review, the parties shall demonstrate to the court  
21 efforts made to implement the [~~treatment~~] case plan approved by  
22 the court in its dispositional order. The court shall  
23 determine the extent to which the [~~treatment~~] case plan has  
24 been implemented and make supplemental orders as necessary to  
25 ensure compliance with the [~~treatment~~] case plan and the safety

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1 of the child. Prior to the initial judicial review, the  
2 department shall submit a copy of the adjudicatory [~~order~~  
3 judgment], the dispositional order and notice of the initial  
4 judicial review to the local substitute care review board for  
5 that judicial district created under the Citizen Substitute  
6 Care Review Act. A representative of the local substitute care  
7 review board shall be permitted to attend and comment to the  
8 court.

9 B. Subsequent periodic reviews of dispositional  
10 orders shall be held within six months of the conclusion of the  
11 permanency hearing or, if a motion has been filed for  
12 termination of parental rights [~~or permanent guardianship~~],  
13 within six months of the decision on that motion and every six  
14 months thereafter. Prior to the review, the department shall  
15 submit a progress report to the local substitute care review  
16 board for that judicial district created under the Citizen  
17 Substitute Care Review Act. Prior to any judicial review by  
18 the court pursuant to this section, the local substitute care  
19 review board may review the dispositional order or the  
20 continuation of the order and the department's progress report  
21 and report its findings and recommendations to the court. The  
22 review may be carried out by either of the following:

23 (1) a judicial review hearing conducted by the  
24 court; or

25 (2) a judicial review hearing conducted by a

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1 special master appointed by the court; provided, however, that  
2 the court approve any findings made by the special master.

3 C. The children's court attorney shall give notice  
4 to all parties, including the child by and through the child's  
5 guardian ad litem or attorney, the child's CASA, a contractor  
6 administering the local substitute care review board and the  
7 child's foster parent or substitute care provider of the time,  
8 place and purpose of any judicial review hearing held pursuant  
9 to Subsection A or B of this section.

10 D. At any judicial review hearing held pursuant to  
11 Subsection B of this section, the department, the child's  
12 guardian ad litem or attorney and all parties given notice  
13 pursuant to Subsection C of this section shall have the  
14 opportunity to present evidence and to cross-examine witnesses.  
15 At the hearing, the department shall show that it has made  
16 reasonable effort to implement any treatment plan approved by  
17 the court in its dispositional order and shall present a  
18 [~~treatment~~] case plan consistent with the purposes of the  
19 Children's Code for any period of extension of the  
20 dispositional order. The respondent shall demonstrate to the  
21 court that efforts to comply with the [~~treatment~~] case plan  
22 approved by the court in its dispositional order and efforts to  
23 maintain contact with the child were diligent and made in good  
24 faith. The court shall determine the extent of compliance with  
25 the [~~treatment~~] case plan and whether progress is being made

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1 toward establishing a stable and permanent placement for the  
2 child.

3 E. The Rules of Evidence shall not apply to  
4 hearings held pursuant to this section. The court may admit  
5 testimony by any person given notice of the hearing who has  
6 information about the status of the child or the status of the  
7 [~~treatment~~] case plan.

8 F. At the conclusion of any hearing held pursuant  
9 to this section, the court shall make findings of fact and  
10 conclusions of law.

11 G. When the child is an Indian child, the court  
12 shall determine during review of a dispositional order whether  
13 the placement preferences set forth in the federal Indian Child  
14 Welfare Act of 1978 or the placement preferences of the child's  
15 Indian tribe were followed and whether the child's [~~treatment~~]  
16 case plan provides for maintaining the child's cultural ties.  
17 When placement preferences have not been followed, good cause  
18 for noncompliance shall be clearly stated and supported.

19 H. Based on its findings at a judicial review  
20 hearing held pursuant to Subsection B of this section, the  
21 court shall order one of the following dispositions:

22 (1) dismiss the action and return the child to  
23 the child's parent without supervision if the court finds that  
24 conditions in the home that led to abuse or neglect have been  
25 corrected and it is now safe [~~for the~~] to return [~~of~~] the

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1 abused or neglected child;

2 (2) permit the child to remain with the  
3 child's parent, guardian or custodian subject to those  
4 conditions and limitations the court may prescribe, including  
5 protective supervision of the child by the department;

6 (3) return the child to the child's parent or  
7 guardian and place the child under the protective supervision  
8 of the department;

9 (4) transfer or continue legal custody of the  
10 child to:

11 (a) the noncustodial parent, if that is  
12 found to be in the child's best interests;

13 (b) a relative or other individual who,  
14 after study by the department or other agency designated by the  
15 court, is found by the court to be qualified to receive and  
16 care for the child and is appointed as a permanent guardian of  
17 the child; or

18 (c) the department, subject to the  
19 provisions of Paragraph (6) of this subsection;

20 (5) continue the child in the legal custody of  
21 the department with or without any required parental  
22 involvement in a [~~treatment~~] case plan. Reasonable efforts  
23 shall be made to preserve and reunify the family, with the  
24 paramount concern being the child's health and safety unless  
25 the court finds that such efforts are not required. The court

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1 may determine that reasonable efforts are not required to be  
2 made when the court finds that:

3 (a) the efforts would be futile; or  
4 (b) the parent, guardian or custodian  
5 has subjected the child to aggravated circumstances;

6 (6) make additional orders regarding the  
7 [~~treatment~~] case plan or placement of the child to protect the  
8 child's best interests if the court determines the department  
9 has failed in implementing any material provision of the  
10 [~~treatment~~] case plan or abused its discretion in the placement  
11 or proposed placement of the child; or

12 (7) if during a judicial review the court  
13 finds that the child's parent, guardian or custodian has not  
14 complied with the court-ordered [~~treatment~~] case plan, the  
15 court may order:

16 (a) the child's parent, guardian or  
17 custodian to show cause why the parent, guardian or custodian  
18 should not be held in contempt of court; or

19 (b) a hearing on the merits of  
20 terminating parental rights.

21 I. Dispositional orders entered pursuant to this  
22 section shall remain in force for a period of six months,  
23 except for orders that provide for transfer of the child to the  
24 child's noncustodial parent or to a permanent guardian.

25 J. The report of the local substitute care review

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1 board submitted to the court pursuant to Subsection B of this  
2 section shall become a part of the child's permanent court  
3 record.

4 K. When the court determines, pursuant to Paragraph  
5 (5) of Subsection H of this section, that no reasonable efforts  
6 at reunification are required, the court shall conduct, within  
7 thirty days, a permanency hearing as described in Section  
8 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to  
9 place the child in a timely manner in accordance with the  
10 permanency plan and to complete whatever steps are necessary to  
11 finalize the permanent placement of the child."

12 SECTION 22. Section 32A-4-25.1 NMSA 1978 (being Laws  
13 1997, Chapter 34, Section 8, as amended) is amended to read:

14 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW  
15 HEARINGS.--

16 A. A permanency hearing shall be commenced within  
17 six months of the initial judicial review of a child's  
18 dispositional order or within twelve months of a child entering  
19 foster care [~~pursuant to~~] as defined in Subsection [D] E of  
20 this section, whichever occurs first. Prior to the initial  
21 permanency hearing, all parties to the hearing shall attend a  
22 mandatory meeting and attempt to settle issues attendant to the  
23 permanency hearing and develop a proposed [~~treatment~~] case plan  
24 that serves the child's best interest. Prior to the initial  
25 permanency hearing, the department shall submit a progress

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1 report regarding the child to the local substitute care review  
2 board for that judicial district. The local substitute care  
3 review board may review the child's dispositional order, any  
4 continuation of that order and the department's progress report  
5 and report its findings and recommendations to the court.

6 B. At the permanency hearing, all parties shall  
7 have the opportunity to present evidence and to cross-examine  
8 witnesses. At the conclusion of the permanency hearing, the  
9 court shall order one of the following permanency plans for the  
10 child:

11 (1) reunification;

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

15 (3) placement with a person who will be the  
16 child's permanent guardian; or

17 [~~(4) placement in the legal custody of the~~  
18 ~~department with the child placed in the home of a fit and~~  
19 ~~willing relative; or~~

20 ~~(5)]~~ (4) placement in the legal custody of the  
21 department under a planned permanent living arrangement;  
22 provided that there is substantial evidence that none of the  
23 [~~above~~] plans in Paragraphs (1) through (3) of this subsection  
24 is appropriate for the child.

25 C. If the court adopts a permanency plan of

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1 reunification, the court shall adopt a plan for transitioning  
2 the child home and schedule a permanency review hearing within  
3 three months. If the child is reunified, the subsequent  
4 hearing may be vacated.

5 ~~[D. If the court adopts a permanency plan other~~  
6 ~~than reunification, the court shall determine whether the~~  
7 ~~department has made reasonable efforts to identify and locate~~  
8 ~~all grandparents and other relatives. The court shall also~~  
9 ~~determine whether the department has made reasonable efforts to~~  
10 ~~conduct home studies on any appropriate relative expressing an~~  
11 ~~interest in providing permanency for the child. The court must~~  
12 ~~ensure the consideration has been given to the child's familial~~  
13 ~~identity and connections. If the court finds that reasonable~~  
14 ~~efforts have not been made to identify or locate grandparents~~  
15 ~~and other relatives or to conduct home studies on appropriate~~  
16 ~~and willing relatives, the court shall schedule a permanency~~  
17 ~~review within sixty days to determine whether an appropriate~~  
18 ~~relative placement has been made. If a relative placement is~~  
19 ~~made, the subsequent hearing may be vacated.~~

20 E.] D. At the permanency review hearing, all  
21 parties and the child's guardian ad litem or attorney shall  
22 have the opportunity to present evidence and cross-examine  
23 witnesses. Based on the evidence, the court shall:

24 (1) change the plan from reunification to one  
25 of the alternative plans provided in Subsection B of this

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1 section;

2 (2) dismiss the case and return custody of the  
3 child to the child's parent or guardian [~~or custodian~~]; or

4 (3) return the child to the custody of the  
5 child's parent, guardian or custodian, subject to any  
6 conditions or limitations as the court may prescribe, including  
7 protective supervision of the child by the department and  
8 continuation of the [~~treatment~~] case plan for not more than six  
9 months, after which the case shall be dismissed. The  
10 department may seek removal of a child from the home by  
11 obtaining an order in the pending case or by seeking emergency  
12 removal under Section 32A-4-6 NMSA 1978 during the period of  
13 protective supervision if the child's best interest requires  
14 such action. When a child is removed in this situation, a  
15 permanency hearing shall be scheduled within thirty days of the  
16 child coming back into the department's legal custody.

17 [~~F-~~] E. The court shall hold a permanency hearing  
18 and adopt a permanency plan for a child within twelve months of  
19 the child entering foster care. For purposes of this section,  
20 a child shall be considered to have entered foster care on the  
21 earlier of:

22 (1) the date of the first judicial finding  
23 that the child has been abused or neglected; or

24 (2) sixty days after the date on which the  
25 child was removed from the home.

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1           ~~[G.]~~ F. The court shall hold permanency hearings  
2 every twelve months when a child is in the legal custody of the  
3 department.

4           ~~[H.]~~ G. The children's court attorney shall give  
5 notice to all parties, including the child by and through the  
6 child's guardian ad litem or attorney, the child's CASA, a  
7 contractor administering the local substitute care review board  
8 and the child's foster parent or substitute care provider of  
9 the time, place and purpose of any permanency hearing or  
10 permanency review hearing held pursuant to this section.

11           ~~[I.]~~ H. The rules of evidence shall not apply to  
12 permanency hearings. The court may admit testimony by any  
13 person given notice of the permanency hearing who has  
14 information about the status of the child or the status of the  
15 ~~[treatment]~~ case plan. All testimony shall be subject to  
16 cross-examination."

17           **SECTION 23.** Section 32A-4-25.2 NMSA 1978 (being Laws  
18 2009, Chapter 239, Section 47) is amended to read:

19           "32A-4-25.2. TRANSITION SERVICES.--

20           A. Prior to a child's reaching seventeen years of  
21 age, the department shall meet with the child, the child's  
22 attorney and others of the child's choosing, including  
23 biological family members, to review and further develop ~~[a]~~  
24 the transition plan. The department shall assist the child in  
25 identifying and planning to meet the child's needs after the

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1 child's eighteenth birthday, including housing, education,  
2 employment or income, [~~health~~] physical and mental health,  
3 local opportunities for mentors and continuing support  
4 services.

5 B. The department shall present the child's  
6 proposed transition plan to the court at the first hearing  
7 scheduled after the child's seventeenth birthday.

8 C. The court shall approve and order a transition  
9 plan for the child. The transition plan approved by the court  
10 shall be reviewed at every subsequent review and permanency  
11 hearing."

12 SECTION 24. Section 32A-4-25.3 NMSA 1978 (being Laws  
13 2009, Chapter 239, Section 48) is amended to read:

14 "32A-4-25.3. DISCHARGE HEARING.--

15 A. At the last review or permanency hearing held  
16 prior to the child's eighteenth birthday, the court shall  
17 review the transition plan and shall determine whether the  
18 department has made reasonable efforts to implement the  
19 requirements of Subsection B of this section.

20 B. The court shall determine:

21 (1) whether written information concerning the  
22 child's family history, the whereabouts of any [~~sibling~~]  
23 siblings if appropriate and education and health records have  
24 been provided to the child;

25 (2) whether the child's social security card,

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1 certified birth certificate, state-issued identification card,  
2 death certificate of a parent and proof of citizenship or  
3 residence have been provided to the child;

4 (3) whether assistance in obtaining medicaid  
5 has been provided to the child, unless the child is ineligible  
6 for medicaid; and

7 (4) whether referral for a guardianship or  
8 limited guardianship if the child is incapacitated has been  
9 made.

10 C. If the court finds that the department has not  
11 made reasonable efforts to meet all the requirements of  
12 Subsection B of this section and that termination of  
13 jurisdiction would be harmful to the young adult, the court may  
14 continue to exercise its jurisdiction for a period not to  
15 exceed one year from the child's eighteenth birthday except as  
16 provided in Subsection D of this section. The young adult must  
17 consent to continued jurisdiction of the court. The court may  
18 dismiss the case at any time after the child's eighteenth  
19 birthday for good cause.

20 D. If a referral for a guardianship or limited  
21 guardianship has been made, the court may continue to exercise  
22 its jurisdiction without the young adult's consent until a  
23 final order in the guardianship or limited guardianship is  
24 entered."

25 SECTION 25. Section 32A-4-27 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 121, as amended) is amended to read:

2 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO  
3 INTERVENE.--

4 A. At any stage of an abuse or neglect proceeding,  
5 a person described in this subsection may be permitted to  
6 intervene as a party with a motion for affirmative relief:

7 (1) a foster parent with whom the child has  
8 resided [~~with~~] for at least six months;

9 (2) a relative within the fifth degree of  
10 consanguinity with whom the child has resided;

11 (3) a stepparent with whom the child has  
12 resided; or

13 (4) a person who wishes to become the child's  
14 permanent guardian.

15 B. When determining whether a person described in  
16 Subsection A of this section should be permitted to intervene,  
17 the court shall consider:

18 (1) the person's rationale for the [~~purpose~~]  
19 proposed intervention; and

20 (2) whether intervention is in the best  
21 interest of the child.

22 C. When the court determines that the child's best  
23 interest will be served as a result of intervention by a person  
24 described in Subsection A of this section, the court may permit  
25 intervention unless the party opposing intervention can

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1 demonstrate that a viable plan for reunification with the  
2 respondents is in progress and that intervention could impede  
3 the progress of the reunification plan.

4 D. The persons described in this subsection shall  
5 be permitted to intervene during any stage of an abuse or  
6 neglect proceeding:

7 (1) a parent of the child who is not named in  
8 the petition alleging abuse or neglect; and

9 (2) when the child is an Indian child, the  
10 child's Indian tribe.

11 E. The child's foster parent shall be permitted to  
12 intervene when:

13 (1) the foster parent desires to adopt the  
14 child;

15 (2) the child has resided with the foster  
16 parent for at least six months within the year prior to the  
17 termination of parental rights;

18 (3) a motion for termination of parental  
19 rights has been filed by a person other than the foster parent;  
20 and

21 (4) bonding between the child and the child's  
22 foster parent is alleged as a reason for terminating parental  
23 rights in the motion for termination of parental rights.

24 F. The foster parent, preadoptive parent or  
25 relative providing care for the child shall be given notice of,

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1 and an opportunity to be heard in, any review or hearing with  
2 respect to the child, except that this subsection shall not be  
3 construed to require that any foster parent, preadoptive parent  
4 or relative providing care for the child be made a party to  
5 ~~[such a review or hearing]~~ the case solely on the basis of the  
6 notice and opportunity to be heard."

7 SECTION 26. Section 32A-4-28 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 122, as amended) is amended to read:

9 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION  
10 DECREE.--

11 A. In proceedings to terminate parental rights, the  
12 court shall give primary consideration to the physical, mental  
13 and emotional welfare and needs of the child, including the  
14 likelihood of the child being adopted if parental rights are  
15 terminated.

16 B. The court shall terminate parental rights with  
17 respect to a child when:

18 (1) there has been an abandonment of the child  
19 by ~~[his]~~ the child's parents;

20 (2) the child has been a neglected or abused  
21 child as defined in the Abuse and Neglect Act and the court  
22 finds that the conditions and causes of the neglect and abuse  
23 are unlikely to change in the foreseeable future despite  
24 reasonable efforts by the department or other appropriate  
25 agency to assist the parent in adjusting the conditions that

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1 render the parent unable to properly care for the child. The  
2 court may find in some cases that efforts by the department or  
3 another agency are unnecessary, when:

4 (a) there is a clear showing that the  
5 efforts would be futile; or

6 (b) the parent has subjected the child  
7 to aggravated circumstances; or

8 (3) the child has been placed in the care of  
9 others, including care by other relatives, either by [a] court  
10 order or otherwise and the following conditions exist:

11 (a) the child has lived in the home of  
12 others for an extended period of time;

13 (b) the parent-child relationship has  
14 disintegrated;

15 (c) a psychological parent-child  
16 relationship has developed between the substitute family and  
17 the child;

18 (d) if the court deems the child of  
19 sufficient capacity to express a preference, the child no  
20 longer prefers to live with the ~~[natural]~~ parent;

21 (e) the substitute family desires to  
22 adopt the child; and

23 (f) a presumption of abandonment created  
24 by the conditions described in Subparagraphs (a) through (e) of  
25 this paragraph has not been rebutted.

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1 C. A finding by the court that all of the  
2 conditions set forth in Subparagraphs (a) through [~~(f)~~] (e) of  
3 Paragraph (3) of Subsection B of this section exist shall  
4 create a rebuttable presumption of abandonment.

5 D. The department shall not file a motion, and  
6 shall not join a motion filed by another party, to terminate  
7 parental rights when the sole factual basis for the motion is  
8 that a child's parent is incarcerated.

9 E. The termination of parental rights involving a  
10 child subject to the federal Indian Child Welfare Act of 1978  
11 shall comply with the requirements of that act.

12 F. If the court finds that parental rights should  
13 be terminated; that the requirements for the adoption of a  
14 child have been satisfied; that the prospective adoptive parent  
15 is a party to the action; and that good cause exists to waive  
16 the filing of a separate petition for adoption, the court may  
17 proceed to grant adoption of the child, absent an appeal of the  
18 termination of parental rights. The court shall not waive any  
19 time requirements set forth in the Adoption Act unless the  
20 termination of parental rights occurred pursuant to the  
21 provisions of Paragraph (3) of Subsection B of this section.  
22 The court may enter a decree of adoption only after finding  
23 that the party seeking to adopt the child has satisfied all of  
24 the requirements set forth in the Adoption Act. Unless  
25 otherwise stipulated by all parties, an adoption decree shall

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1 take effect sixty days after the termination of parental rights  
2 to allow the department sufficient time to provide counseling  
3 for the child and otherwise prepare the child for the adoption.  
4 The adoption decree shall conform to the requirements of the  
5 Adoption Act and shall have the same force and effect as other  
6 adoption decrees entered pursuant to that act. The court clerk  
7 shall assign an adoption case number to the adoption decree."

8 SECTION 27. Section 32A-4-29 NMSA 1978 (being Laws 1993,  
9 Chapter 77, Section 123, as amended) is amended to read:

10 "32A-4-29. TERMINATION PROCEDURE.--

11 A. A motion to terminate parental rights may be  
12 filed at any stage of the abuse or neglect proceeding by a  
13 party to the proceeding.

14 B. The motion for termination of parental rights  
15 shall set forth:

16 (1) the date, place of birth and marital  
17 status of the child, if known;

18 (2) the grounds for termination and the facts  
19 and circumstances supporting the grounds for termination;

20 (3) the names and addresses of the persons or  
21 authorized agency or agency officer to whom legal custody might  
22 be transferred;

23 (4) whether the child resides or has resided  
24 with a foster parent who desires to adopt this child;

25 (5) whether the motion is in contemplation of

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1 adoption;

2 (6) the relationship or legitimate interest of  
3 the moving party to the child; and

4 (7) whether the child is subject to the  
5 federal Indian Child Welfare Act of 1978 and, if so:

6 (a) the tribal affiliations of the  
7 child's parents;

8 (b) the specific actions taken by the  
9 moving party to notify the parents' tribes and the results of  
10 the contacts, including the names, addresses, titles and  
11 telephone numbers of the persons contacted. Copies of any  
12 correspondence with the tribes shall be attached as exhibits to  
13 the petition; and

14 (c) what specific efforts were made to  
15 comply with the placement preferences set forth in the federal  
16 Indian Child Welfare Act of 1978 or the placement preferences  
17 of the appropriate Indian tribes.

18 C. Notice of the filing of the motion, accompanied  
19 by a copy of the motion, shall be served by the moving party on  
20 all other parties, the foster parent, preadoptive parent or  
21 relative providing care for the child with whom the child is  
22 residing, foster parents with whom the child has resided for  
23 six months within the previous twelve months, the custodian of  
24 the child, any person appointed to represent any party and any  
25 other person the court orders. Service shall be in accordance

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1 with the Children's Court Rules for the service of motions,  
2 except that foster parents and attorneys of record in this  
3 proceeding shall be served by certified mail. The notice shall  
4 state specifically that the person served shall file a written  
5 response to the motion within twenty days if the person intends  
6 to contest the termination. In any case involving a child  
7 subject to the federal Indian Child Welfare Act of 1978, notice  
8 shall also be sent by certified mail to the tribes of the  
9 child's parents and upon any "Indian custodian" as that term is  
10 defined in 25 U.S.C. Section 1903(6). Further notice shall not  
11 be required on a parent who has been provided notice previously  
12 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make  
13 an appearance.

14 D. When a motion to terminate parental rights is  
15 filed, the moving party shall request a hearing on the motion.  
16 The hearing date shall be at least thirty days, but no more  
17 than sixty days, after service is effected upon the parties  
18 entitled to service under this section. [~~The moving~~] Any party  
19 [~~shall also~~] may file a motion for court-ordered mediation  
20 between the parent and any prospective adoptive parent to  
21 discuss an open adoption agreement. [~~If an open adoption~~  
22 ~~agreement is reached at any time before termination of parental~~  
23 ~~rights, it shall be made a part of the court record.~~]

24 E. In any action for the termination of parental  
25 rights brought by a party other than the department and

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1 involving a child in the legal custody of the department, the  
2 department may:

3 (1) litigate a motion for the termination of  
4 parental rights that was initially filed by another party; or

5 (2) move that the motion for the termination  
6 of parental rights be found premature and denied.

7 F. When a motion to terminate parental rights is  
8 filed, the department shall perform concurrent planning.

9 G. When a child has been in foster care for not  
10 less than fifteen of the previous twenty-two months, the  
11 department shall file a motion to terminate parental rights,  
12 unless

13 ~~[(1) a parent has made substantial progress~~  
14 ~~toward eliminating the problem that caused the child's~~  
15 ~~placement in foster care; it is likely that the child will be~~  
16 ~~able to safely return to the parent's home within three months;~~  
17 ~~and the child's return to the parent's home will be in the~~  
18 ~~child's best interests;~~

19 ~~(2) the child has a close and positive~~  
20 ~~relationship with a parent and a permanent plan that does not~~  
21 ~~include termination of parental rights will provide the most~~  
22 ~~secure and appropriate placement for the child;~~

23 ~~(3) the child is fourteen years of age or~~  
24 ~~older, is firmly opposed to termination of parental rights and~~  
25 ~~is likely to disrupt an attempt to place the child with an~~

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1 ~~adoptive family;~~

2 ~~(4) a parent is terminally ill, but in~~  
3 ~~remission, and does not want parental rights to be terminated;~~  
4 ~~provided that the parent has designated a guardian for the~~  
5 ~~child;~~

6 ~~(5) the child is not capable of functioning if~~  
7 ~~placed in a family setting. In such a case, the court shall~~  
8 ~~reevaluate the status of the child every ninety days unless~~  
9 ~~there is a final court determination that the child cannot be~~  
10 ~~placed in a family setting;~~

11 ~~(6) grounds do not exist for termination of~~  
12 ~~parental rights;~~

13 ~~(7) the child is an unaccompanied, refugee~~  
14 ~~minor and the situation regarding the child involves~~  
15 ~~international legal issues or compelling foreign policy issues;~~

16 ~~(8) adoption is not an appropriate plan for~~  
17 ~~the child; or~~

18 ~~(9) the parent's incarceration or~~  
19 ~~participation in a court-ordered residential substance abuse~~  
20 ~~treatment program constitutes the primary factor in the child's~~  
21 ~~placement in substitute care and termination of parental rights~~  
22 ~~is not in the child's best interest] the department has~~  
23 ~~documented in the case plan, which shall be available for court~~  
24 ~~review, a compelling reason for determining that filing such a~~  
25 ~~motion would not be in the best interests of the child.~~

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1           H. For purposes of this section, a child shall be  
2 considered to have entered foster care on the earlier of:

3                   (1) the date of the first judicial finding  
4 that the child has been abused or neglected; or

5                   (2) the date that is sixty days after the date  
6 on which the child was removed from the home.

7           I. The grounds for any attempted termination  
8 shall be proved by clear and convincing evidence. In any  
9 proceeding involving a child subject to the federal Indian  
10 Child Welfare Act of 1978, the grounds for any attempted  
11 termination shall be proved beyond a reasonable doubt and shall  
12 meet the requirements set forth in 25 U.S.C. Section 1912(f).

13           J. When the court terminates parental rights, it  
14 shall appoint a custodian for the child and fix responsibility  
15 for the child's support.

16           K. In any termination proceeding involving a child  
17 subject to the federal Indian Child Welfare Act of 1978, the  
18 court shall in any termination order make specific findings  
19 that the requirements of that act have been met.

20           L. A judgment of the court terminating parental  
21 rights divests the parent of all legal rights and privileges  
22 and dispenses with both the necessity for the consent to or  
23 receipt of notice of any subsequent adoption proceeding  
24 concerning the child. A judgment of the court terminating  
25 parental rights shall not affect the child's rights of

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1 inheritance from and through the child's biological  
2 parents.

3 M. When the court denies a motion to terminate  
4 parental rights, the court shall issue appropriate orders  
5 immediately. The court shall direct the parties to file a  
6 stipulated order and interim plan or a request for hearing  
7 within thirty days of the date of the hearing denying the  
8 termination of parental rights."

9 SECTION 28. Section 32A-4-32 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 126, as amended) is amended to read:

11 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

12 A. A motion for permanent guardianship may be filed  
13 by any party.

14 B. A motion for permanent guardianship shall set  
15 forth:

16 (1) the date, place of birth and marital  
17 status of the child, if known;

18 (2) the facts and circumstances supporting the  
19 grounds for permanent guardianship;

20 (3) the name and address of the prospective  
21 guardian and a statement that the person agrees to accept the  
22 duties and responsibilities of guardianship;

23 (4) the basis for the court's jurisdiction;

24 (5) the relationship of the child to the  
25 petitioner and the prospective guardian; and

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1 (6) whether the child is subject to the  
2 federal Indian Child Welfare Act of 1978 and, if so:

3 (a) the tribal affiliations of the  
4 child's parents;

5 (b) the specific actions taken by the  
6 petitioner to notify the parents' tribe and the results of the  
7 contacts, including the names, addresses, titles and telephone  
8 numbers of the persons contacted. Copies of any correspondence  
9 with the tribes shall be attached as exhibits to the petition;  
10 and

11 (c) what specific efforts were made to  
12 comply with the placement preferences set forth in the federal  
13 Indian Child Welfare Act of 1978 or the placement preferences  
14 of the appropriate Indian tribes.

15 C. If the motion is not filed by the prospective  
16 guardian, the motion shall be verified by the prospective  
17 guardian.

18 D. Notice of the filing of the motion, accompanied  
19 by a copy of the motion, shall be served by the moving party on  
20 any parent who has not previously been made a party to the  
21 proceeding, the parents of the child, foster parents with whom  
22 the child is residing, the foster parent, preadoptive parent or  
23 relative providing care for the child with whom the child has  
24 resided for six months, the child's custodian, the department,  
25 any person appointed to represent any party, including the

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1 child's guardian ad litem, and any other person the court  
2 orders provided with notice. Service shall be in accordance  
3 with the Children's Court Rules for the service of motions. In  
4 a case involving a child subject to the federal Indian Child  
5 Welfare Act of 1978, notice shall also be sent by certified  
6 mail to the Indian tribes of the child's parents and to any  
7 "Indian custodian" as that term is defined in 25 U.S.C. Section  
8 1903(6). Further notice shall not be required to a parent who  
9 has been provided notice previously pursuant to Section  
10 32A-4-17 NMSA 1978 and who failed to make an appearance.

11 E. The grounds for permanent guardianship shall be  
12 proved by clear and convincing evidence. The grounds for  
13 permanent guardianship shall be proved beyond a reasonable  
14 doubt and meet the requirements of 25 U.S.C. Section 1912(f) in  
15 any proceeding involving a child subject to the federal Indian  
16 Child Welfare Act of 1978.

17 F. A judgment of the court vesting permanent  
18 guardianship with an individual divests the biological or  
19 adoptive ~~[parent]~~ parents of legal custody or guardianship of  
20 the child but is not a termination of the ~~[parent's]~~ parents'  
21 rights. A child's inheritance rights from and through the  
22 child's biological or adoptive parents are not affected by  
23 ~~[this proceeding]~~ an order granting permanent guardianship.

24 G. Upon a finding that grounds exist for a  
25 permanent guardianship, the court may incorporate into the

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1 final order provisions for visitation with the natural parents,  
2 siblings or other relatives of the child and any other  
3 provision necessary to rehabilitate the child or provide for  
4 the child's continuing safety and well-being.

5 H. The court shall retain jurisdiction to enforce  
6 its judgment of permanent guardianship.

7 I. Any party may make a motion for revocation of  
8 the order granting guardianship when there is a significant  
9 change of circumstances, including:

10 (1) the child's parent is able and willing to  
11 properly care for the child; or

12 (2) the child's guardian is unable to properly  
13 care for the child.

14 J. The court shall appoint a guardian ad litem for  
15 the child in all proceedings for the revocation of permanent  
16 guardianship if the child is under the age of fourteen. The  
17 court shall appoint an attorney for the child in all  
18 proceedings for the revocation of permanent guardianship if the  
19 child is fourteen years of age or older at the inception of the  
20 proceedings.

21 K. The court may revoke the order granting  
22 guardianship when a significant change of circumstances has  
23 been proven by clear and convincing evidence and it is in the  
24 child's best interests to revoke the order granting  
25 guardianship."

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1           SECTION 29. Section 32A-4-33 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 127, as amended) is amended to read:

3           "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

4           A. All records or information concerning a party to  
5 a neglect or abuse proceeding, including social records,  
6 diagnostic evaluations, psychiatric or psychological reports,  
7 videotapes, transcripts and audio recordings of a child's  
8 statement of abuse or medical reports incident to or obtained  
9 as a result of a neglect or abuse proceeding or that were  
10 produced or obtained during an investigation in anticipation of  
11 or incident to a neglect or abuse proceeding shall be  
12 confidential and closed to the public, except as provided in  
13 this section.

14           B. The disclosure of all mental health and  
15 developmental disability records shall be made pursuant to the  
16 Children's Mental Health and Developmental Disabilities Act.

17           ~~[B-]~~ C. Within a neglect or an abuse proceeding,  
18 the records described in Subsection A of this section shall be  
19 disclosed only to the parties and any of the following;  
20 provided that the agency, person or institution receiving the  
21 information shall not re-release the information without proper  
22 consent or as otherwise provided by law:

- 23                           (1) court personnel;
- 24                           (2) court-appointed special advocates;
- 25                           (3) the child's guardian ad litem;

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1 (4) the attorney representing the child in an  
2 abuse or neglect action, a delinquency action or any other  
3 action under the Children's Code;

4 (5) department personnel;

5 (6) any local substitute care review board or  
6 any agency contracted to implement local substitute care review  
7 boards;

8 (7) law enforcement officials, except when use  
9 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

10 (8) district attorneys, except when use  
11 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

12 (9) any state government social services  
13 agency in any state, any federal or tribal social services  
14 agency or when, in the opinion of the department it is in the  
15 best interest of the child, a governmental social services  
16 agency of another country;

17 (10) those persons or entities of an Indian  
18 tribe specifically authorized to inspect the records pursuant  
19 to the federal Indian Child Welfare Act of 1978 or any  
20 regulations promulgated thereunder;

21 (11) a foster parent, if the records are those  
22 of a child currently placed with that foster parent or of a  
23 child being considered for placement with that foster parent  
24 and the records concern the social, medical, psychological or  
25 educational needs of the child;

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1 (12) school personnel involved with the child,  
2 if the records concern the child's social or educational needs;

3 (13) health care or mental health  
4 professionals involved in the evaluation or treatment of the  
5 child or of the child's parents, guardian, custodian or other  
6 family members;

7 (14) protection and advocacy representatives  
8 pursuant to the federal Developmental Disabilities Assistance  
9 and Bill of Rights Act and the federal Protection and Advocacy  
10 for Mentally Ill Individuals Amendments Act of 1991;

11 (15) any other person or entity, if necessary  
12 for case planning, including persons or entities invited by the  
13 child to attend a transition plan meeting, persons or entities  
14 attending a court-ordered pre-adjudicatory or pre-permanency  
15 meeting and any person or entities attending a family-centered  
16 meeting or mediation, if the records directly concern the  
17 specific issues raised for purposes of case planning;

18 [~~(15)~~] (16) children's safehouse organizations  
19 conducting investigatory interviews of children ~~[on behalf]~~ at  
20 the request of a law enforcement agency or the department; ~~[and~~

21 ~~(16)]~~ (17) any other person or entity, by  
22 order of the court, having a legitimate interest in the case or  
23 the work of the court; and

24 (18) a person or entity authorized by contract  
25 with the department, or by state or federal law, to review,

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1 inspect or otherwise have access to records or information in  
2 the department's possession.

3 D. Regardless of whether or not an abuse or neglect  
4 petition has been filed, the following entities are entitled to  
5 the records described in Subsection A of this section:

6 (1) department personnel;

7 (2) law enforcement officials;

8 (3) district attorneys;

9 (4) any state, federal or tribal social  
10 services agency in any state or, when in the opinion of the  
11 department it is in the best interest of the child, a  
12 governmental social services agency of another country;

13 (5) those persons or entities of an Indian  
14 tribe specifically authorized to inspect the records pursuant  
15 to the federal Indian Child Welfare Act of 1978 or any  
16 regulations promulgated thereunder;

17 (6) any other person or entity necessary for  
18 case planning, including persons or entities attending a  
19 family-centered meeting or mediation, if the records directly  
20 concern the specific issues raised for purposes of case  
21 planning;

22 (7) children's safehouse organizations  
23 conducting investigatory interviews of children at the request  
24 of a law enforcement agency or the department;

25 (8) any other person or entity, by order of

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1 the court, having a legitimate interest in the case or work of  
2 the court; and

3 (9) a person or entity authorized by contract  
4 with the department, or by state or federal law, to review,  
5 inspect or otherwise have access to records or information in  
6 the department's possession.

7 ~~[G.] E.~~ A parent, guardian or legal custodian whose  
8 child has been the subject of an investigation of abuse or  
9 neglect where no petition has been filed shall have the right  
10 to ~~[inspect any medical report, psychological evaluation, law~~  
11 ~~enforcement reports or other investigative or diagnostic~~  
12 ~~evaluation; provided that any identifying information related~~  
13 ~~to the reporting party or any other party providing information~~  
14 ~~shall be deleted. The parent, guardian or legal custodian~~  
15 ~~shall also have the right to] the results of the investigation~~  
16 and the right to petition the court for full access to all  
17 department records and information except those records and  
18 information the department finds would be likely to endanger  
19 the life or safety of any person providing information to the  
20 department.

21 ~~[D.] F.~~ Whoever intentionally and unlawfully  
22 releases any information or records closed to the public  
23 pursuant to the Abuse and Neglect Act or releases or makes  
24 other unlawful use of records in violation of that act is  
25 guilty of a petty misdemeanor and shall be sentenced pursuant

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1 to the provisions of Section 31-19-1 NMSA 1978.

2 [E-] G. The department shall promulgate rules for  
3 implementing disclosure of records pursuant to this section and  
4 in compliance with state and federal law and the Children's  
5 Court Rules."

6 SECTION 30. Section 32A-4-33.1 NMSA 1978 (being Laws  
7 2009, Chapter 239, Section 52) is amended to read:

8 "32A-4-33.1. RECORDS RELEASE WHEN A CHILD DIES.--

9 A. After learning that a child fatality has  
10 occurred and that there is reasonable suspicion that the  
11 fatality was caused by abuse or neglect, the department shall,  
12 upon written request to the secretary of the department,  
13 release the following information, if in the department's  
14 possession, within five business days:

- 15 (1) the age and gender of the child;
- 16 (2) the date of death;
- 17 (3) whether the child was in foster care or in  
18 the home of the child's parent or guardian at the time of  
19 death; and
- 20 (4) whether an investigation is being  
21 conducted by the department.

22 B. If an investigation is being conducted by the  
23 department, then a request for further information beyond that  
24 listed in Subsection A of this section shall be answered with a  
25 statement that a report is under investigation.

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1 C. Upon completion of a child abuse or neglect  
2 investigation into a child's death, if it is determined that  
3 abuse or neglect caused the child's death, the following  
4 documents shall be released upon request:

5 (1) a summary of the department's  
6 investigation;

7 (2) a law enforcement investigation report, if  
8 in the department's possession; and

9 (3) a medical examiner's report, if in the  
10 department's possession.

11 D. Prior to releasing any document pursuant to  
12 Subsection C of this section, the department shall consult with  
13 the district attorney and shall redact:

14 (1) information that would, in the opinion of  
15 the district attorney, jeopardize a criminal investigation or  
16 proceeding;

17 (2) identifying information related to a  
18 reporting party or any other party providing information; and

19 (3) information that is privileged,  
20 confidential or not subject to disclosure pursuant to any other  
21 state or federal law.

22 E. Once documents pursuant to this section have  
23 been released by the department, the department may comment on  
24 the case within the scope of the release.

25 F. [~~Information released~~] The release of

.190560.3SA

underscored material = new  
[bracketed material] = delete

1 information by the department consistent with the requirements  
2 of this section does not require prior notice to any other  
3 individual.

4 G. Nothing in this section shall be construed as  
5 requiring the department to obtain documents not in the abuse  
6 and neglect case file.

7 H. A person disclosing abuse and neglect case file  
8 information as required by this section shall not be subject to  
9 suit in civil or criminal proceedings for complying with the  
10 requirements of this section."

11 SECTION 31. Section 32A-4-34 NMSA 1978 (being Laws 2005,  
12 Chapter 189, Section 57) is amended to read:

13 "32A-4-34. DUTIES OF EMPLOYEES.--All employees of the  
14 department shall be trained in their legal duties to protect  
15 the constitutional and statutory rights of children and  
16 families from the initial time of contact, during the  
17 investigation and throughout any [~~treatment~~] casework  
18 involvement."

19 SECTION 32. REPEAL.--Sections 32A-1-13 and 32A-1-20 NMSA  
20 1978 (being Laws 1993, Chapter 77, Sections 22 and 29, as  
21 amended) are repealed.

22 SECTION 33. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2013.