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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING AND CHANGING THE NAME OF
THE FAMILY SERVICES ACT; AMENDING THE KINSHIP GUARDIANSHIP ACT;
PROVIDING FOR VOLUNTARY PLACEMENT OF CHILDREN; PROVIDING FOR
FINANCIAL SUBSIDIES; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978.

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

SECTION 1. Section 22-12A-14 NMSA 1978 (being Laws 2019,
Chapter 223, Section 14, as amended) is amended to read:

"22-12A-14. TIMELY GRADUATION AND SUPPORT FOR STUDENTS
WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has
experienced a disruption in the student's education" means a
student who experiences one or more changes in public school or
school district enrollment during a single school year as the

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1 result of:

2 (1) homelessness as defined in the federal
3 McKinney-Vento Homeless Assistance Act and as determined by the
4 public school or school district;

5 (2) adjudication:

6 (a) as an abused or neglected child as
7 determined by the children, youth and families department
8 pursuant to the Abuse and Neglect Act;

9 (b) as part of a family in need of
10 court-ordered services voluntary placement pursuant to the
11 Voluntary Placement and Family Services Act; or

12 (c) as a delinquent if the parent wishes
13 to disclose the adjudication of delinquency; or

14 (3) placement in a mental health treatment
15 facility or habilitation program for developmental disabilities
16 pursuant to the Children's Mental Health and Developmental
17 Disabilities Act or placement in treatment foster care.

18 B. When a student who has experienced a disruption
19 in the student's education transfers to a new public school or
20 school district, the receiving public school or school district
21 shall communicate with the sending public school or school
22 district within two days of the student's enrollment. The
23 sending public school or school district shall provide the
24 receiving public school or school district with any requested
25 records within two days of having received the receiving public

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1 school's or school district's communication.

2 C. A student who has experienced a disruption in
3 the student's education because of transferring to a new public
4 school as the result of circumstances set forth in this section
5 shall have:

6 (1) priority placement in classes that meet
7 state graduation requirements; and

8 (2) timely placement in elective classes that
9 are comparable to those in which the student was enrolled at
10 the student's previous public school or schools as soon as the
11 public school or school district receives verification from the
12 student's records.

13 D. For a student who has experienced a disruption
14 in the student's education at any time during the student's
15 high school enrollment, a school district and public schools
16 shall ensure:

17 (1) acceptance of the student's state
18 graduation requirements for a diploma of excellence pursuant to
19 the Public School Code;

20 (2) equal access to participation in sports
21 and other extracurricular activities, career and technical
22 programs or other special programs for which the student
23 qualifies;

24 (3) timely assistance and advice from
25 counselors to improve the student's college or career

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1 readiness; and

2 (4) that the student receives all special
3 education services to which the student is entitled.

4 E. A student who has experienced a disruption in
5 the student's education and has transferred between public
6 schools in different school districts or between public schools
7 within the same school district shall receive credit for any
8 work completed prior to the transfer, regardless of whether the
9 transfer occurred at the end of a grading period. The
10 department shall promulgate and adopt a rule to determine how
11 credit shall be awarded for courses that are partially
12 completed, and school districts shall follow the department
13 rule."

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

16 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

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

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

21 C. "council" means the substitute care advisory
22 council established pursuant to Section 32A-8-4 NMSA 1978;

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

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

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

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

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

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

16 I. "fictive kin" means a non-relative who has a
17 significant and family-like relationship with a child or a
18 child's family that existed prior to the child entering foster
19 care or a non-relative who is the current foster parent of a
20 child in the legal custody of the department if the child has
21 been placed in the home for at least one year and has
22 established a significant and family-like relationship with the
23 foster parent and the foster parent has been identified by the
24 department as the child's permanent connection. "Fictive kin"
25 may also be a person chosen by a child fourteen years of age or

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1 older, without regard to when the relationship was established
2 or for how long, or a person defined according to tribal or
3 pueblo law, custom or tradition;

4 [H.] J. "foster parent" means a person, including a
5 relative of the child, licensed or certified by the department
6 or a child placement agency to provide care for children in the
7 custody of the department or agency;

8 [J.] K. "guardian" means a person appointed as a
9 guardian by a court or Indian tribal authority [~~or a person~~
10 ~~authorized to care for the child by a parental power of~~
11 ~~attorney as permitted by law];~~

12 [K.] L. "guardian ad litem" means an attorney
13 appointed by the children's court to represent and protect the
14 best interests of the child in a case; provided that no party
15 or employee or representative of a party to the case shall be
16 appointed to serve as a guardian ad litem;

17 [L.] M. "Indian child" means an unmarried person
18 who is:

- 19 (1) less than eighteen years old;
20 (2) a member of an Indian tribe or is eligible
21 for membership in an Indian tribe; and
22 (3) the biological child of a member of an
23 Indian tribe;

24 [M.] N. "Indian child's tribe" means:

- 25 (1) the Indian tribe in which an Indian child

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1 is a member or eligible for membership; or

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

6 ~~[N-]~~ O. "Indian tribe" means a federally recognized
7 Indian tribe, community or group pursuant to 25 U.S.C. Section
8 1903(1);

9 ~~[O-]~~ P. "judge", when used without further
10 qualification, means the judge of the court;

11 ~~[P-]~~ Q. "legal custody" means a legal status
12 created by order of the court or other court of competent
13 jurisdiction or by operation of statute that vests in a person,
14 department or agency the right to determine where and with whom
15 a child shall live; the right and duty to protect, train and
16 discipline the child and to provide the child with food,
17 shelter, personal care, education and ordinary and emergency
18 medical care; the right to consent to major medical,
19 psychiatric, psychological and surgical treatment and to the
20 administration of legally prescribed psychotropic medications
21 pursuant to the Children's Mental Health and Developmental
22 Disabilities Act; and the right to consent to the child's
23 enlistment in the armed forces of the United States;

24 ~~[Q-]~~ R. "parent" or "parents" includes a biological
25 or adoptive parent if the biological or adoptive parent has a

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1 constitutionally protected liberty interest in the care and
2 custody of the child;

3 [R-] S. "permanency plan" means a determination by
4 the court that the child's interest will be served best by:

5 (1) reunification;

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

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

11 (4) placement in the legal custody of the
12 department with the child placed in the home of a fit and
13 willing relative; or

14 (5) placement in the legal custody of the
15 department under a planned permanent living arrangement;

16 [S-] T. "person" means an individual or any other
17 form of entity recognized by law;

18 [F-] U. "plan of care" means a plan created by a
19 health care professional intended to ensure the safety and
20 well-being of a substance-exposed newborn by addressing the
21 treatment needs of the child and any of the child's parents,
22 relatives, guardians, family members or caregivers to the
23 extent those treatment needs are relevant to the safety of the
24 child;

25 [U-] V. "preadoptive parent" means a person with

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1 whom a child has been placed for adoption;

2 ~~[V.]~~ W. "protective supervision" means the right to
3 visit the child in the home where the child is residing,
4 inspect the home, transport the child to court-ordered
5 diagnostic examinations and evaluations and obtain information
6 and records concerning the child;

7 ~~[W.]~~ X. "relative" means a person related to
8 another person by blood within the fifth degree of
9 consanguinity or through marriage by the fifth degree of
10 affinity;

11 ~~[X.]~~ Y. "reunification" means either a return of
12 the child to the parent or to the home from which the child was
13 removed or a return to the noncustodial parent;

14 ~~[Y.]~~ Z. "tribal court" means:

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

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

19 ~~[Z.]~~ AA. "tribal court order" means a document
20 issued by a tribal court that is signed by an appropriate
21 authority, including a judge, governor or tribal council
22 member, and that orders an action that is within the tribal
23 court's jurisdiction; and

24 ~~[AA.]~~ BB. "tribunal" means any judicial forum other
25 than the court."

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1 SECTION 3. Section 32A-1-14 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 23, as amended) is amended to read:

3 "32A-1-14. NOTICE TO INDIAN TRIBES.--

4 ~~[A. In a case involving a family in need of court-~~
5 ~~ordered services, if the child is an Indian child, the Indian~~
6 ~~child's tribe shall be notified when the petition is filed.~~
7 ~~The form of the notice shall comply with the provisions of the~~
8 ~~federal Indian Child Welfare Act of 1978.~~

9 ~~B. In abuse, neglect or adoption proceedings, if~~
10 ~~the child is an Indian child, the Indian child's tribe shall be~~
11 ~~notified. The form of the notice shall comply with the~~
12 ~~provisions of the federal Indian Child Welfare Act of 1978.~~

13 ~~C. In a delinquency proceeding, if the child is an~~
14 ~~Indian child, the Indian child's tribe shall be notified of the~~
15 ~~filing of the petition via certified mail.] In a case involving~~
16 ~~an Indian child or where there is reason to know that a child~~
17 ~~is an Indian child, the Indian child's tribe shall be notified~~
18 ~~in proceedings initiated pursuant to the provisions of the~~
19 ~~Voluntary Placement and Family Services Act, Family in Need of~~
20 ~~Court-Ordered Services Act, Abuse and Neglect Act and Adoption~~
21 ~~Act. The form of the notice shall comply with the provisions~~
22 ~~of the federal Indian Child Welfare Act of 1978. In a~~
23 ~~proceeding pursuant to Article 2 of the Children's Code, if the~~
24 ~~child is an Indian child, the Indian child's tribe shall be~~
25 ~~notified in accordance with that article."~~

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1 SECTION 4. Section 32A-3A-1 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 63, as amended) is amended to read:

3 "32A-3A-1. SHORT TITLE--PURPOSE.--

4 A. Chapter 32A, Article 3A NMSA 1978 may be cited
5 as the "Voluntary Placement and Family Services Act".

6 B. The Voluntary Placement and Family Services Act
7 shall be interpreted and construed to effectuate the following
8 expressed legislative purposes:

9 (1) to recognize that many instances of a
10 child's behavior are symptomatic of a family in need of family
11 services; [~~and~~]

12 (2) to provide prevention, diversion and
13 intervention services for a child or family; and

14 (3) to provide for voluntary placement of a
15 child with the department."

16 SECTION 5. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 64, as amended) is amended to read:

18 "32A-3A-2. DEFINITIONS.--As used in the Voluntary
19 Placement and Family Services Act:

20 A. "child or family in need of family services"
21 means a family:

22 (1) whose child's behavior endangers the
23 child's health, safety, education or well-being;

24 (2) whose child is excessively absent from
25 public school as defined in the Attendance for Success Act;

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1 (3) whose child is absent from the child's
2 place of residence for twenty-four hours or more without the
3 consent of the parent, guardian or custodian;

4 (4) in which the parent, guardian or custodian
5 of a child refuses to permit the child to live with the parent,
6 guardian or custodian; or

7 (5) in which the child refuses to live with
8 the child's parent, guardian or custodian; [~~and~~]

9 B. "designated tribal agent" means the agent,
10 agency or entity designated by an Indian tribe to receive
11 notices of child custody proceedings subject to the federal
12 Indian Child Welfare Act of 1978;

13 [~~B.~~] C. "family services" means services that
14 address specific needs of the child or family;

15 D. "guardian" means a person appointed as a
16 guardian by a court or Indian tribal authority;

17 E. "guardianship assistance agreement" means a
18 written agreement entered into by the prospective kinship
19 guardian and the department or Indian tribe prior to the
20 establishment of the guardianship by a court;

21 F. "guardianship assistance payments" means
22 payments made by the department to a kinship guardian or
23 successor guardian on behalf of a child pursuant to the terms
24 of a guardianship assistance agreement;

25 G. "guardianship assistance program" means the

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1 financial subsidy program provided for in the Voluntary
2 Placement and Family Services Act;

3 H. "Indian custodian" means an Indian person who
4 has legal custody of an Indian child pursuant to tribal law or
5 custom or pursuant to state law or to whom temporary physical
6 care, custody and control has been transferred by the parent of
7 such child;

8 I. "kinship" means the relationship that exists
9 between a child and a relative of the child, a godparent, a
10 member of the child's tribe or clan or an adult with whom the
11 child has a significant bond; and

12 J. "voluntary placement agreement" means a written
13 agreement between the department or Indian tribe that has
14 entered into a joint powers agreement and the parent, guardian
15 or Indian custodian of a child."

16 SECTION 6. Section 32A-3A-6 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 68) is amended to read:

18 "32A-3A-6. VOLUNTARY PLACEMENT [~~OF CHILD OUTSIDE HOME~~--
19 ~~DOCUMENTATION~~]--VOLUNTARY PLACEMENT AGREEMENT.--

20 A. [~~Upon written application by~~] A parent, guardian
21 or Indian custodian and, if good cause is shown, the department
22 may accept legal custody of a minor child for temporary
23 voluntary placement outside the home.

24 [~~B. Prior to accepting any child for voluntary~~
25 ~~placement, the department shall document the following:~~

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1 ~~(1) the efforts made by the department to~~
2 ~~provide or arrange for services by other public or private~~
3 ~~agencies that would be affordable to the family and that would~~
4 ~~alleviate the conditions leading to the placement request;~~

5 ~~(2) any determination that the services are~~
6 ~~not available;~~

7 ~~(3) any refusal by the parent, guardian or~~
8 ~~custodian to accept the services; and~~

9 ~~(4) the fact that conditions leading to the~~
10 ~~placement request could not be alleviated by services aimed at~~
11 ~~keeping the child in the home.~~

12 ~~G. If the department accepts custody of a child,~~
13 ~~the department shall provide the child with shelter in an~~
14 ~~appropriate facility, pursuant to the provisions of Section~~
15 ~~32-3B-6 NMSA 1978, that is located as close as possible to the~~
16 ~~child's residence. The child shall not be held in a jail or~~
17 ~~other facility intended or used for the incarceration of adults~~
18 ~~charged or convicted of criminal offenses or a facility for the~~
19 ~~detention of children alleged to be or adjudicated as~~
20 ~~delinquent children.]~~

21 B. Prior to signing a voluntary placement
22 agreement, and through the duration of the voluntary placement
23 agreement, legal counsel shall be provided to the parent,
24 guardian or Indian custodian. Counsel shall explain to the
25 parent, guardian or Indian custodian in detail the terms and

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1 consequences of the consent to the voluntary placement
2 agreement and that the parent, guardian or Indian custodian can
3 withdraw consent at any time and the child shall be returned
4 within seventy-two hours of when the written or verbal demand
5 was made, but before the expiration of the seventy-two hours,
6 the department may prevent the immediate return of the child by
7 filing a petition alleging neglect or abuse and by obtaining a
8 court order granting the department temporary custody of the
9 child."

10 SECTION 7. Section 32A-3A-7 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 69, as amended) is amended to read:

12 "32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

13 ~~[A. No child shall remain in voluntary placement~~
14 ~~for longer than one hundred eighty consecutive days or for more~~
15 ~~than one hundred eighty days in any calendar year; provided~~
16 ~~that a child may remain in voluntary placement up to an~~
17 ~~additional one hundred eighty consecutive days upon order of~~
18 ~~the court after the filing of a petition by the department for~~
19 ~~extension of voluntary placement, a hearing and a finding that~~
20 ~~additional voluntary placement is in the best interests of the~~
21 ~~child.]~~

22 A. A child may remain in voluntary placement for up
23 to one hundred eighty consecutive days.

24 B. Prior to the expiration of the voluntary
25 placement agreement, if the parent or guardian agrees in

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1 writing that the child is to remain in voluntary placement for
2 up to an additional one hundred eighty days, the department
3 shall file a petition to extend the voluntary placement. The
4 department shall provide notice of the hearing on the petition
5 for extension to the parent or guardian.

6 C. The court shall hold a hearing and enter a
7 written final order within thirty days of the filing of the
8 petition. If the court grants an extension of up to one
9 hundred eighty days, the order shall contain findings that
10 proper notice was given, the parent or guardian consents to the
11 extension of the voluntary placement and the voluntary
12 placement agreement is in the child's best interest. If an
13 extension is denied, the court shall enter a written order
14 denying the extension and directing the department to
15 immediately return the child to the parent or guardian.

16 ~~[B-]~~ D. In no event shall a child remain in
17 voluntary placement for a period in excess of three hundred
18 sixty-five days in any two-year period.

19 ~~[G-]~~ E. Any placement described in this section
20 shall not be considered abandonment by a parent, guardian or
21 custodian ~~[or other family member]."~~

22 **SECTION 8.** Section 32A-3A-8 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 70, as amended) is amended to read:

24 "32A-3A-8. ~~[DUTY TO FILE A PETITION]~~ VOLUNTARY
25 PLACEMENT--DEPARTMENT DUTY UPON PARENT REFUSAL TO REGAIN

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1 CUSTODY.--If [~~any child has remained in voluntary placement for~~
2 ~~longer than three hundred sixty-five days in any two-year~~
3 ~~period and]~~ the parent, guardian or Indian custodian of the
4 child refuses to or cannot accept the child back into the
5 parent's, guardian's or Indian custodian's custody, the
6 department shall immediately file a petition alleging that the
7 child is a neglected child or that the child's family needs
8 court-ordered family services."

9 SECTION 9. Section 32A-3A-9 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 71) is amended to read:

11 "32A-3A-9. [~~RIGHT TO REGAIN CUSTODY]~~ VOLUNTARY
12 PLACEMENT--RETURN OF CHILD TO PARENT.--At any time, a parent,
13 guardian or Indian custodian may [~~at any time]~~ demand and
14 obtain the return of a child voluntarily placed outside the
15 home without seeking or obtaining court approval. The child
16 shall be returned within seventy-two hours of [~~the demand;~~
17 ~~however]~~ when the written or verbal demand was made. However,
18 before the expiration of seventy-two hours, the department may
19 prevent the immediate return of the child by [~~requesting the~~
20 ~~children's court attorney to file]~~ filing a petition alleging
21 neglect or abuse and by obtaining a court order granting the
22 department temporary custody of the child [~~before the~~
23 ~~expiration of the seventy-two hours~~]."

24 SECTION 10. Section 32A-3A-10 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 72) is amended to read:

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1 "32A-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--Any
2 parent, guardian or Indian custodian whose child is in
3 voluntary placement shall have the following rights with
4 respect to the child:

5 A. the right of reasonable visitation with the
6 child;

7 B. the right to be informed of changes in the
8 child's school or of changes in the child's placement by the
9 department; [~~and~~

10 ~~C. the right of decision as to all nonemergency and~~
11 ~~nonroutine medical care provided for the child]~~

12 C. the right to serve as the educational decision
13 maker unless the department determines that doing so would be
14 contrary to the best interests of the child, in which case the
15 foster parent or other substitute care provider will serve as
16 the educational decision maker;

17 D. the right to authorize decisions regarding
18 medical and dental care and behavioral health services,
19 including decisions that affect the daily care and support and
20 safety and well-being of the child, subject to the provisions
21 of Subsection A of Section 24-7A-6.2 NMSA 1978 and Sections
22 24-1-9, 24-1-13.1, 24-8-5, 32A-6A-14, 32A-6A-15 and 32A-6A-16
23 NMSA 1978; and

24 E. the right to make decisions regarding
25 participation and attendance in traditional, cultural and

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1 religious events, including traditional and cultural events
2 offered by the Indian child's tribe."

3 SECTION 11. Section 32A-3A-15 NMSA 1978 (being Laws 2019,
4 Chapter 247, Section 14) is amended to read:

5 "32A-3A-15. MEDICAL CANNABIS PROGRAM--REMOVAL OF
6 CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--
7 MEDICAL CARE.--

8 A. An individual's participation in the state's
9 medical cannabis program established pursuant to the Lynn and
10 Erin Compassionate Use Act shall not in itself constitute
11 grounds for:

12 (1) intervention, removal or placement into
13 state custody of a child in that individual's care pursuant to
14 the Abuse and Neglect Act; or

15 (2) the provision of state prevention,
16 diversion or intervention services to that individual's family
17 pursuant to the Voluntary Placement and Family Services Act.

18 B. A person shall not be denied custody of or
19 visitation or parenting time with a child, and there is no
20 presumption of neglect or child endangerment, for conduct
21 allowed under the Lynn and Erin Compassionate Use Act.

22 C. A school shall not refuse to enroll or otherwise
23 penalize a person solely for conduct allowed pursuant to the
24 Lynn and Erin Compassionate Use Act, unless failing to do so
25 would cause the school to lose a monetary or licensing-related

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1 benefit under federal law or regulation.

2 D. For the purposes of medical care, including an
3 organ transplant, a qualified patient's use of cannabis
4 pursuant to the Lynn and Erin Compassionate Use Act shall be
5 considered the equivalent of the use of any other medication
6 under the direction of a physician and shall not be considered
7 to constitute the use of an illicit substance or otherwise
8 disqualify a qualified patient from medical care."

9 SECTION 12. A new section of the Voluntary Placement and
10 Family Services Act is enacted to read:

11 "[NEW MATERIAL] CONFIDENTIALITY.--

12 A. All records or information concerning a party to
13 a voluntary placement proceeding shall be confidential and
14 closed to the public.

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

18 C. The records described in Subsection A of this
19 section, other than mental health and developmental disability
20 records, shall be disclosed only to the following; provided
21 that the agency, person or institution receiving information
22 shall not re-release the information without proper consent or
23 as otherwise provided by law:

24 (1) court personnel and persons authorized by
25 contract with the court to review, inspect or otherwise have

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1 access to records or information in the court's possession;

2 (2) department personnel and persons
3 authorized by contract with the department to review, inspect
4 or otherwise have access to records or information in the
5 department's possession;

6 (3) state government social services agencies
7 in a state or, when in the opinion of the department it is in
8 the best interest of the child, a governmental social services
9 agency of another country;

10 (4) persons of an Indian tribe specifically
11 authorized to inspect the records pursuant to the federal
12 Indian Child Welfare Act of 1978 or any regulations promulgated
13 thereunder;

14 (5) a foster parent, if the records are those
15 of a child currently placed with that foster parent or of a
16 child being considered for placement with that foster parent
17 and the records concern the social, medical, psychological or
18 educational needs of the child;

19 (6) school personnel involved with the child
20 if the records concern the child's social or educational needs;

21 (7) a grandparent, parent of a sibling,
22 relative or fictive kin, if the records or information pertain
23 to a child being considered for placement with that
24 grandparent, parent of a sibling, relative or fictive kin and
25 the records or information concern the social, medical,

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1 psychological or educational needs of the child;

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

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

9 (10) children's safehouse organizations
10 conducting investigatory interviews of children on behalf of a
11 law enforcement agency or the department;

12 (11) representatives of the federal government
13 or their contractors authorized by federal statute or
14 regulation to review, inspect, audit or otherwise have access
15 to records and information pertaining to neglect or abuse
16 proceedings;

17 (12) a person attending a meeting arranged by
18 the department to discuss the safety, well-being and permanency
19 of a child when the parent or child, or parent or legal
20 custodian on behalf of a child younger than fourteen years of
21 age, has consented to the disclosure;

22 (13) a person, pursuant to an order of a
23 court, deemed to have a legitimate interest in the case or the
24 work of the court; and

25 (14) the child, if fourteen years of age or

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1 older.

2 D. Whoever intentionally and unlawfully releases
3 any information or records closed to the public pursuant to the
4 Voluntary Placement and Family Services Act or releases or
5 makes other unlawful use of records in violation of that act is
6 guilty of a petty misdemeanor and shall be sentenced pursuant
7 to the provisions of Section 31-19-1 NMSA 1978.

8 E. The department shall promulgate rules for
9 implementing disclosure of records pursuant to this section and
10 in compliance with state and federal law and the Children's
11 Court Rules."

12 SECTION 13. A new section of the Voluntary Placement and
13 Family Services Act is enacted to read:

14 "[NEW MATERIAL] CONDUCT OF HEARINGS.--

15 A. All hearings held pursuant to the Voluntary
16 Placement and Family Services Act shall be closed to the
17 general public.

18 B. Only the parties to a proceeding, their counsel
19 and other persons approved by the court may be present at a
20 closed hearing. Other persons the court finds to have a proper
21 interest in the case or in the work of the court may be
22 admitted by the court to closed hearings on the condition they
23 refrain from divulging any information that would identify the
24 child or family involved in the proceedings."

25 SECTION 14. A new section of the Voluntary Placement and

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1 Family Services Act is enacted to read:

2 "[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--
3 SIGNING OF VOLUNTARY PLACEMENT AGREEMENT.--

4 A. Prior to the department accepting legal custody
5 of an Indian child for voluntary placement:

6 (1) the department shall file a petition for
7 the voluntary placement agreement to be reviewed with and
8 signed by the parent, guardian or Indian custodian before the
9 court;

10 (2) the department shall provide notice to the
11 parent, guardian or Indian custodian and designated tribal
12 agent of the Indian child's tribe, and the form of the notice
13 shall comply with the provisions of the federal Indian Child
14 Welfare Act of 1978;

15 (3) the judge shall:

16 (a) ask the participants to state on the
17 record whether the child is an Indian child or whether there is
18 reason to believe the child is an Indian child and that the
19 consent was not given prior to or within ten days of the birth
20 of the Indian child;

21 (b) explain to the parent, guardian or
22 Indian custodian in detail the terms and consequences of the
23 consent to the voluntary placement agreement and that the
24 parent, guardian or Indian custodian can withdraw consent at
25 any time and the child shall be returned within seventy-two

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1 hours of when the written or verbal demand was made, but before
2 the expiration of the seventy-two hours, the department may
3 prevent the immediate return of the child by filing a petition
4 alleging neglect or abuse and by obtaining a court order
5 granting the department temporary custody of the child; and

6 (c) determine that the parent, guardian
7 or Indian custodian fully understood the consent to the
8 voluntary placement agreement and that either the parent,
9 guardian or Indian custodian fully understood the explanation
10 in English or that it was interpreted into a language that the
11 parent, guardian or Indian custodian understood;

12 (4) if the court determines that the parent,
13 guardian or Indian custodian voluntarily agrees to the
14 placement of the child in the legal custody of the department,
15 the department and Indian child's parent, guardian or Indian
16 custodian shall sign the written voluntary placement agreement
17 before the court in accordance with the federal Indian Child
18 Welfare Act of 1978; and

19 (5) at the completion of the hearing, the
20 decision of the court shall be made by entry on the voluntary
21 placement agreement of the judge's certificate certifying that
22 the terms and consequences of the consent were fully explained
23 in detail and were fully understood by the parent, guardian or
24 Indian custodian and that either the parent, guardian or Indian
25 custodian fully understood the explanation in English or that

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1 it was interpreted into a language that the parent, guardian or
2 Indian custodian understood. The voluntary placement agreement
3 with the judge's certificate shall be filed with the clerk of
4 the court at the earliest practicable time.

5 B. At any time, a parent, guardian or Indian
6 custodian may demand and obtain the return of a child pursuant
7 to Section 32A-3A-9 NMSA 1978."

8 SECTION 15. A new section of the Voluntary Placement and
9 Family Services Act is enacted to read:

10 "[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--
11 TIME LIMITATION.--

12 A. An Indian child may remain in voluntary
13 placement for up to one hundred eighty consecutive days.

14 B. Prior to the expiration of the voluntary
15 placement agreement, if the parent, guardian or Indian
16 custodian agrees in writing that the child is to remain in
17 voluntary placement for up to an additional one hundred eighty
18 days, the department shall file a petition to extend the
19 voluntary placement. The department shall provide notice on
20 the petition for extension to the parent, guardian or Indian
21 custodian and designated tribal agent of the Indian child's
22 tribe, and the form of the notice shall comply with the
23 provisions of the federal Indian Child Welfare Act of 1978.

24 C. The court shall hold a hearing and enter a
25 written final order within thirty days of the filing of the

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1 petition. If the court grants the extension of up to one
2 hundred eighty days, the order shall contain findings that
3 proper notice was given, the parent, guardian or Indian
4 custodian consents to the extension of the voluntary placement
5 and the voluntary placement agreement is in the child's best
6 interest. If the extension is denied, the court shall enter a
7 written order denying the extension and directing the
8 department to immediately return the child to the parent,
9 guardian or Indian custodian.

10 D. In no event shall an Indian child remain in
11 voluntary placement for a period in excess of three hundred
12 sixty-five days in any two-year period.

13 E. A placement described in this section shall not
14 be considered abandonment by a parent, guardian or Indian
15 custodian."

16 SECTION 16. A new section of the Voluntary Placement and
17 Family Services Act is enacted to read:

18 "[NEW MATERIAL] VOLUNTARY PLACEMENT--PLACEMENT.--

19 A. If the department accepts legal custody of a
20 child, the child shall be placed in the least restrictive
21 setting that most closely approximates a family in which the
22 child's special needs, if any, may be met. The child shall be
23 placed within reasonable proximity to the child's home, taking
24 into account any special needs of the child. Preference shall
25 be given to placement with:

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1 (1) a relative of the child;

2 (2) a licensed foster home or any home
3 authorized by law for the provision of foster care or group
4 care or use as a protective residence;

5 (3) a facility operated by a licensed child
6 welfare services agency; or

7 (4) a facility provided for in the Children's
8 Shelter Care Act.

9 B. The department shall provide the child with
10 shelter in an appropriate facility, pursuant to the provisions
11 of Section 32-3B-6 NMSA 1978, that is located as close as
12 possible to the child's residence. The child shall not be held
13 in a jail or other facility intended or used for the
14 incarceration of adults charged or convicted of criminal
15 offenses or a facility for the detention of children alleged to
16 be or adjudicated as delinquent children.

17 C. If the child is placed in an evaluation facility
18 or out-of-home treatment or rehabilitation program, the child
19 shall be admitted pursuant to the provisions of Sections
20 32A-6A-19 through 32A-6A-22 NMSA 1978.

21 D. The department shall make reasonable efforts to
22 place siblings in custody by court order or voluntary placement
23 agreement together, unless such joint placement would be
24 contrary to the safety or well-being of any of the siblings in
25 custody, and whether any siblings not jointly placed have been

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1 provided reasonable visitation or other ongoing interaction,
2 unless visitation or other ongoing interaction would be
3 contrary to the safety or well-being of any of the siblings."

4 SECTION 17. A new section of the Voluntary Placement and
5 Family Services Act is enacted to read:

6 "[NEW MATERIAL] VOLUNTARY PLACEMENT OF AN INDIAN CHILD--
7 PLACEMENT.--

8 A. If the department accepts legal custody of an
9 Indian child, the child shall be placed in the least
10 restrictive setting that most closely approximates a family in
11 which the child's special needs, if any, may be met. The
12 Indian child shall be placed within reasonable proximity to the
13 child's home, taking into account any special needs of the
14 child. Preference shall be given to placement with:

15 (1) a member of the Indian child's extended
16 family;

17 (2) a foster care home licensed, approved and
18 specified by the Indian child's tribe;

19 (3) an Indian foster care home licensed or
20 approved by an authorized non-Indian licensing authority; or

21 (4) an institution for children approved by
22 the Indian child's tribe or operated by an Indian organization
23 that has a program suitable to meet the Indian child's needs.

24 B. If the child is placed in an evaluation facility
25 or out-of-home treatment or rehabilitation program, the child

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1 shall be admitted pursuant to the provisions of Sections
2 32A-6A-19 through 32A-6A-22 NMSA 1978.

3 C. When the placement preferences set forth in this
4 section are not followed or if the Indian child is placed in an
5 institution, a plan shall be developed to ensure that the
6 Indian child's cultural ties are protected and fostered."

7 SECTION 18. A new section of the Voluntary Placement and
8 Family Services Act is enacted to read:

9 "[NEW MATERIAL] FINANCIAL SUBSIDIES--ELIGIBILITY.--

10 A. Prior to a guardianship being granted pursuant
11 to the Kinship Guardianship Act or the Abuse and Neglect Act
12 and in order to be eligible for guardianship assistance
13 payments, the following conditions shall be satisfied:

14 (1) the child shall have been removed from the
15 child's home:

16 (a) pursuant to a voluntary placement
17 agreement; or

18 (b) as a result of a judicial
19 determination that the placement and care of the child should
20 be vested in the department;

21 (2) the child shall be eligible for foster
22 care maintenance payments while in the home of the prospective
23 guardian;

24 (3) the child shall have lived with the
25 prospective guardian for at least six consecutive months

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1 pursuant to a court order or a voluntary placement agreement;

2 (4) the child has a strong attachment to the
3 prospective guardian and the prospective guardian is a relative
4 or fictive kin of the child;

5 (5) the prospective guardian has a strong
6 commitment to caring permanently for the child, documented via
7 a meeting between the prospective guardian and the department
8 discussing the prospective guardian's long-term commitment;

9 (6) if the child is fourteen years of age or
10 older, the child has been consulted by the department regarding
11 the guardianship arrangement; and

12 (7) the child is the subject of a fully
13 executed guardianship assistance agreement approved by the
14 department; or

15 (8) the child is a sibling of a child who
16 meets the eligibility criteria set forth in this subsection.

17 B. The department shall promulgate rules for
18 guardianship assistance payments and payment of nonrecurring
19 expenses."

20 SECTION 19. A new section of the Voluntary Placement and
21 Family Services Act is enacted to read:

22 "[NEW MATERIAL] FINANCIAL SUBSIDIES--NONRECURRING
23 EXPENSES.--Nonrecurring expenses incurred by a prospective
24 guardian associated with establishing a subsidized guardianship
25 may be reimbursed for each eligible child, up to an amount

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1 established by the department, and also for any of an eligible
2 child's siblings."

3 SECTION 20. A new section of the Voluntary Placement and
4 Family Services Act is enacted to read:

5 "[NEW MATERIAL] FINANCIAL SUBSIDIES--GUARDIANSHIP
6 ASSISTANCE AGREEMENT.--

7 A. In order for a prospective guardian to receive
8 guardianship assistance payments, the department shall
9 negotiate and enter into a written guardianship assistance
10 agreement with the prospective guardian of an eligible child.
11 The agreement shall specify the following:

12 (1) the amount of and manner in which
13 guardianship assistance payments will be provided;

14 (2) additional services and assistance for
15 which the child and prospective guardian will be eligible;

16 (3) a procedure by which the prospective
17 guardian may apply for additional services;

18 (4) the responsibility of the prospective
19 guardian to report changes in the needs of the child or the
20 circumstances of the prospective guardian that affect
21 guardianship assistance payments;

22 (5) reasonable and verified nonrecurring
23 expenses associated with establishing a subsidized guardianship
24 pursuant to the provisions of Section 32A-3A-12 NMSA 1978; and

25 (6) terms by which the guardianship assistance

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1 agreement may be terminated and the ability of the department
2 to recoup funds received due to improper payment.

3 B. A copy of the fully executed guardianship
4 assistance agreement shall be given to the prospective guardian
5 and to the department."

6 SECTION 21. A new section of the Voluntary Placement and
7 Family Services Act is enacted to read:

8 "[NEW MATERIAL] FINANCIAL SUBSIDIES--SUCCESSOR
9 GUARDIANS.--

10 A. In order for a successor guardian to be eligible
11 for guardianship assistance payments if the successor guardian
12 serves as guardian in the event the guardian dies or is
13 incapacitated, the successor guardian shall be named in the
14 guardianship assistance agreement and any amendments thereto.

15 B. The department may pay the cost of nonrecurring
16 expenses associated with the successor guardian obtaining a
17 subsidized guardianship of the child, up to an amount
18 established by the department.

19 C. The successor guardian does not need to be a
20 relative and does not need to be licensed as a foster parent to
21 receive guardianship assistance payments."

22 SECTION 22. A new section of the Voluntary Placement and
23 Family Services Act is enacted to read:

24 "[NEW MATERIAL] FINANCIAL SUBSIDIES--DISCONTINUANCE OF
25 GUARDIANSHIP ASSISTANCE PAYMENTS.--

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1 A. The department shall immediately discontinue
2 guardianship assistance payments when the department is advised
3 or determines a child or guardian no longer meets the criteria
4 to be eligible for guardianship assistance payments.

5 B. The department shall notify the guardian in
6 writing of a discontinuation of guardianship assistance
7 payments and the reasons for discontinuation.

8 C. The discontinuance of guardianship assistance
9 payments does not terminate a guardianship that has been
10 established by a court."

11 **SECTION 23.** A new section of the Voluntary Placement and
12 Family Services Act is enacted to read:

13 "[NEW MATERIAL] FINANCIAL SUBSIDIES--ADMINISTRATIVE APPEAL
14 OF DECISIONS.--A child or prospective guardian may appeal a
15 decision by the department to establish, deny, reduce or
16 discontinue guardianship assistance payments within thirty days
17 of the department's decision."

18 **SECTION 24.** Section 32A-4-2 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 96, as amended) is amended to read:

20 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
21 Act:

22 A. "abandonment" includes instances when the
23 parent, without justifiable cause:

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

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

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

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

9 B. "abused child" means a child:

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

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

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

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

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

25 C. "aggravated circumstances" includes those

1 circumstances in which the parent, guardian or custodian has:

2 (1) attempted, conspired to cause or caused
3 great bodily harm to the child or great bodily harm or death to
4 the child's sibling;

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

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

11 (4) had parental rights over a sibling of the
12 child terminated involuntarily;

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

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

22 F.] E. "great bodily harm" means an injury to a
23 person that creates a high probability of death, that causes
24 serious disfigurement or that results in permanent or
25 protracted loss or impairment of the function of a member or

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1 organ of the body;

2 ~~[G-]~~ F. "neglected child" means a child:

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

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

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

15 (4) whose parent, guardian or custodian is
16 unable to discharge that person's responsibilities to and for
17 the child because of incarceration, hospitalization or physical
18 or mental disorder or incapacity; or

19 (5) who has been placed for care or adoption
20 in violation of the law; provided that nothing in the
21 Children's Code shall be construed to imply that a child who is
22 being provided with treatment by spiritual means alone through
23 prayer, in accordance with the tenets and practices of a
24 recognized church or religious denomination, by a duly
25 accredited practitioner thereof is for that reason alone a

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1 neglected child within the meaning of the Children's Code; and
2 further provided that no child shall be denied the protection
3 afforded to all children under the Children's Code;

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

9 (1) there is not a justifiable explanation for
10 the condition or death;

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

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

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

17 ~~[I.]~~ H. "relative" means a person related to
18 another person by birth, adoption or marriage within the fifth
19 degree of consanguinity;

20 ~~[J.]~~ I. "sexual abuse" includes criminal sexual
21 contact, incest or criminal sexual penetration, as those acts
22 are defined by state law;

23 ~~[K.]~~ J. "sexual exploitation" includes:

24 (1) allowing, permitting or encouraging a
25 child to engage in prostitution;

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

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

6 [~~H.~~] K. "sibling" means a brother or sister having
7 one or both parents in common by birth or adoption;

8 [~~M.~~] L. "strangulation" has the same meaning as set
9 forth in Section 30-3-11 NMSA 1978;

10 [~~N.~~] M. "suffocation" has the same meaning as set
11 forth in Section 30-3-11 NMSA 1978; and

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

19 **SECTION 25.** A new section of the Kinship Guardianship Act
20 is enacted to read:

21 "[NEW MATERIAL] POLICY--PURPOSE.--

22 A. It is the policy of the state of New Mexico that
23 the interests of children are best served when they are raised
24 by their parents. When neither parent is able or willing to
25 provide appropriate care, guidance and supervision to a child,

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1 it is the policy of the state that, whenever possible, a child
2 should be raised by family members or kinship caregivers.

3 B. The Kinship Guardianship Act is intended to
4 address cases where a parent has left a child or children in
5 the care of another for ninety consecutive days and that
6 arrangement leaves the child or children without appropriate
7 care, guidance or supervision.

8 C. The purposes of the Kinship Guardianship Act are
9 to:

10 (1) establish procedures to effect a legal
11 relationship between a child and a kinship caregiver when the
12 child is not residing with either parent; and

13 (2) provide a child with a stable and
14 consistent relationship with a kinship caregiver that will
15 enable the child to develop physically, mentally and
16 emotionally to the maximum extent possible when the child's
17 parents are not willing or able to do so."

18 SECTION 26. Section 40-10B-3 NMSA 1978 (being Laws 2001,
19 Chapter 167, Section 3, as amended) is amended to read:

20 "40-10B-3. DEFINITIONS.--As used in the Kinship
21 Guardianship Act:

22 A. "caregiver" means an adult, who is not a parent
23 of a child, with whom a child resides and who provides that
24 child with the care, maintenance and supervision consistent
25 with the duties and responsibilities of a parent of the child;

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1 B. "child" means an individual who is a minor;

2 C. "department" means the children, youth and
3 families department;

4 D. "guardian" means a person appointed as a
5 guardian by a court or Indian tribal authority; ~~[or a person~~
6 ~~authorized to care for the child by a parental power of~~
7 ~~attorney as permitted by law;~~

8 ~~E. "guardianship assistance agreement" means a~~
9 ~~written agreement entered into by the prospective kinship~~
10 ~~guardian and the protective services division or juvenile~~
11 ~~justice division of the department or Indian tribe prior to the~~
12 ~~establishment of the guardianship by a court;~~

13 ~~F. "guardianship assistance payments" means~~
14 ~~payments made by the department to a kinship guardian or~~
15 ~~successor guardian on behalf of a child pursuant to the terms~~
16 ~~of a guardianship assistance agreement;~~

17 ~~G. "guardianship assistance program" means the~~
18 ~~financial subsidy program provided for in the Kinship~~
19 ~~Guardianship Act;~~

20 H.] E. "kinship" means the relationship that exists
21 between a child and a relative of the child, a godparent, a
22 member of the child's tribe or clan or an adult with whom the
23 child has a significant bond;

24 ~~[I. "legal custody" means a legal status that vests~~
25 ~~in a person, department or agency the rights and obligations~~

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1 ~~that would otherwise vest by law in a parent;~~

2 ~~J.]~~ F. "parent" means a biological or adoptive
3 parent of a child whose parental rights have not been
4 terminated; and

5 ~~[K.]~~ G. "relative" means an individual related to a
6 child as a spouse, parent, stepparent, brother, sister,
7 stepbrother, stepsister, half-brother, half-sister, uncle,
8 aunt, niece, nephew, first cousin or any person denoted by the
9 prefix "grand" or "great", or the spouse or former spouse of
10 the persons specified

11 ~~[L. "subsidized guardianship" means a guardianship~~
12 ~~that meets subsidy eligibility criteria pursuant to the Kinship~~
13 ~~Guardianship Act; and~~

14 ~~M. "voluntary placement agreement" means a written~~
15 ~~agreement between either the protective services division or~~
16 ~~juvenile justice division of the department or Indian tribe~~
17 ~~that has entered into a joint powers agreement and the parents~~
18 ~~or guardians of a child, which agreement shall not exceed one~~
19 ~~hundred eighty days unless there has been a judicial~~
20 ~~determination that such placement is in the best interests of~~
21 ~~the child, in which case the agreement may be extended for an~~
22 ~~additional one hundred eighty days, that specifies at least the~~
23 ~~following:~~

24 ~~(1) whether the parent or guardian agrees to~~
25 ~~give legal custody of the child to the department;~~

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1 ~~(2) the rights and obligations of the parents~~
2 ~~or guardians, the child and the department, including that the~~
3 ~~parent or guardian has the right to revoke or terminate the~~
4 ~~placement agreement and grant of legal custody to the~~
5 ~~department at any time; and~~

6 ~~(3) such other criteria as set forth by rule~~
7 ~~promulgated by the department as necessary to comply with state~~
8 ~~and federal law]."~~

9 SECTION 27. Section 40-10B-5 NMSA 1978 (being Laws 2001,
10 Chapter 167, Section 5, as amended) is amended to read:

11 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

12 A. A petition seeking the appointment of a guardian
13 pursuant to the Kinship Guardianship Act may be filed only by:

14 (1) a kinship caregiver;

15 (2) a caregiver, who has reached the age of
16 twenty-one, with whom no kinship with the child exists and who
17 has been nominated to be guardian of the child by the child,
18 and the child has reached the age of fourteen; ~~[or]~~

19 (3) a caregiver designated formally or
20 informally by a parent in writing if the designation indicates
21 on its face that the parent signing understands:

22 (a) the purpose and effect of the
23 guardianship;

24 (b) that the parent has the right to be
25 served with the petition and notices of hearings in the action;

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1 and

2 (c) that the parent may appear in court
3 to contest the guardianship;

4 (4) a caregiver with whom the department has
5 placed the child pursuant to the Children's Code and has
6 obtained the written consent of the department to file the
7 petition; or

8 (5) the department when the child is in the
9 department's custody.

10 B. A petition seeking the appointment of a guardian
11 shall be verified by the petitioner and allege the following
12 with respect to the child:

13 (1) facts that, if proved, will meet the
14 requirements of Subsection B of Section 40-10B-8 NMSA 1978;

15 (2) the date and place of birth of the child,
16 if known, and if not known, the reason for the lack of
17 knowledge;

18 (3) the legal residence of the child and the
19 place where the child resides, if different from the legal
20 residence;

21 (4) the name and address of the petitioner;

22 (5) the kinship, if any, between the
23 petitioner and the child;

24 (6) the names and addresses of the parents of
25 the child;

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1 (7) the names and addresses of persons having
2 legal custody of the child;

3 (8) the existence of any matters pending
4 involving the custody of the child;

5 (9) a statement that the petitioner agrees to
6 accept the duties and responsibilities of guardianship;

7 (10) the existence of any matters pending
8 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978
9 and, if so, a statement that the [~~children, youth and families~~]
10 department consents to the relief requested in the petition;

11 (11) whether the child is subject to
12 provisions of the federal Indian Child Welfare Act of 1978 and,
13 if so:

14 (a) the tribal affiliations of the
15 child's parents; and

16 (b) the specific actions taken by the
17 petitioner to notify the parents' tribes and the results of the
18 contacts, including the names, addresses, titles and telephone
19 numbers of the persons contacted, and copies of correspondence
20 with the tribe; and

21 (12) other facts in support of the
22 guardianship sought."

23 SECTION 28. Section 40-10B-6 NMSA 1978 (being Laws 2001,
24 Chapter 167, Section 6, as amended) is amended to read:

25 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

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1 A. The court shall set a date for hearing on the
2 petition, which date shall be no less than thirty and no more
3 than ninety days from the date of filing the petition.

4 B. The petition and a notice of the hearing shall
5 be served upon:

6 (1) the [~~children, youth and families~~]
7 department if there is any pending matter relating to the child
8 pursuant to the provisions of [~~Chapter 32A, Article 4 NMSA~~
9 ~~1978~~] the Children's Code;

10 (2) the child if the child has reached the age
11 of fourteen;

12 (3) the parents of the child;

13 (4) a person having custody of the child or
14 visitation rights pursuant to a court order; and

15 (5) if the child is an Indian child as defined
16 in the federal Indian Child Welfare Act of 1978, the
17 appropriate Indian tribe and any "Indian custodian", together
18 with a notice of pendency of the guardianship proceedings,
19 pursuant to the provisions of the federal Indian Child Welfare
20 Act of 1978.

21 C. Service of process required by Subsection A of
22 this section shall be made in accordance with the requirements
23 for giving notice of a hearing pursuant to Subsection A of
24 Section 45-1-401 NMSA 1978.

25 D. The persons required to be served pursuant to

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1 Subsection B of this section have a right to file a response as
2 parties to this action. Other persons may intervene pursuant
3 to Rule 1-024 NMRA."

4 SECTION 29. Section 40-10B-7 NMSA 1978 (being Laws 2001,
5 Chapter 167, Section 7) is amended to read:

6 "40-10B-7. TEMPORARY GUARDIANSHIP PENDING HEARING.--

7 A. After the filing of the petition, upon motion of
8 the petitioner or a person required to be served pursuant to
9 Subsection B of Section [~~6 of the Kinship Guardianship Act~~]
10 40-10B-6 NMSA 1978, or upon its own motion, the court may
11 appoint a temporary guardian to serve for not more than one
12 hundred eighty days or until the case is decided on the merits,
13 whichever occurs first.

14 B. A motion for temporary guardianship shall be
15 heard within twenty days of the date the motion is filed. The
16 motion and notice of hearing shall be served on all persons
17 required to be served pursuant to Subsection B of Section [~~6 of~~
18 ~~the Kinship Guardianship Act~~] 40-10B-6 NMSA 1978.

19 C. An order pursuant to Subsection A of this
20 section may be entered ex parte upon good cause shown. If the
21 order is entered ex parte, a copy of the order shall be served
22 on the persons required to be served pursuant to Subsection B
23 of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA
24 1978. If a person files an objection to the order, the court
25 immediately shall schedule a hearing to be held within ten days

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1 of the date the objection is filed. Notice of the hearing
2 shall be given to the petitioner and all persons required to be
3 served pursuant to Subsection B of Section [~~6 of the Kinship~~
4 ~~Guardianship Act~~] 40-10B-6 NMSA 1978."

5 SECTION 30. Section 40-10B-8 NMSA 1978 (being Laws 2001,
6 Chapter 167, Section 8, as amended) is amended to read:

7 "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--
8 JUDGMENT--CHILD SUPPORT.--

9 A. Upon hearing, if the court finds that a
10 qualified person seeks appointment, the venue is proper, the
11 required notices have been given, the requirements of
12 Subsection B of this section have been proved and the best
13 interests of the minor will be served by the requested
14 appointment, it shall make the appointment. In other cases,
15 the court may dismiss the proceedings or make any other
16 disposition of the matter that will serve the best interests of
17 the minor.

18 B. A guardian may be appointed pursuant to the
19 Kinship Guardianship Act only if:

20 (1) a parent of the child is living and has
21 consented in writing to the appointment of a guardian and the
22 consent has not been withdrawn;

23 (2) a parent of the child is living but all
24 parental rights in regard to the child have been terminated or
25 suspended by prior court order; or

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1 (3) the child has resided with the petitioner
2 without the parent for a period of ninety days or more
3 immediately preceding the date the petition is filed and a
4 parent having legal custody of the child is currently unwilling
5 or unable to provide adequate care, maintenance and supervision
6 for the child or there are extraordinary circumstances; and

7 (4) no guardian of the child is currently
8 appointed pursuant to a provision of the Uniform Probate Code.

9 C. The burden of proof shall be by clear and
10 convincing evidence.

11 D. As part of a judgment entered pursuant to the
12 Kinship Guardianship Act, the court may order a parent to pay
13 the reasonable costs of support and maintenance of the child
14 that the parent is financially able to pay. ~~[The court shall~~
15 ~~consider the potential impact of financial payments pursuant to~~
16 ~~this subsection on the relationship of the parent and child and~~
17 ~~on the prospects of family reunification.]~~ The court may use
18 the child support guidelines set forth in Section 40-4-11.1
19 NMSA 1978 to calculate a reasonable payment.

20 E. The court may order visitation between a parent
21 and child to maintain or rebuild a parent-child relationship if
22 the visitation is in the best interests of the child."

23 SECTION 31. Section 40-10B-11 NMSA 1978 (being Laws 2001,
24 Chapter 167, Section 11) is amended to read:

25 "40-10B-11. NOMINATION OBJECTION BY CHILD.--In a

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1 proceeding for appointment of a guardian pursuant to the
2 Kinship Guardianship Act:

3 A. the court shall appoint a person nominated by a
4 child who has reached [~~his fourteenth birthday~~] the age of
5 fourteen unless the court finds the nomination contrary to the
6 best interests of the child; and

7 B. the court shall not appoint a person as guardian
8 if a child who has reached [~~his fourteenth birthday~~] the age of
9 fourteen files a written objection in the proceeding before the
10 person accepts appointment as guardian."

11 SECTION 32. Section 40-10B-12 NMSA 1978 (being Laws 2001,
12 Chapter 167, Section 12) is amended to read:

13 "40-10B-12. REVOCATION OF GUARDIANSHIP.--

14 A. Any person, including a child who has reached
15 [~~his fourteenth birthday~~] the age of fourteen, may move for
16 revocation of a guardianship created pursuant to the Kinship
17 Guardianship Act. The person requesting revocation shall
18 attach to the motion a transition plan proposed to facilitate
19 the reintegration of the child into the home of a parent or a
20 new guardian. A transition plan shall take into consideration
21 the child's age, development and any bond with the guardian.

22 B. If the court finds that a preponderance of the
23 evidence proves a change in circumstances and the revocation is
24 in the best interests of the child, it shall grant the motion
25 and:

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1 (1) adopt a transition plan proposed by a
2 party or the guardian ad litem;

3 (2) propose and adopt its own transition plan;
4 or

5 (3) order the parties to develop a transition
6 plan by consensus if they will agree to do so."

7 **SECTION 33. REPEAL.**--Sections 40-10B-16 through 40-10B-21
8 NMSA 1978 (being Laws 2020, Chapter 51, Sections 4 through 9)
9 are repealed.

10 **SECTION 34. EFFECTIVE DATE.**--The effective date of the
11 provisions of this act is July 1, 2021.