

1 HOUSE BILL 255

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CHILDREN; AMENDING THE ABUSE AND NEGLECT ACT TO
12 PROVIDE FOR THE ESTABLISHMENT OF A FAMILY SUPPORT SERVICES
13 PROGRAM; PROVIDING THAT THE FAMILY SUPPORT SERVICES PROGRAM MAY
14 BE USED AS AN ALTERNATIVE TO INVESTIGATION FOR CERTAIN REPORTS
15 ALLEGING CHILD ABUSE OR NEGLECT; CLARIFYING THAT THE COURT MAY
16 ORDER PARTICIPATION IN PROGRAMS OR SERVICES PENDING THE OUTCOME
17 OF A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.

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

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

22 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

23 A. Reports alleging neglect or abuse shall be
24 referred to the department, which shall conduct an
25 investigation to determine the best interests of the child with

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1 regard to any action to be taken. The name and information
2 regarding the person making the report shall not be disclosed
3 absent the consent of the informant or a court order.

4 B. If a report alleging neglect or abuse meets the
5 criteria established pursuant to Section 32A-4-4.1 NMSA 1978,
6 the department may assign the case to the family support
7 services program.

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

22 [~~G-~~] D. After completion of the investigation on a
23 neglect or abuse report, the department shall either recommend
24 or refuse to recommend the filing of a petition.

25 [~~D-~~] E. When a child is taken into custody, the

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1 department shall file a petition within two days. If a
2 petition is not filed in a timely manner, the child shall be
3 released to the child's parent, guardian or custodian."

4 SECTION 2. A new section of the Children's Code, Section
5 32A-4-4.1 NMSA 1978, is enacted to read:

6 "32A-4-4.1. [NEW MATERIAL] FAMILY SUPPORT SERVICES
7 PROGRAM.--

8 A. The department shall establish a family support
9 services program to provide services to any child or family
10 with respect to whom a report alleging neglect or abuse has
11 been made. The family support services program may be used as
12 an alternative to investigation upon completion of an
13 evaluation by the department, the results of which indicate
14 that there is no immediate concern for the child's safety;
15 provided, however, that an investigation shall be conducted for
16 any report:

- 17 (1) alleging sexual abuse of a child or
18 serious or imminent harm to a child;
- 19 (2) indicating a child fatality;
- 20 (3) requiring law enforcement involvement, as
21 identified pursuant to rules promulgated by the department; or
- 22 (4) requiring a specialized assessment or a
23 traditional investigative approach, as determined pursuant to
24 rules promulgated by the department.

25 B. The department may remove a case from the family

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1 support services program and conduct an investigation if safety
2 concerns for the child become evident. The department may
3 reassign a case from investigation to the family support
4 services program at the discretion of the department.

5 C. For each family enrolled in the family support
6 services program, the department shall conduct a family
7 assessment. Based on the results of the family assessment, the
8 department may offer or provide referrals for counseling,
9 training or other services aimed at addressing the underlying
10 causative factors jeopardizing the safety or well-being of a
11 child. A family may choose to accept or decline any services
12 or programs offered under the family support services program;
13 provided, however, that if a family declines services, the
14 department may choose to proceed with an investigation.

15 D. The department shall employ licensed social
16 workers to provide services to families participating in the
17 family support services program.

18 E. The department may limit implementation of the
19 family support services program to areas of the state where
20 appropriate services are available and operate the program
21 within available state and federal resources.

22 F. The department shall:

23 (1) provide an annual report of program
24 implementation and outcomes to the legislative finance
25 committee and the department of finance and administration as

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1 part of the department's budget submission;

2 (2) develop performance measures, as provided
3 in the Accountability in Government Act, for the family support
4 services program; and

5 (3) no later than July 1, 2019, submit a plan
6 to the legislative finance committee and the department of
7 finance and administration setting forth how the program could
8 be expanded statewide, including a plan to address service
9 availability, and identifying costs that would be incurred by
10 the department.

11 G. The department may promulgate rules to implement
12 the provisions of this section.

13 H. As used in this section, "family assessment"
14 means a comprehensive assessment tool developed by the
15 department, which shall include an assessment of the risk of
16 subsequent abuse or neglect of a child and the strengths and
17 needs of the child's family with respect to providing for the
18 health and safety of the child."

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

21 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
22 PROBABLE CAUSE.--

23 A. When a child alleged to be neglected or abused
24 has been placed in the legal custody of the department or the
25 department has petitioned the court for temporary custody, a

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1 custody hearing shall be held within ten days from the date the
2 petition is filed to determine if the child should remain in or
3 be placed in the department's custody pending adjudication.

4 Upon written request of the respondent, the hearing may be held
5 earlier, but in no event shall the hearing be held sooner than
6 two days after the date the petition was filed.

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

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

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

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

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

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

23 (5) the parent, guardian or custodian is not
24 able or willing to provide adequate supervision and care for
25 the child.

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

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

11 (2) award legal custody of the child to the
12 department.

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

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

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

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

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

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

23 H. The Rules of Evidence shall not apply to custody
24 hearings.

25 I. Notwithstanding any other provision of law, a

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

10 J. Nothing in this section shall be construed to
11 abridge the rights of Indian children pursuant to the federal
12 Indian Child Welfare Act of 1978."

13 SECTION 4. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2017.

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