

1 SENATE BILL 278

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Benny Shendo, Jr.

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10 AN ACT

11 RELATING TO CHILDREN; ENACTING THE STATE INDIAN CHILD WELFARE
12 ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY
13 PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE STATE INDIAN
14 CHILD WELFARE ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING
15 CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; AMENDING,
16 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 30 of
22 this act may be cited as the "State Indian Child Welfare Act"."

23 SECTION 2. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] DEFINITIONS.--As used in the State Indian

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1 Child Welfare Act:

2 A. "active efforts" means efforts that are
3 affirmative, active, thorough, timely and intended to maintain
4 or reunite an Indian child with the Indian child's family and
5 represent a higher standard of conduct than reasonable efforts;

6 B. "adoptive placement" means a permanent placement
7 of an Indian child for adoption pursuant to the Adoption Act,
8 including an action resulting in a final decree of adoption,
9 but does not include a placement based upon an act that, if
10 committed by an adult, would be deemed a crime or upon award,
11 in a divorce proceeding, of custody to one of the parents;

12 C. "child custody proceeding" means an action for
13 foster care placement, termination of parental rights,
14 guardianship, preadoptive placement or adoptive placement or an
15 action regarding an alleged family in need of court-ordered
16 services;

17 D. "cultural compact" means an agreement that
18 documents how an Indian child placed in an adoptive or
19 guardianship home will continue to actively participate in the
20 child's cultural learning and activities and that is entered
21 into among:

22 (1) the adoptive parents or guardians of the
23 Indian child, which parents are either non-Indian or nonmembers
24 of the Indian child's tribe; and

25 (2) the Indian child's tribe;

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1 E. "extended family member" means a person who is
2 defined to be an extended family member by law or custom of an
3 Indian child's tribe or, in the absence of such a custom, means
4 a person who is eighteen years of age or older and who is an
5 Indian child's grandparent, aunt or uncle, brother or sister,
6 brother-in-law or sister-in-law, niece or nephew, first or
7 second cousin or stepparent;

8 F. "fictive kin" means a person:

9 (1) who is not a relative or extended family
10 of an Indian child and who has a significant, family-like
11 relationship with the child or the child's family, which
12 relationship existed prior to the child's entry into foster
13 care;

14 (2) chosen by an Indian child who is fourteen
15 years of age or older, regardless of when the relationship
16 between the person and the Indian child was established;
17 provided that the department has determined that it is in the
18 child's best interest to include the person as the child's
19 fictive kin; or

20 (3) who meets the definition of "fictive kin"
21 as established by an Indian child's tribe's law, custom or
22 tradition;

23 G. "foster care placement" means:

24 (1) an action pursuant to the Abuse and
25 Neglect Act removing an Indian child from the child's parent,

1 guardian or Indian custodian for temporary placement in a
2 foster home or institution or the home of a guardian where the
3 parent or Indian custodian cannot have the child returned upon
4 demand, but in which parental rights have not been terminated;
5 or

6 (2) a voluntary agreement pursuant to the
7 Family Services Act between a parent, guardian or Indian
8 custodian and the department placing the Indian child in foster
9 care;

10 H. "Indian" means a person who is a member of an
11 Indian tribe, or who is an Alaska Native and a member of a
12 regional corporation as defined in 43 U.S.C. Section 1606;

13 I. "Indian child" means an unmarried person who is
14 under age eighteen and who is:

15 (1) a member of an Indian tribe; or

16 (2) eligible for membership in an Indian tribe
17 and is the biological child of a member of an Indian tribe;

18 J. "Indian child's tribe" means:

19 (1) an Indian tribe in which an Indian child
20 is a member or eligible for membership; or

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

25 K. "Indian custodian" means an Indian person:

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1 (1) who has legal custody of an Indian child
2 pursuant to tribal law or custom or pursuant to state law; or

3 (2) to whom temporary physical care, custody
4 and control has been transferred by the parent of the child;

5 L. "Indian organization" means a group,
6 association, partnership, corporation or other legal entity
7 owned or controlled by Indians, or a majority of whose members
8 are Indians;

9 M. "Indian tribe" means an Indian tribe, band,
10 nation or other organized group or community of Indians
11 recognized as eligible for the services provided to Indians by
12 the secretary because of their status as Indians, including an
13 Alaska native village as defined in 43 U.S.C. Section 1602(c).
14 For the purposes of notification to and communication with a
15 tribe as required in the State Indian Child Welfare Act,
16 "Indian tribe" also means those tribal officials responsible
17 for child welfare and social services matters;

18 N. "member" or "membership" means a determination
19 by an Indian tribe that a person is a member or of that Indian
20 tribe;

21 O. "parent" means a biological parent of an Indian
22 child or an Indian person who has lawfully adopted an Indian
23 child pursuant to the Adoption Act or the child's tribal law or
24 tribal custom;

25 P. "preadoptive placement" means a temporary

1 placement of an Indian child in a foster home or institution
2 after the termination of parental rights, but prior to or in
3 lieu of an adoptive placement;

4 Q. "relative" means a person related to another
5 person:

6 (1) by blood within the fifth degree of
7 consanguinity or through marriage by the fifth degree of
8 affinity; or

9 (2) with respect to an Indian child, as
10 established or defined by the Indian child's tribe's custom or
11 law;

12 R. "reservation" means "Indian country" as defined
13 in 18 U.S.C. Section 1151 and any lands, not covered by that
14 section, title to which is either held by the United States in
15 trust for the benefit of an Indian tribe or individual or held
16 by an Indian tribe or individual subject to a restriction by
17 the United States against alienation;

18 S. "secretary" means the United States secretary of
19 the interior;

20 T. "state court" means a court of the state or
21 instrumentality of the state;

22 U. "termination procedure" means an action pursuant
23 to the Abuse and Neglect Act or the Adoption Act that results
24 in the termination of a parent-child relationship; and

25 V. "tribal court" means a court with jurisdiction

1 over child custody proceedings and that is either a court of
2 Indian offenses, a court established and operated under the
3 code or custom of an Indian tribe or any other administrative
4 body of an Indian tribe that is vested with authority over
5 child custody proceedings."

6 SECTION 3. A new section of the Children's Code is
7 enacted to read:

8 "[NEW MATERIAL] DETERMINATION OF DOMICILE AND RESIDENCE.--
9 In a child custody proceeding involving an Indian child, the
10 state court shall determine and make an order of the domicile
11 and residence of the Indian child and whether the Indian child
12 is a ward of a tribal court. The department shall communicate
13 with any tribal court as necessary to make a determination
14 pursuant to this section."

15 SECTION 4. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] INDIAN CHILD'S DOMICILE.--For the purposes
18 of the State Indian Child Welfare Act, an Indian child's
19 domicile is, in order of priority, the domicile of the child's:

20 A. parents, or, if the parents do not have the same
21 domicile, the parent who has physical custody of the Indian
22 child;

23 B. Indian custodian; or

24 C. guardian."

25 SECTION 5. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] DETERMINATION OF WHETHER A CHILD IS AN
3 INDIAN CHILD--TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--

4 A. If a child is taken into custody by the
5 department, the department shall make active efforts to
6 determine whether the child is an Indian child.

7 B. When an Indian child or a child who the
8 department has reason to know is an Indian child is placed in
9 the custody of the department, the department shall work with
10 the parent or the Indian tribe to establish membership, at the
11 discretion of the parent or Indian tribe. The Indian tribe
12 shall determine membership and eligibility. The department
13 shall provide records to assist if necessary, at the discretion
14 of the parent or the Indian tribe."

15 SECTION 6. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] INDIAN CHILD CUSTODY PROCEEDINGS--
18 JURISDICTION--TRANSFER--COMMUNICATIONS.--

19 A. Except as otherwise provided in the State Indian
20 Child Welfare Act, a state court's jurisdiction in a child
21 custody proceeding involving an Indian child is concurrent with
22 the jurisdiction of the Indian child's tribe.

23 B. A state court has temporary exclusive
24 jurisdiction over an Indian child who is taken into protective
25 custody pursuant to the Children's Code.

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1 C. An Indian tribe has exclusive jurisdiction over
2 a child custody proceeding involving an Indian child who
3 resides or is domiciled within the reservation of the Indian
4 tribe, except when jurisdiction is otherwise vested in the
5 state by federal law or pursuant to a tribal-state agreement.
6 When an Indian child is a ward of the tribal court, the Indian
7 tribe shall retain exclusive jurisdiction, notwithstanding the
8 residence or domicile of the child.

9 D. In a state court proceeding for the foster care
10 placement, preadoptive placement, guardianship placement,
11 adoptive placement or termination of parental rights to an
12 Indian child not domiciled or residing within the reservation
13 of the Indian child's tribe, the state court, in the absence of
14 good cause to the contrary, shall transfer that proceeding to
15 the jurisdiction of the Indian tribe, absent objection by
16 either parent, upon the motion of either parent or the Indian
17 custodian or the Indian child's tribe; provided that the
18 transfer shall be subject to declination by the tribal court of
19 that Indian tribe.

20 E. If a state court declines to exercise
21 jurisdiction in accordance with this section or a tribal-state
22 agreement, it shall coordinate with the appropriate tribal
23 court to facilitate the tribal court's assumption of
24 jurisdiction.

25 F. A state court shall:

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- 1 (1) hold a hearing on record;
- 2 (2) allow each parent of the Indian child, the
3 Indian child's custodian or the Indian child's tribe to
4 participate in any communications pertaining to jurisdiction
5 with a tribal court or, if that person is unable to participate
6 in a communication, provide the person with an opportunity to
7 represent facts and legal arguments supporting the person's
8 position before the state court makes a decision regarding
9 jurisdiction;
- 10 (3) create and maintain a record of any
11 communications made pursuant to this subsection;
- 12 (4) notify each parent of the Indian child,
13 the Indian child's custodian or the Indian child's tribe in
14 advance of each communication; and
- 15 (5) provide each parent of the Indian child,
16 the Indian child's custodian or the Indian child's tribe with
17 access to the record of the communication."

18 SECTION 7. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] TRIBAL-STATE AGREEMENTS.--

21 A. The department shall make a good faith effort to
22 enter into a tribal-state agreement with each Indian tribe
23 within the borders of this state.

24 B. The department may enter into a tribal-state
25 agreement with any Indian tribe outside of this state if that

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1 Indian tribe has a significant number of children residing in
2 this state who are members of or are eligible to become members
3 of that Indian tribe.

4 C. A tribal-state agreement may include an
5 agreement regarding:

6 (1) default jurisdiction over cases in which
7 the state court and tribal court have concurrent jurisdiction;

8 (2) the transfer of cases between a state
9 court and tribal court;

10 (3) the assessment, removal, placement and
11 custody of Indian children; and

12 (4) any other child welfare services provided
13 to Indian children.

14 D. A tribal-state agreement shall:

15 (1) provide for cooperative delivery of child
16 welfare services to Indian children in this state, including
17 the use, to the extent available, of services provided by the
18 Indian tribe; and

19 (2) if services provided by the Indian tribe
20 are unavailable, provide for the department's use of community
21 services and resources developed specifically for Indian
22 families and that have demonstrated experience and capacity to
23 provide culturally relevant and effective services to
24 children."

25 SECTION 8. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] TRANSFER.--Upon granting a transfer motion
3 for a child custody proceeding involving an Indian child
4 pursuant to Subsection D of Section 6 of the State Indian Child
5 Welfare Act, a state court shall expeditiously:

6 A. notify the tribal court of the pending dismissal
7 of the child custody proceeding;

8 B. transfer all information regarding the child
9 custody proceeding, including pleadings and court records, to
10 the tribal court;

11 C. direct the department to:

12 (1) coordinate with the tribal court and the
13 Indian child's tribe to ensure that the transfer of the child
14 custody proceeding is accomplished with minimal disruption of
15 services to the Indian child and the Indian child's family; and

16 (2) provide the Indian child's tribe with
17 documentation related to the Indian child's eligibility for
18 state and federal assistance and information related to the
19 Indian child's social history, treatment diagnosis and services
20 and other relevant case- and service-related data; and

21 D. dismiss the proceeding upon confirmation from
22 the tribal court that the tribal court received the transferred
23 information."

24 SECTION 9. A new section of the Children's Code is
25 enacted to read:

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1 "[NEW MATERIAL] FULL FAITH AND CREDIT--RIGHT TO
2 SERVICES.--

3 A. Every agency and court of the state or political
4 subdivision of the state shall give full faith and credit to
5 the public acts, records and judicial proceedings of an Indian
6 tribe applicable to an Indian child custody proceeding to the
7 same extent that agency or court gives full faith and credit to
8 the public acts, records and judicial proceedings of any other
9 entity.

10 B. A tribal court order pertaining to an Indian
11 child in an action under the Children's Code shall be
12 recognized and enforced by the state district court. The
13 recognition and enforcement by a state district court shall
14 make the tribal court order recognized and enforceable
15 throughout the state by state district court as any state court
16 order.

17 C. A tribal court order pertaining to an Indian
18 child that accesses state resources shall be recognized and
19 enforced. An Indian child residing on or off a reservation, as
20 a resident of this state, shall have the same right to services
21 that are available to other children of this state. The cost
22 of the services provided to an Indian child shall be determined
23 and provided for in the same manner as services are made to
24 other children of the state, utilizing tribal, state and
25 federal funds.

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1 D. Any state services requiring a tribal-state
2 agreement based on a funding source shall be negotiated and
3 entered into based on good faith to meet the provisions of
4 Subsection C of this section."

5 **SECTION 10.** A new section of the Children's Code is
6 enacted to read:

7 "[NEW MATERIAL] IMPROPER REMOVAL OF A CHILD FROM CUSTODY--
8 DECLINATION OF JURISDICTION--RETURN OF A CHILD--DANGER
9 EXCEPTION.--When a petitioner in an Indian child custody
10 proceeding before a state court has improperly removed the
11 child from custody of the parent or Indian custodian or has
12 improperly retained custody after a visit or other temporary
13 relinquishment of custody, the state court shall decline
14 jurisdiction over that petition and shall return the child to
15 the child's parent or Indian custodian unless returning the
16 child to the child's parent or Indian custodian could subject
17 the child to a substantial and immediate danger or threat of
18 that danger."

19 **SECTION 11.** A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] INVESTIGATIONS--PENDING COURT
22 PROCEEDINGS--NOTICE--DOCUMENTATION OF APPLICABILITY AND
23 COMPLIANCE.--

24 A. Within forty-eight hours of initiating an
25 investigation that involves a child that the department knows

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1 or has reason to know is an Indian child, the department shall
2 notify the Indian child's tribe of:

3 (1) the investigation;

4 (2) the involvement of the Indian child or a
5 child the department has reason to know is an Indian child;

6 (3) the department's obligation to collaborate
7 with the Indian child's tribe to identify a qualified expert
8 witness to participate in the proceeding if the investigation
9 results in an adjudicatory proceeding; and

10 (4) the department's obligation to identify a
11 qualified expert witness no later than thirty days prior to an
12 adjudicatory or termination proceeding.

13 B. At the beginning of every proceeding under the
14 Delinquency Act, Family Services Act, Family in Need of Court-
15 Ordered Services Act, Abuse and Neglect Act and Adoption Act,
16 the court shall make a written determination as to whether the
17 federal Indian Child Welfare Act of 1978 and the State Indian
18 Child Welfare Act apply to the case.

19 C. Upon initiating a child custody proceeding
20 related to a child that the department knows or has reason to
21 know is an Indian child, the department shall notify the Indian
22 child's tribe of:

23 (1) the investigation;

24 (2) the involvement of the Indian child;

25 (3) active efforts that have been made to

1 provide remedial services and rehabilitative programs designed
2 to prevent the breakup of the Indian family and that these
3 efforts have proved unsuccessful;

4 (4) the department's obligation to collaborate
5 with the Indian child's tribe to identify a qualified expert
6 witness to participate in the proceeding if the investigation
7 results in an adjudication or termination of parental rights
8 proceeding; and

9 (5) the department's obligation to identify a
10 qualified expert witness no later than thirty days prior to an
11 adjudication or termination proceeding.

12 D. With respect to those proceedings to which the
13 federal Indian Child Welfare Act of 1978 and the State Indian
14 Child Welfare Act apply, the record shall include written
15 statements of compliance with those acts regarding notice,
16 evidentiary and other requirements.

17 E. In a child custody proceeding or in a proceeding
18 pursuant to the Delinquency Act, when the state court knows or
19 has reason to know that an Indian child is involved, the
20 department shall notify the parent or Indian custodian and the
21 Indian child's tribe, by registered mail with return receipt
22 requested, of:

23 (1) the pending proceedings;

24 (2) the right of the Indian child's parent,
25 Indian custodian or Indian child's tribe to:

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(a) intervention; and

(b) petition the state court to transfer the proceeding to the tribal court;

(3) the right of the Indian child's parent or Indian custodian to court-appointed counsel if the state court determines that person is unable to afford counsel; and

(4) the right of the Indian child's tribe, as a party to the child custody proceeding, to participate in the proceeding.

F. If there is a reason to know that the Indian child's parent or Indian custodian has limited English proficiency and may not understand the contents of the notice pursuant to Subsection E of this section, the state court shall provide language access services as required by Title VI of the federal Civil Rights Act of 1964 and other applicable federal and state laws. If the state court is unable to secure translation or interpretation support, the state court shall contact or direct a party to contact the Indian child's tribe or the local office of the United States department of the interior bureau of Indian affairs for assistance identifying a qualified translator or interpreter.

G. If the identity or location of the parent or Indian custodian and the Indian tribe cannot be determined, a notice shall be given to the secretary in the same manner as provided in Subsection E of this section. The secretary shall

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1 have fifteen days after receipt of the notice to provide the
2 same notice to the parent or Indian custodian and the Indian
3 tribe.

4 H. A foster care placement or termination of
5 parental rights proceeding shall not be held until at least ten
6 days after receipt of notice by the parent or Indian custodian
7 and the Indian tribe or the secretary pursuant to this section;
8 provided that the parent or Indian custodian or the Indian
9 tribe shall, upon request, be granted up to twenty additional
10 days to prepare for that proceeding.

11 I. Nothing in this section prevents a state court
12 from reviewing a removal of an Indian child from the child's
13 parent or Indian custodian at an emergency custody proceeding
14 before the expiration of the waiting periods provided in
15 Subsections G and H of this section to determine the
16 appropriateness of the removal and potential return of the
17 child."

18 SECTION 12. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] RIGHT TO INTERVENE.--In a state court
21 proceeding for the foster care placement or preadoptive
22 placement, guardianship placement, adoptive placement of or
23 termination of the parental rights to an Indian child, only the
24 Indian child's relative or a member of the Indian child's
25 extended family, the Indian custodian of the child and the

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1 Indian child's tribe have a right to intervene at any point in
2 the proceeding."

3 SECTION 13. A new section of the Children's Code is
4 enacted to read:

5 "[NEW MATERIAL] PETITION--FORM AND CONTENT.--

6 A. A petition initiating a child custody proceeding
7 shall include a statement as to whether the child who is the
8 subject of the child custody proceeding is an Indian child or a
9 child the department has reason to know is an Indian child.

10 B. A party that files a petition, motion or other
11 document in a state court that seeks to effect a foster care
12 placement or permanent placement of or termination of parental
13 rights to an Indian child shall include in that petition,
14 motion or document:

15 (1) the Indian child's tribe or that the
16 department has reason to know that the child is an Indian
17 child;

18 (2) the tribal affiliations of the Indian
19 child's parents;

20 (3) the active efforts made to notify the
21 Indian child's tribe pursuant to the State Indian Child Welfare
22 Act and the federal Indian Child Welfare Act of 1978;

23 (4) a statement of and evidence satisfactory
24 to the state court that active efforts have been made to
25 provide remedial services and rehabilitative programs designed

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1 to prevent the breakup of the Indian family and that these
2 efforts have proved unsuccessful;

3 (5) the active efforts that were made to
4 comply with the notice requirements pursuant to the State
5 Indian Child Welfare Act and the federal Indian Child Welfare
6 Act of 1978, including results of the contact and the names,
7 addresses, titles and telephone numbers of the persons
8 contacted; and

9 (6) the active efforts that were made to
10 comply with the placement preferences set forth in the State
11 Indian Child Welfare Act and the federal Indian Child Welfare
12 Act of 1978.

13 C. Active efforts pursuant to this section require
14 a higher standard of conduct than reasonable efforts and:

15 (1) shall:

16 (a) be documented in detail in writing
17 and on the record;

18 (b) include assisting the Indian child's
19 parent or parents or Indian custodian through the steps of a
20 department case plan and with accessing or developing the
21 resources necessary to satisfy the department case plan;

22 (c) include providing assistance in a
23 manner consistent with the prevailing social and cultural
24 standards and way of life of the Indian child's tribe;

25 (d) be conducted in cooperation with the

1 Indian child and the Indian child's parents, extended family
2 members, Indian custodians and Indian tribe; and

3 (e) be tailored to the facts and
4 circumstances of the case; and

5 (2) may include:

6 (a) conducting a comprehensive
7 assessment of the circumstances of an Indian child's family,
8 with a goal of reunification;

9 (b) identifying appropriate services and
10 assisting the child's parents to overcome barriers to
11 reunification, including actively assisting the parents in
12 obtaining those services;

13 (c) identifying, notifying and inviting
14 representatives of the Indian child's tribe to participate in
15 providing support and services to the Indian child's family;

16 (d) conducting or causing to be
17 conducted a diligent search for the Indian child's extended
18 family members and contacting and consulting with the Indian
19 child's extended family members and adult relatives to provide
20 family structure and support for the Indian child and the
21 Indian child's parents;

22 (e) offering and employing culturally
23 appropriate family preservation strategies and facilitating the
24 use of remedial and rehabilitative services provided by the
25 Indian child's tribe;

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1 (f) taking steps to keep the Indian
2 child and the Indian child's siblings together whenever
3 possible;

4 (g) supporting regular visits with the
5 Indian child's parent or Indian custodian, as well as trial
6 home visits during a period of removal, consistent with the
7 need to ensure the health, safety and welfare of the Indian
8 child;

9 (h) identifying community resources,
10 including housing, financial assistance, employment training,
11 transportation, mental health, health care, substance abuse
12 prevention and treatment, parent training, transportation and
13 peer support services and actively assisting the Indian child's
14 parents or, when appropriate, the Indian child's extended
15 family members, in using and accessing those resources;

16 (i) monitoring process and participation
17 of the Indian child's parents, Indian custodian or extended
18 family members if the services as described in Subparagraphs
19 (b), (c), (e) and (h) of this paragraph are not available; and

20 (j) providing post-reunification
21 services and monitoring for the duration of the state court's
22 jurisdiction."

23 SECTION 14. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] STATE COURT RECORD OF INDIAN CHILD'S

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1 TRIBE.--

2 A. In a child custody proceeding involving an
3 Indian child, a state court shall make a record that an Indian
4 child is a member of:

5 (1) an Indian tribe of which the Indian child
6 is a member or eligible for membership, as determined by the
7 Indian child's tribe;

8 (2) an Indian tribe of which an Indian child
9 is a member if the Indian child is a member of one Indian
10 tribe, but is eligible for membership in one or more other
11 Indian tribes;

12 (3) the Indian tribe designated by agreement
13 between one or more Indian tribes if the Indian child is not a
14 member of each of those Indian tribes, but is eligible for
15 membership with each of those Indian tribes; or

16 (4) the Indian tribe recorded by the state
17 court pursuant to Subsection B of this section if the Indian
18 child is eligible for membership with each of those Indian
19 tribes and the Indian tribes cannot agree on the designation of
20 the Indian child's tribe.

21 B. When recording an Indian child's tribe pursuant
22 to Paragraph (4) of Subsection A of this section, a state court
23 shall, after a hearing, record the Indian tribe with which the
24 Indian child has the more significant contacts, taking into
25 consideration:

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- 1 (1) the preference of each of the Indian
- 2 child's parents;
- 3 (2) the duration of the Indian child's current
- 4 or prior domicile or residence on or near the reservation of
- 5 each Indian tribe;
- 6 (3) the tribal membership of the Indian
- 7 child's custodial parent or Indian custodian;
- 8 (4) the interests asserted by each Indian
- 9 tribe;
- 10 (5) whether the Indian tribe has previously
- 11 adjudicated a case involving an Indian child; and
- 12 (6) if the court determines that the Indian
- 13 child is of sufficient age and capacity to meaningfully self-
- 14 identify the Indian child's tribe, the self-identification of
- 15 the Indian child.

16 C. If an Indian child is a member of or is eligible
17 for membership in more than one Indian tribe, the state court
18 may permit an Indian tribe, in addition to the Indian child's
19 tribe as determined pursuant to Subsection A of this section,
20 to participate in the child custody proceeding in an advisory
21 capacity or as a party."

22 SECTION 15. A new section of the Children's Code is
23 enacted to read:

24 "[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--
25 RIGHT TO COUNSEL.--

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1 A. At the commencement of any hearing in a child
2 custody proceeding, the state court shall determine whether the
3 child is an Indian child by asking, on the record, each
4 individual present on the matter whether the individual knows
5 or has reason to know that the child is an Indian child. If no
6 individual present at the hearing knows or has reason to know
7 that the child is an Indian child, the state court shall
8 instruct each party to inform the court immediately if the
9 individual later receives information that provides reason to
10 know that the child is an Indian child.

11 B. A state court has reason to know that a child is
12 an Indian child if:

13 (1) an individual present in the proceeding,
14 officer of the court involved in the proceeding, Indian tribe,
15 Indian organization or agency informs the court that the child
16 is an Indian child;

17 (2) an individual present at the hearing,
18 officer of the court present at the hearing, Indian tribe or
19 Indian organization or agency informs the court that
20 information has been discovered indicating that the child is an
21 Indian child;

22 (3) the child indicates to the court that the
23 child is an Indian child;

24 (4) the court is informed that the domicile or
25 residence of the child, the child's parent or the child's

1 Indian custodian is on a reservation or in an Alaska native
2 village;

3 (5) the court is informed that the child is or
4 has been a ward of a tribal court;

5 (6) the court is informed that the child or
6 the child's parent possesses an identification card or other
7 record indicating membership in an Indian tribe;

8 (7) testimony or documents presented to the
9 court indicate that the child may be an Indian child; or

10 (8) any other indicia provided to the court or
11 within the court's knowledge, indicating that the child is an
12 Indian child.

13 C. If a state court has reason to know that a child
14 is an Indian child but does not have sufficient evidence to
15 determine whether the child is an Indian child, the court
16 shall:

17 (1) treat the child as an Indian child until
18 the court determines, on the record, that the child is not an
19 Indian child; and

20 (2) require the department or another party to
21 submit a report, declaration or testimony on the record that
22 the department or other party used active efforts to identify
23 and work with all of the Indian tribes of which there is reason
24 to know the child may be a member or be eligible for membership
25 to verify whether:

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1 (a) the child is a member of an Indian
2 tribe; or

3 (b) the child is eligible for membership
4 of an Indian tribe or is the biological child of a member of an
5 Indian tribe.

6 D. In a case in which a state court determines
7 indigency, the parent or Indian custodian shall have the right
8 to court-appointed counsel in any removal, placement or
9 termination proceeding. The state court may appoint counsel
10 for the child upon a finding that the appointment is in the
11 best interest of the child. To the extent appropriations from
12 the state are insufficient to provide for the appointment of
13 counsel in the proceeding, the state court shall promptly
14 notify the secretary upon appointment of counsel so that the
15 secretary may pay for reasonable fees and expenses as provided
16 pursuant to 25 U.S.C. Section 1912 upon certification of the
17 presiding judge.

18 E. Each party, including the Indian child's tribe,
19 whether or not the Indian child's tribe has intervened, in a
20 foster care placement or termination of parental rights
21 proceeding pursuant to the Abuse and Neglect Act or the
22 Adoption Act involving an Indian child shall have the right to
23 examine all reports or other documents filed with the state
24 court upon which a decision with respect to the action may be
25 based."

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1 SECTION 16. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

4 A. The court shall receive testimony from a
5 qualified expert witness in all adjudicatory proceedings and
6 all proceedings to terminate parental rights.

7 B. At least thirty days prior to an adjudicatory
8 proceeding, the department shall name a qualified expert
9 witness to testify at all adjudicatory hearings and all
10 proceedings to terminate parental rights, and the department
11 shall inform the Indian child's tribe of the qualified expert
12 witness who was named to testify.

13 C. When the department notifies an Indian child's
14 tribe of the pendency of an investigation involving an Indian
15 child from that Indian tribe, the department shall have the
16 burden of collaborating, informing and identifying to the
17 Indian tribe the qualified expert witness to testify in any
18 adjudicatory or termination proceeding that results from the
19 investigation. The qualified expert witness shall be a person
20 who is:

21 (1) familiar with the Indian child's case and
22 has communicated with the Indian child's tribe about the case;

23 (2) recognized as knowledgeable about the
24 family and child-rearing practices of the Indian child's tribe;
25 and

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- 1 (3) a member of the Indian child's tribe; or
2 (4) a person recommended by the Indian child's
3 tribe.

4 D. Only the Indian child's tribe may object to the
5 qualified expert witness that the department has identified and
6 may stipulate to a qualified expert witness.

7 E. An Indian child's tribe shall have the
8 opportunity to question a qualified expert witness in all
9 hearings involving an Indian child in which the qualified
10 expert witness testifies, regardless of whether the Indian
11 child's tribe has intervened.

12 F. If, after active efforts and in no case later
13 than forty-five days after contacting the Indian child's tribe
14 for a recommendation, the department does not receive a
15 recommendation from the Indian tribe, the department shall
16 identify a qualified expert witness who meets the requirements
17 provided in Paragraphs (1) and (2) of Subsection C of this
18 section from a list of qualified expert witnesses compiled
19 through cooperation among the Indian tribes in the state and
20 the department.

21 G. If, sixty days following the initiation of an
22 investigation, the department has not identified a qualified
23 expert witness to testify as required by the State Indian Child
24 Welfare Act and the federal Indian Child Welfare Act of 1978,
25 in considering a motion by the department for a continuance,

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1 the court shall consider whether it is in the best interest of
2 the Indian child to remain in the department's custody for
3 additional time."

4 SECTION 17. A new section of the Children's Code is
5 enacted to read:

6 "[NEW MATERIAL] PARENTAL RIGHTS--VOLUNTARY TERMINATION--
7 CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

8 A. When a parent or Indian custodian voluntarily
9 consents to a foster care placement or to termination of
10 parental rights, that consent is not valid unless executed in
11 writing and recorded before a judge of competent jurisdiction
12 and accompanied by the presiding judge's certificate that the
13 terms and consequences of the consent were fully explained in
14 detail and were fully understood by the parent or Indian
15 custodian. The state court shall also certify that either the
16 parent or the Indian custodian fully understood the explanation
17 in English or that it was interpreted into a language that the
18 parent or Indian custodian understood. Any consent to a foster
19 care placement or termination of parental rights that is given
20 prior to or within ten days after birth of an Indian child is
21 not valid.

22 B. A parent or Indian custodian may withdraw
23 consent to a foster care placement of an Indian child pursuant
24 to the Children's Code at any time and, upon that withdrawal,
25 the Indian child shall be returned to the parent or Indian

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1 custodian.

2 C. In a voluntary proceeding for termination of
3 parental rights or adoptive placement of an Indian child
4 pursuant to the Children's Code, the consent of the parent may
5 be withdrawn for any reason at any time prior to the entry of a
6 final decree of termination or adoption as the case may be, and
7 the Indian child shall be returned to the parent.

8 D. After the entry of a final decree of adoption of
9 an Indian child in a state court that is made pursuant to the
10 Adoption Act, the parent may withdraw consent to the adoption
11 upon the grounds that consent was obtained through fraud or
12 duress and may petition the court to vacate the decree. Upon a
13 finding that the consent was obtained through fraud or duress,
14 the court shall vacate the decree and return the child to the
15 parent. An adoption that has been in effect for at least two
16 years shall not be invalidated except as otherwise provided by
17 law."

18 SECTION 18. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] PETITION TO COURT OF COMPETENT
21 JURISDICTION TO INVALIDATE ACTION.--An Indian child who is the
22 subject of an action for foster care placement, preadoptive
23 placement, guardianship, adoptive placement or termination of
24 parental rights pursuant to the Children's Code, a parent or
25 Indian custodian from whose custody the child was removed or

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1 the Indian child's tribe may petition any court of competent
2 jurisdiction to invalidate that action upon a showing that the
3 action violated any provision of Section 6, 11 or 17 of the
4 State Indian Child Welfare Act."

5 SECTION 19. A new section of the Children's Code is
6 enacted to read:

7 "[NEW MATERIAL] PLACEMENT PREFERENCES--ADOPTION--PLACEMENT
8 OF INDIAN CHILDREN--REQUIRED TRAINING.--

9 A. If the child is an Indian child or there is
10 reason to know that a child is an Indian child and that the
11 child is in need of placement or continuation in substitute
12 care, except as provided in Subsection C of this section, the
13 child shall be placed in the least restrictive setting that:

14 (1) most closely approximates a family, taking
15 into consideration the Indian child's sibling attachment;

16 (2) allows the Indian child's special needs,
17 if any, to be met;

18 (3) is in reasonable geographic proximity to
19 the Indian child's home, extended family or siblings; and

20 (4) is in accordance with the order of
21 preference established by the Indian child's tribe by any
22 means, or, if that Indian tribe has not established placement
23 preferences, is in accordance with the following order of
24 preference:

25 (a) a member of the Indian child's

1 extended family;

2 (b) a foster home licensed, approved or
3 specified by the Indian child's tribe; or

4 (c) a foster home licensed or approved
5 by a licensing authority in New Mexico and in which one or more
6 of the licensed or approved foster parents is an Indian.

7 B. A placement shall not depart from the
8 preferences based on:

9 (1) the socioeconomic status of any placement;
10 or

11 (2) a home environment that does not impact
12 the safety and well-being of the Indian child.

13 C. If an Indian child is placed in a placement that
14 is contrary to the placement preferences provided in this
15 section, the placement shall not be a concurrent placement, and
16 the department shall:

17 (1) conduct monitoring at least every thirty
18 days to determine whether a placement that comports with the
19 placement preferences provided in this section is available;

20 (2) undertake active efforts to identify a
21 placement that aligns with the placement preferences as soon as
22 practicable; and

23 (3) document all active efforts undertaken to
24 identify a placement that aligns with the placement
25 preferences. At minimum, this shall include:

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- 1 (a) contacting the Indian tribe;
- 2 (b) conducting a relative search;
- 3 (c) interviewing relatives throughout
- 4 the case;
- 5 (d) continually assessing and
- 6 reevaluating relatives;
- 7 (e) providing the Indian tribe with all
- 8 information in regard to family members;
- 9 (f) offering relative limited license;
- 10 (g) assisting relatives through the
- 11 licensing process and making the licensing process more
- 12 accessible;
- 13 (h) continued contact, including
- 14 visitation;
- 15 (i) providing culturally appropriate
- 16 interventions; and
- 17 (j) first-line intervention.

18 D. In the case of a foster care placement,
19 preadoptive placement, adoptive placement or guardianship of an
20 Indian child pursuant to the Children's Code, if the Indian
21 child's tribe establishes a different order of preference, the
22 adoption agency or state court effecting the placement shall
23 follow that order of preference so long as the placement is the
24 least restrictive setting appropriate to the particular needs
25 of the Indian child, as provided in Subsection A of this

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1 section. When appropriate, the preference of the Indian child
2 or parent may be considered.

3 E. If an Indian child is placed in a household that
4 does not include a parent or guardian who is a member of the
5 Indian child's tribe, upon placement and at least annually
6 thereafter, the department shall provide mandatory training to
7 the foster or preadoptive parent that includes information on
8 the Indian child's tribal culture and language, created in
9 conjunction with, and at the discretion of, the Indian tribe,
10 tribal experts and relatives.

11 F. The administrative office of the courts in
12 collaboration with the department shall develop and deliver
13 annual mandatory training to all children's court judges,
14 district court judges and all attorneys, guardians ad litem and
15 youth attorneys who are both court appointed or whose practice
16 involves or represents clients in the areas of child welfare or
17 juvenile justice. The training shall include information on:

18 (1) the federal Indian Child Welfare Act of
19 1978;

20 (2) the State Indian Child Welfare Act,
21 including cultural compacts; and

22 (3) the Indian tribes geographically located
23 within the state.

24 G. A judge, attorney, guardian ad litem or youth
25 attorney required to be trained in accordance with Subsection F

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1 of this section shall attend the required training at least
2 once every twelve months."

3 SECTION 20. A new section of the Children's Code is
4 enacted to read:

5 "[NEW MATERIAL] CHANGE IN PLACEMENT--PLACEMENT
6 PREFERENCE--DEPARTMENT DUTIES.--If an Indian child is placed in
7 a foster or substitute care placement that was contrary to the
8 placement preferences provided in Section 19 of the State
9 Indian Child Welfare Act, and regardless of the length of time
10 that the child was in the foster or substitute care placement,
11 the department shall conduct a reassessment of placement
12 preferences for the child, in accordance with Section 19 of
13 that act, before the child's placement may be changed to an
14 adoptive or other permanent placement. The reassessment shall
15 include consultation with the Indian child's tribe."

16 SECTION 21. A new section of the Children's Code is
17 enacted to read:

18 "[NEW MATERIAL] PREADOPTIVE, ADOPTIVE AND GUARDIANSHIP
19 PLACEMENTS--MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To
20 ensure that the federal Indian Child Welfare Act of 1978 and
21 the State Indian Child Welfare Act are fully implemented and
22 that all Indian children have the opportunity to maintain
23 strong connections to their culture, if the household into
24 which an Indian child is placed for pre-adoption, adoption or
25 guardianship does not include a parent who is a member of the

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1 Indian child's tribe, the court shall require the parties to
2 the adoption to enter a cultural compact, at the discretion of
3 the Indian child's tribe, that documents the parties' agreement
4 regarding how the Indian child will continue to actively
5 participate in the Indian child's cultural learning and
6 activities and engagement with family members. Each cultural
7 compact shall be specific to the Indian child and shall
8 articulate the Indian child's understanding as the Indian child
9 grows and matures. The cultural compact shall become part of
10 the court record, shall be enforced by the court and shall be
11 included in the adoption decree."

12 SECTION 22. A new section of the Children's Code is
13 enacted to read:

14 "[NEW MATERIAL] DISPOSITIONAL JUDGMENTS.--

15 A. At the conclusion of a dispositional hearing in
16 a child custody proceeding involving an Indian child, in
17 addition to other requirements for a state court's findings
18 pursuant to the Children's Code, a state court shall include:

19 (1) when the judgment is made in a child
20 custody proceeding held pursuant to the Family in Need of
21 Court-Ordered Services Act or the Abuse and Neglect Act,
22 findings of:

23 (a) whether the placement preferences
24 set forth in the State Indian Child Welfare Act and the federal
25 Indian Child Welfare Act of 1978 have been incorporated into a

1 plan for family services made pursuant to Section 32A-3B-15
2 NMSA 1978 or in a case plan as described in Section 32A-4-21
3 NMSA 1978; provided that if those placement preferences are not
4 incorporated into the plan for family services or the case
5 plan, good cause for noncompliance shall be clearly stated and
6 supported;

7 (b) whether the plan for family services
8 or the case plan provides for maintenance of the Indian child's
9 cultural ties; and

10 (c) how the Indian child's cultural
11 needs are considered and how, when reasonable, access to
12 cultural practices and traditional treatment will be provided
13 to the child; and

14 (2) in a termination of parental rights
15 proceeding pursuant to the Abuse and Neglect Act or the
16 Adoption Act, findings that the requirements of the State
17 Indian Child Welfare Act and the federal Indian Child Welfare
18 Act of 1978 have been met.

19 B. The state court shall determine during a review
20 of a dispositional judgment involving an Indian child pursuant
21 to Section 32A-4-25 NMSA 1978 whether the preferences set forth
22 in the State Indian Child Welfare Act and the federal Indian
23 Child Welfare Act of 1978 and whether the child's case plan as
24 described in Section 32A-4-21 NMSA 1978 provide for maintaining
25 the Indian child's cultural ties. When placement preferences

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

3 SECTION 23. A new section of the Children's Code is
4 enacted to read:

5 "[NEW MATERIAL] RETURN OF CUSTODY.--

6 A. Whenever a final decree of adoption of an Indian
7 child has been vacated or set aside or the adoptive parents
8 voluntarily consent to the termination of their parental rights
9 to the child, a biological parent or prior Indian custodian may
10 petition for return of custody, and the state court shall grant
11 that petition unless there is a showing, in a proceeding
12 subject to the provisions of Section 11 of the State Indian
13 Child Welfare Act, that the return of custody is not in the
14 best interests of the Indian child.

15 B. Whenever an Indian child is removed from a
16 foster care home or institution for the purpose of further
17 foster care, preadoptive or adoptive placement, that placement
18 shall be in accordance with the provisions of the State Indian
19 Child Welfare Act and the federal Indian Child Welfare Act of
20 1978, except in the case where an Indian child is being
21 returned to the parent or Indian custodian from whose custody
22 the child was originally removed."

23 SECTION 24. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When

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1 making a determination regarding the best interests of an
2 Indian child pursuant to the State Indian Child Welfare Act and
3 the federal Indian Child Welfare Act of 1978, a state court
4 shall, in consultation with the Indian child's tribe, consider
5 the following relevant factors:

6 A. the protection, safety and well-being of the
7 Indian child;

8 B. the prevention of unnecessary out-of-home
9 placement of the Indian child;

10 C. the prioritization of placement of the Indian
11 child in accordance with the placement preferences provided
12 pursuant to Section 19 of the State Indian Child Welfare Act
13 and the federal Indian Child Welfare Act of 1978;

14 D. the critical importance to the Indian child of
15 establishing, developing or maintaining a political, cultural,
16 social and spiritual relationship with the Indian child's tribe
17 and tribal community and with familial ties such as clanship
18 and family with unique cultural characteristics; and

19 E. the importance to the Indian child of the
20 ability of the Indian child's tribe to maintain its existence
21 and integrity in promotion of the stability and security of
22 Indian children and families."

23 SECTION 25. A new section of the Children's Code is
24 enacted to read:

25 "[NEW MATERIAL] TRIBAL AFFILIATION AND OTHER

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1 INFORMATION.--

2 A. Upon application by an Indian individual who has
3 reached the age of eighteen and who was the subject of an
4 adoptive placement, the state court that entered the final
5 decree shall inform that individual of the tribal affiliation,
6 if any, of the individual's biological parents and provide any
7 other information necessary to protect any rights flowing from
8 the individual's tribal relationship.

9 B. An individual adopted pursuant to the Adoption
10 Act shall have the right, for the purpose of membership in that
11 individual's Indian tribe of origin, to access information kept
12 by the department. Information needed by that individual for
13 membership in that individual's Indian tribe of origin may be
14 requested by the department. Information needed by an
15 individual for membership in the individual's Indian tribe of
16 origin may be requested from the department by the following
17 persons:

- 18 (1) the individual, after the individual
19 reaches eighteen years of age;
- 20 (2) when the individual is a child, the
21 individual's parent or guardian; or
- 22 (3) the individual's descendant or, if the
23 individual's descendant is a child, an adult representative for
24 the descendant.

25 C. When the department receives a request for

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1 information regarding an individual's Indian tribe of origin
2 when that individual was adopted pursuant to the Adoption Act,
3 the department shall examine its records to determine if the
4 individual is of Indian descent. If the department establishes
5 that an individual is of Indian descent, the department shall:

6 (1) provide the requester with the tribal
7 affiliation of the individual's biological parents; and

8 (2) provide the requester any additional
9 information necessary to establish tribal membership for the
10 individual and to protect any rights flowing from the
11 individual's tribal relationship, pursuant to the
12 confidentiality provisions of the Children's Code."

13 SECTION 26. A new section of the Children's Code is
14 enacted to read:

15 "[NEW MATERIAL] ADOPTION DECREES--INFORMATION
16 AVAILABILITY.--

17 A. The clerk of a state court entering a final
18 decree or order in an adoptive placement of an Indian child
19 shall provide the secretary with a copy of that decree or order
20 with other information as necessary to show:

21 (1) the name and tribal membership or
22 eligibility of membership of the child;

23 (2) the names and addresses of the child's
24 biological parents;

25 (3) the names and addresses of the biological

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1 parents; and

2 (4) the identity of any agency having files or
3 information relating to the adoptive placement.

4 B. The attorney for the petitioner shall provide to
5 the clerk of the state court a copy of the decree of adoption
6 and a stamped envelope addressed to the secretary."

7 SECTION 27. A new section of the Children's Code is
8 enacted to read:

9 "[NEW MATERIAL] EMERGENCY REMOVAL OR PLACEMENT OF AN
10 INDIAN CHILD--TERMINATION--APPROPRIATE ACTION.--Nothing in the
11 State Indian Child Welfare Act and the federal Indian Child
12 Welfare Act of 1978 shall be construed to prevent the emergency
13 removal of an Indian child who is a resident of or is domiciled
14 on a reservation, but temporarily located off the reservation,
15 from the Indian child's parent or Indian custodian or the
16 emergency placement of that Indian child in a foster home or
17 institution, under the Children's Code, in order to prevent
18 imminent physical danger or harm to the Indian child. The
19 department shall expeditiously initiate a child custody
20 proceeding subject to the provisions of the State Indian Child
21 Welfare Act and the federal Indian Child Welfare Act of 1978,
22 transfer the Indian child to the jurisdiction of the
23 appropriate Indian tribe or restore the child to the parent or
24 Indian custodian, as may be appropriate."

25 SECTION 28. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] STATE INDIAN CHILD WELFARE ACT
3 SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--The
4 provisions of the State Indian Child Welfare Act are in
5 addition to other requirements for child custody proceedings
6 set forth in the Children's Code and the Kinship Guardianship
7 Act. To the extent the provisions of the State Indian Child
8 Welfare Act conflict with the provisions of any other
9 provisions of the federal Indian Child Welfare Act of 1978, the
10 Children's Code or the Kinship Guardianship Act, the provisions
11 of the State Indian Child Welfare Act shall apply."

12 SECTION 29. A new section of Children's Code is enacted
13 to read:

14 "[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The
15 "office of tribal affairs" is created in the department. The
16 office shall be dedicated to ensuring the department's
17 compliance with and full implementation of the federal Indian
18 Child Welfare Act of 1978 and the State Indian Child Welfare
19 Act."

20 SECTION 30. A new section of the Children's Code is
21 enacted to read:

22 "[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The
23 department and the court shall promulgate rules to implement
24 the provisions of the State Indian Child Welfare Act."

25 SECTION 31. Section 32A-1-8 NMSA 1978 (being Laws 1993,
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1 Chapter 77, Section 17, as amended) is amended to read:

2 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
3 JURISDICTION.--

4 A. The court has exclusive original jurisdiction of
5 all proceedings under the Children's Code in which a person is
6 eighteen years of age or older and was a child at the time the
7 alleged act in question was committed or is a child alleged to
8 be:

- 9 (1) a delinquent child;
10 (2) a child of a family in need of
11 court-ordered services or a child in need of services pursuant
12 to the Family in Need of Court-Ordered Services Act;
13 (3) a neglected child;
14 (4) an abused child;
15 (5) a child subject to adoption; or
16 (6) a child subject to placement for a
17 developmental disability or a mental disorder.

18 B. The court has exclusive original jurisdiction to
19 emancipate a minor.

20 C. During abuse or neglect proceedings in which New
21 Mexico is the home state, pursuant to the provisions of the
22 Uniform Child-Custody Jurisdiction and Enforcement Act, the
23 court shall have jurisdiction over both parents to determine
24 the best interest of the child and to decide all matters
25 incident to the court proceedings.

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1 D. Nothing in this section shall be construed to in
2 any way abridge the rights of any Indian tribe to exercise
3 jurisdiction over child custody matters as defined by and in
4 accordance with the federal Indian Child Welfare Act of 1978
5 and the State Indian Child Welfare Act.

6 ~~[E. A tribal court order pertaining to an Indian~~
7 ~~child in an action under the Children's Code shall be~~
8 ~~recognized and enforced by the district court for the judicial~~
9 ~~district in which the tribal court is located. A tribal court~~
10 ~~order pertaining to an Indian child that accesses state~~
11 ~~resources shall be recognized and enforced pursuant to the~~
12 ~~provisions of intergovernmental agreements entered into by the~~
13 ~~Indian child's tribe and the department or another state~~
14 ~~agency. An Indian child residing on or off a reservation, as a~~
15 ~~citizen of this state, shall have the same right to services~~
16 ~~that are available to other children of the state, pursuant to~~
17 ~~intergovernmental agreements. The cost of the services~~
18 ~~provided to an Indian child shall be determined and provided~~
19 ~~for in the same manner as services are made available to other~~
20 ~~children of the state, utilizing tribal, state and federal~~
21 ~~funds and pursuant to intergovernmental agreements. The tribal~~
22 ~~court, as the court of original jurisdiction, shall retain~~
23 ~~jurisdiction and authority over the Indian child.~~

24 ~~F.]~~ E. The court may acquire jurisdiction over a
25 Motor Vehicle Code or municipal traffic code violation as set

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1 forth in Section 32A-2-29 NMSA 1978."

2 **SECTION 32.** Section 32A-1-11 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 20, as amended) is amended to read:

4 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
5 initiating proceedings pursuant to the provisions of Chapter
6 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the
7 Matter of, a child", and shall set forth with
8 specificity:

9 A. the facts necessary to invoke the jurisdiction
10 of the court;

11 B. if violation of a criminal statute or other law
12 or ordinance is alleged, the citation to the appropriate law;

13 C. the name, birth date and residence address of
14 the child;

15 D. the name and residence address of the parents,
16 guardian, custodian or spouse, if any, of the child; and if no
17 parent, guardian, custodian or spouse, if any, resides or can
18 be found within the state or if a residence address is unknown,
19 the name of any known adult relative residing within the state
20 or, if there be none, the known adult relative residing nearest
21 to the court;

22 E. whether the child is in custody or detention
23 pursuant to the Delinquency Act and, if so, the place of
24 custody or detention and the time the child was taken into
25 custody;

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1 F. whether the child is an Indian child and, if so,
2 any additional information required pursuant to the State
3 Indian Child Welfare Act and the federal Indian Child Welfare
4 Act of 1978; and

5 G. if any of the matters required to be set forth
6 by this section are not known, a statement of those matters and
7 the fact that they are not known."

8 SECTION 33. Section 32A-3B-16 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 88, as amended) is amended to read:

10 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

11 A. At the conclusion of the dispositional hearing,
12 the court shall set forth its findings on the following issues
13 in the dispositional judgment:

14 (1) the ability of the parent and child to
15 share a residence;

16 (2) the interaction and interrelationship of
17 the child with the child's parent, siblings and any other
18 person who may significantly affect the child's best interest;

19 (3) the child's adjustment to home, school and
20 community;

21 (4) whether the child's educational needs are
22 being met;

23 (5) the mental and physical health of all
24 individuals involved;

25 (6) the wishes of the child as to the child's

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1 custodian;

2 (7) the wishes of the child's parent, guardian
3 or custodian as to the child's custody;

4 (8) whether there exists a relative of the
5 child or any other individual who, after study by the
6 department, is found to be qualified to receive and care for
7 the child;

8 (9) the availability of services recommended
9 in the treatment plan;

10 (10) the department's efforts to work with the
11 parent and child in the home and a description of the in-home
12 treatment programs that the department has considered and
13 rejected;

14 ~~[(11) whether the placement preferences set~~
15 ~~forth in the federal Indian Child Welfare Act of 1978 or the~~
16 ~~placement preferences of the child's Indian tribe have been~~
17 ~~incorporated into the plan. When placement preferences have~~
18 ~~not been incorporated into the plan, an explanation shall be~~
19 ~~clearly stated and supported;~~

20 ~~(12) when the child is an Indian child,~~
21 ~~whether the plan provides for maintaining the Indian child's~~
22 ~~cultural ties]~~

23 (11) if the child is an Indian child or there
24 is reason to know the child is an Indian child, any other
25 findings required for a dispositional judgment pursuant to the

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1 State Indian Child Welfare Act and the federal Indian Child
2 Welfare Act of 1978; and

3 [~~(13)~~] (12) when the child is an undocumented
4 immigrant child, whether the family services plan included
5 referral to nongovernmental agencies that may be able to assist
6 the child, and family when appropriate, in addressing
7 immigration status.

8 B. When there is an adjudication regarding a family
9 in need of court-ordered services, the court shall enter
10 judgment and make any of the following dispositions:

11 (1) permit the child to remain with the
12 child's parent, guardian or custodian, subject to conditions
13 and limitations the court may prescribe;

14 (2) place the child under the protective
15 supervision of the department;

16 (3) transfer legal custody of the child to:

17 (a) the department;

18 (b) an agency responsible for the care
19 of neglected or abused children; or

20 (c) the child's noncustodial parent, if
21 that is found to be in the child's best interests; or

22 (4) if the evidence indicates that the child's
23 educational needs are not being met, the local education agency
24 may be joined as a party and directed to assess the child's
25 needs within forty-five days, attempt to meet the child's

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1 educational needs and document its efforts to meet the child's
2 educational needs.

3 C. Unless a child of an adjudicated family in need
4 of court-ordered services is also found to be a delinquent
5 child, the child shall not be confined in an institution
6 established for the long-term care and rehabilitation of
7 delinquent children or in a facility for the detention of
8 alleged delinquent children.

9 ~~[D. When the child is an Indian child, the child's~~
10 ~~cultural needs shall be considered during dispositional~~
11 ~~judgment and, when reasonable, access to cultural practices and~~
12 ~~traditional treatment shall be provided to the Indian child.]"~~

13 SECTION 34. Section 32A-4-6 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 100, as amended) is amended to read:

15 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

16 A. A child may be held or taken into custody:

17 (1) by a law enforcement officer when the
18 officer has evidence giving rise to reasonable grounds to
19 believe that the child is abused or neglected and that there is
20 an immediate threat to the child's safety; provided that the
21 law enforcement officer contacts the department to enable the
22 department to conduct an on-site safety assessment to determine
23 whether it is appropriate to take the child into immediate
24 custody, except that a child may be taken into custody by a law
25 enforcement officer without a protective services assessment

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1 being conducted if:

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

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

10 (c) the child has been abandoned;

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

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

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

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

25 B. A child shall not be taken into protective

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1 custody solely on the grounds that the child's parent, guardian
2 or custodian refuses to consent to the administration of a
3 psychotropic medication to the child.

4 C. When a child is taken into custody by law
5 enforcement, the department is not compelled to place the child
6 in an out-of-home placement and may release the child to the
7 child's parent, guardian or custodian.

8 D. When a child is taken into custody, the
9 department shall make [~~reasonable~~] active efforts to determine
10 whether the child is an Indian child as required pursuant to
11 the State Indian Child Welfare Act and the federal Indian Child
12 Welfare Act of 1978.

13 E. If a child taken into custody is an Indian child
14 and is alleged to be neglected or abused, the department shall
15 give notice to the [~~agent of the Indian child's tribe~~]
16 appropriate parties in accordance with the federal Indian Child
17 Welfare Act of 1978 and the State Indian Child Welfare Act.

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

21 SECTION 35. Section 32A-4-18 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 112, as amended) is amended to read:

23 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
24 PROBABLE CAUSE.--

25 A. When a child alleged to be neglected or abused

.219414.1

1 has been placed in the legal custody of the department or the
2 department has petitioned the court for temporary custody, a
3 custody hearing shall be held within ten days from the date the
4 petition is filed to determine if the child should remain in or
5 be placed in the department's custody pending adjudication.

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

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

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

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

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

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

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

25 (5) the parent, guardian or custodian is not

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1 able or willing to provide adequate supervision and care for
2 the child.

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

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

13 (2) award legal custody of the child to the
14 department.

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

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1 federal Indian Child Welfare Act of 1978 and the State Indian
2 Child Welfare Act.

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

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

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

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

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

.219414.1

1 the parties at least five days before the adjudicatory hearing
2 is scheduled. The reports shall not be sent to the court.

3 H. The Rules of Evidence shall not apply to custody
4 hearings.

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

15 J. Nothing in this section shall be construed to
16 abridge the rights of Indian children pursuant to the federal
17 Indian Child Welfare Act of 1978 and the State Indian Child
18 Welfare Act."

19 SECTION 36. Section 32A-4-20 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 114, as amended) is amended to read:

21 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
22 DISPOSITIONAL MATTERS--PENALTY.--

23 A. The proceedings shall be recorded by
24 stenographic notes or by electronic, mechanical or other
25 appropriate means.

.219414.1

1 B. All abuse and neglect hearings shall be closed
2 to the general public.

3 C. Only the parties, their counsel, witnesses and
4 other persons approved by the court may be present at a closed
5 hearing. The foster parent, preadoptive parent or relative
6 providing care for the child, and an Indian child's tribe,
7 pursuant to the State Indian Child Welfare Act and the federal
8 Indian Child Welfare Act of 1978, if applicable, shall be given
9 notice and an opportunity to be heard at the dispositional
10 phase. Those other persons the court finds to have a proper
11 interest in the case or in the work of the court may be
12 admitted by the court to closed hearings on the condition that
13 they refrain from divulging any information that would identify
14 the child or family involved in the proceedings.

15 D. In proceedings with an Indian child or a child
16 who the court or the department has reason to believe is an
17 Indian child, the Indian child's tribe may be present at a
18 closed hearing, regardless if the Indian child's tribe has
19 intervened.

20 [~~D.~~] E. Accredited representatives of the news
21 media shall be allowed to be present at closed hearings,
22 subject to the condition that they refrain from divulging
23 information that would identify any child involved in the
24 proceedings or the parent, guardian or custodian of that child
25 and subject to enabling regulations as the court finds

1 necessary for the maintenance of order and decorum and for the
2 furtherance of the purposes of the Children's Code. A child
3 who is the subject of an abuse and neglect proceeding and is
4 present at a hearing may object to the presence of the media.
5 The court may exclude the media if it finds that the presence
6 of the media is contrary to the best interests of the child.

7 ~~[E.]~~ F. If the court finds that it is in the best
8 interest of a child under fourteen years of age, the child may
9 be excluded from a hearing under the Abuse and Neglect Act. A
10 child fourteen years of age or older may be excluded from a
11 hearing only if the court makes a finding that there is a
12 compelling reason to exclude the child and states the factual
13 basis for the finding.

14 ~~[F.]~~ G. Those persons or parties granted admission
15 to a closed hearing who intentionally divulge information in
16 violation of this section are guilty of a petty misdemeanor.

17 ~~[G.]~~ H. The court shall determine if the
18 allegations of the petition are admitted or denied. If the
19 allegations are denied, the court shall proceed to hear
20 evidence on the petition. The court, after hearing all of the
21 evidence bearing on the allegations of neglect or abuse, shall
22 make and record its findings on whether the child is a
23 neglected child, an abused child or both. Except in the case
24 of a petition that relates to an Indian child, if the petition
25 alleges that the parent, guardian or custodian has subjected

1 the child to aggravated circumstances, then the court shall
2 also make and record its findings on whether the aggravated
3 circumstances have been proven. If the petition relates to an
4 Indian child, aggravating circumstances shall not be considered
5 by the court and shall not be recorded in the court's findings
6 on the petition, pursuant to the State Indian Child Welfare
7 Act.

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

18 [H.] J. A party aggrieved by an order entered
19 pursuant to Subsection [H] I of this section may file an
20 immediate appeal to the court of appeals.

21 [J.] K. In that part of the hearings held under the
22 Children's Code on dispositional issues, all relevant and
23 material evidence helpful in determining the questions
24 presented, including oral and written reports, may be received
25 by the court and may be relied upon to the extent of its

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1 probative value even though not competent had it been offered
2 during the part of the hearings on adjudicatory issues.

3 ~~[K-]~~ L. On the court's motion or that of a party,
4 the court may continue the hearing on the petition for a period
5 not to exceed thirty days to receive reports and other evidence
6 in connection with disposition. The court shall continue the
7 hearing pending the receipt of the predisposition study and
8 report if that document has not been prepared and received.
9 During any continuances under this subsection, the court shall
10 make an appropriate order for legal custody."

11 **SECTION 37.** Section 32A-4-21 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 115, as amended) is amended to read:

13 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
14 REPORTS AND EXAMINATIONS.--

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

18 B. The predisposition study required pursuant to
19 Subsection A of this section shall contain the following
20 information:

21 (1) a statement of the specific reasons for
22 intervention by the department or for placing the child in the
23 department's custody and a statement of the parent's ability to
24 care for the child in the parent's home without causing harm to
25 the child;

.219414.1

1 (2) a statement of how an intervention plan is
2 designed to achieve placement of the child in the least
3 restrictive setting available, consistent with the best
4 interests and special needs of the child, including a statement
5 of the likely harm the child may suffer as a result of being
6 removed from the parent's home, including emotional harm that
7 may result due to separation from the child's parents, and a
8 statement of how the intervention plan is designed to place the
9 child in close proximity to the parent's home without causing
10 harm to the child due to separation from parents, siblings or
11 any other person who may significantly affect the child's best
12 interest;

13 (3) the wishes of the child as to the child's
14 custodian;

15 (4) a statement of the efforts the department
16 has made to identify and locate all grandparents and other
17 relatives and to conduct home studies on any appropriate
18 relative expressing an interest in providing care for the
19 child, and a statement as to whether the child has a family
20 member who, subsequent to study by the department, is
21 determined to be qualified to care for the child;

22 (5) a description of services offered to the
23 child, the child's family and the child's foster care family
24 and a summary of reasonable efforts made to prevent removal of
25 the child from the child's family or reasonable efforts made to

.219414.1

1 reunite the child with the child's family;

2 (6) a description of the home or facility in
3 which the child is placed and the appropriateness of the
4 child's placement;

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;

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 and the State Indian Child Welfare Act or
12 the placement preferences of the child's Indian tribe were
13 followed and whether the child's case plan provides for
14 maintaining the child's cultural ties;

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

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

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1 (12) a case plan that sets forth steps to
2 ensure that the child's educational needs are met and, for a
3 child fourteen years of age or older, a case plan that
4 specifically sets forth the child's educational and post-
5 secondary goals; and

6 (13) a description of the child's foster care
7 placement and whether it is appropriate in terms of the
8 educational setting and proximity to the school the child was
9 enrolled in at the time of the placement, including plans for
10 travel for the child to remain in the school in which the child
11 was enrolled at the time of placement, if reasonable and in the
12 child's best interest.

13 C. A copy of the predisposition report shall be
14 provided by the department to counsel for all parties five days
15 before the dispositional hearing.

16 D. If the child is an adjudicated abused child, any
17 temporary custody orders shall remain in effect until the court
18 has received and considered the predispositional study at the
19 dispositional hearing."

20 SECTION 38. Section 32A-4-22 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 116, as amended) is amended to read:

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

24 A. If not held in conjunction with the adjudicatory
25 hearing, the dispositional hearing shall be commenced within

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1 thirty days after the conclusion of the adjudicatory hearing.
2 At the conclusion of the dispositional hearing, the court shall
3 make and include in the dispositional judgment its findings on
4 the following:

5 (1) the interaction and interrelationship of
6 the child with the child's parent, siblings and any other
7 person who may significantly affect the child's best interest;

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

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

12 (4) the wishes of the child as to the child's
13 placement;

14 (5) the wishes of the child's parent, guardian
15 or custodian as to the child's custody;

16 (6) whether reasonable efforts have been made
17 by the department to identify, locate and give notice to all
18 grandparents and other relatives and to conduct home studies on
19 any appropriate relative who expresses an interest in providing
20 care for the child. If the court finds that reasonable efforts
21 in these areas have not been made, the court may make
22 supplemental orders as necessary and may reconsider the matter
23 at the initial judicial review and subsequent periodic review
24 hearings. If the child is an Indian child, the person shall
25 meet the standards set forth in the federal Indian Child

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1 Welfare Act of 1978 and the State Indian Child Welfare Act;

2 (7) whether consideration has been given to
3 the child's familial identity and connections;

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

7 (9) the availability of services recommended
8 in the case plan prepared as a part of the predisposition study
9 in accordance with the provisions of Section 32A-4-21 NMSA
10 1978;

11 (10) the ability of the parent to care for the
12 child in the home so that no harm will result to the child;

13 (11) whether reasonable efforts were made by
14 the department to prevent removal of the child from the home
15 prior to placement in substitute care and whether reasonable
16 efforts were made to attempt reunification of the child with
17 the natural parent;

18 (12) whether reasonable efforts were made by
19 the department to place siblings in custody together, unless
20 such joint placement would be contrary to the safety or well-
21 being of any of the siblings in custody, and whether any
22 siblings not jointly placed have been provided reasonable
23 visitation or other ongoing interaction, unless visitation or
24 other ongoing interaction would be contrary to the safety or
25 well-being of any of the siblings; and

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1 (13) if the child is an Indian child, ~~[whether~~
2 ~~the placement preferences set forth in the federal Indian Child~~
3 ~~Welfare Act of 1978 or the placement preferences of the child's~~
4 ~~Indian tribe have been followed and whether the Indian child's~~
5 ~~case plan provides for maintaining the Indian child's cultural~~
6 ~~ties. When placement preferences have not been followed, good~~
7 ~~cause for noncompliance shall be clearly stated and supported]~~
8 any other information required for a dispositional judgment
9 pursuant to the State Indian Child Welfare Act and the federal
10 Indian Child Welfare Act of 1978.

11 B. If a child is found to be neglected or abused,
12 the court may enter its judgment making any of the following
13 dispositions to protect the welfare of the child:

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

17 (2) place the child under protective
18 supervision of the department; or

19 (3) transfer legal custody of the child to one
20 of the following:

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

23 (b) the department.

24 C. If a child is found to be neglected or abused,
25 in its dispositional judgment the court shall also order the

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1 department to implement and the child's parent, guardian or
2 custodian to cooperate with any case plan approved by the
3 court. Reasonable efforts shall be made to preserve and
4 reunify the family, with the paramount concern being the
5 child's health and safety. The court may determine that
6 reasonable efforts are not required to be made when the court
7 finds that:

8 (1) the efforts would be futile; or

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

11 D. Any parent, guardian or custodian of a child who
12 is placed in the legal custody of the department or other
13 person pursuant to Subsection B of this section shall have
14 reasonable rights of visitation with the child as determined by
15 the court, unless the court finds that the best interests of
16 the child preclude any visitation.

17 E. The court may order reasonable visitation
18 between a child placed in the custody of the department and the
19 child's siblings or any other person who may significantly
20 affect the child's best interest, if the court finds the
21 visitation to be in the child's best interest.

22 F. Unless a child found to be neglected or abused
23 is also found to be delinquent, the child shall not be confined
24 in an institution established for the long-term care and
25 rehabilitation of delinquent children.

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1 G. When the court vests legal custody in an agency,
2 institution or department, the court shall transmit with the
3 dispositional judgment copies of the clinical reports, the
4 predisposition study and report and any other information it
5 has pertinent to the care and treatment of the child.

6 H. Prior to a child being placed in the custody or
7 protective supervision of the department, the department shall
8 be provided with reasonable oral or written notification and an
9 opportunity to be heard. At any hearing held pursuant to this
10 subsection, the department may appear as a party.

11 I. As required pursuant to the State Indian Child
12 Welfare Act, when a child is placed in the custody of the
13 department, [~~the department shall investigate whether the child~~
14 ~~is eligible for enrollment as a member of an Indian tribe and,~~
15 ~~if so~~] the department shall [~~pursue the enrollment on the~~
16 ~~child's behalf~~] work with the parent or the Indian tribe to
17 establish membership, at the discretion of the parent or the
18 Indian tribe. An Indian tribe shall determine membership and
19 eligibility. The department shall provide records to assist if
20 necessary, at the discretion of the parent or the Indian tribe.

21 J. When the court determines pursuant to Subsection
22 C of this section that no reasonable efforts at reunification
23 are required, the court shall conduct, within thirty days, a
24 permanency hearing as described in Section 32A-4-25.1 NMSA
25 1978. Reasonable efforts shall be made to implement and

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1 finalize the permanency plan in a timely manner."

2 SECTION 39. Section 32A-4-25 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 119, as amended) is amended to read:

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

6 A. The initial judicial review shall be held within
7 sixty days of the disposition. At the initial judicial review,
8 the parties shall demonstrate to the court efforts made to
9 implement the treatment plan approved by the court in its
10 dispositional order. The court shall determine the extent to
11 which the treatment plan has been implemented and make
12 supplemental orders as necessary to ensure compliance with the
13 treatment plan and the safety of the child. Prior to the
14 initial judicial review, the department shall submit a copy of
15 the adjudicatory order, the dispositional order and notice of
16 the initial judicial review to the council. The staff of the
17 council, or an entity contracting with the council, shall
18 review the case. If the staff or contracting entity determines
19 that the case meets the criteria established in council rules,
20 the staff or contracting entity shall designate the case for
21 review by a substitute care review board. A representative of
22 the substitute care review board, if designated, shall be
23 permitted to attend and comment to the court.

24 B. The court shall conduct subsequent periodic
25 judicial reviews of the dispositional order within six months

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1 of the conclusion of the permanency hearing or, if a motion has
2 been filed for termination of parental rights or permanent
3 guardianship, within six months of the decision on that motion
4 and every six months thereafter. Prior to a subsequent
5 periodic judicial review, the department shall submit a
6 progress report to the council or any designated substitute
7 care review board. Prior to any judicial review by the court
8 pursuant to this section, the substitute care review board may
9 review the dispositional order or the continuation of the order
10 and the department's progress report and report its findings
11 and recommendations to the court.

12 C. Judicial review pursuant to this section may be
13 carried out by either of the following:

14 (1) a judicial review hearing conducted by the
15 court; or

16 (2) a judicial review hearing conducted by a
17 special master appointed by the court; provided, however, that
18 the court approve any findings made by the special master.

19 D. The children's court attorney shall give notice
20 of the time, place and purpose of any judicial review hearing
21 held pursuant to Subsection A, B or C of this section to:

22 (1) all parties, including:

23 (a) the child alleged to be neglected or
24 abused or in need of court-ordered services, by and through the
25 child's guardian ad litem or attorney;

1 (b) the child's parent, guardian or
2 custodian, who has allegedly neglected or abused the child or
3 is in need of court-ordered services; and

4 (c) any other person made a party by the
5 court;

6 (2) the child's foster parent or substitute
7 care provider;

8 (3) the child's court-appointed special
9 advocate; and

10 (4) if designated by the council, the
11 substitute care review board.

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

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1 treatment plan and whether progress is being made toward
2 establishing a stable and permanent placement for the child.

3 F. 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 plan.

8 G. 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 H. When the child is an Indian child or there is
12 reason to know the child is an Indian child, the court shall
13 determine during review of a dispositional order whether the
14 placement preferences set forth in the federal Indian Child
15 Welfare Act of 1978 and the State Indian Child Welfare Act or
16 the placement preferences of the child's Indian tribe were
17 followed and [~~whether the child's treatment plan provides for~~
18 ~~maintaining the child's cultural ties. When placement~~
19 ~~preferences have not been followed, good cause for~~
20 ~~noncompliance shall be clearly stated and supported~~] make any
21 other determinations required for dispositional judgment
22 findings and issue orders pursuant to the State Indian Child
23 Welfare Act and federal Indian Child Welfare Act of 1978.

24 I. Based on its findings at a judicial review
25 hearing held pursuant to Subsection B of this section, the

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1 court shall order one of the following dispositions:

2 (1) dismiss the action and return the child to
3 the child's parent without supervision if the court finds that
4 conditions in the home that led to abuse have been corrected
5 and it is now safe for the return of the abused child;

6 (2) 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, including
9 protective supervision of the child by the department;

10 (3) return the child to the child's parent and
11 place the child under the protective supervision of the
12 department;

13 (4) transfer or continue legal custody of the
14 child to:

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

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

22 (c) the department, subject to the
23 provisions of Paragraph (6) of this subsection;

24 (5) continue the child in the legal custody of
25 the department with or without any required parental

.219414.1

1 involvement in a treatment plan. Reasonable efforts shall be
2 made to preserve and reunify the family, with the paramount
3 concern being the child's health and safety unless the court
4 finds that such efforts are not required. The court may
5 determine that reasonable efforts are not required to be made
6 when the court finds that:

7 (a) the efforts would be futile; or

8 (b) the parent, guardian or custodian
9 has subjected the child to aggravated circumstances;

10 (6) make additional orders regarding the
11 treatment plan or placement of the child to protect the child's
12 best interests if the court determines the department has
13 failed in implementing any material provision of the treatment
14 plan or abused its discretion in the placement or proposed
15 placement of the child; or

16 (7) if during a judicial review the court
17 finds that the child's parent, guardian or custodian has not
18 complied with the court-ordered treatment plan, the court may
19 order:

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

23 (b) a hearing on the merits of
24 terminating parental rights.

25 J. Dispositional orders entered pursuant to this

1 section shall remain in force for a period of six months,
2 except for orders that provide for transfer of the child to the
3 child's noncustodial parent or to a permanent guardian.

4 K. When the court determines, pursuant to Paragraph
5 (5) of Subsection I 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. The department shall make reasonable
9 efforts to place the child in a timely manner in accordance
10 with the permanency plan and to complete whatever steps are
11 necessary to finalize the permanent placement of the child."

12 SECTION 40. Section 32A-4-27 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 121, as amended) is amended to read:

14 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO
15 INTERVENE.--

16 A. At any stage of an abuse or neglect proceeding
17 that does not involve an Indian child, a person described in
18 this subsection may be permitted to intervene as a party with a
19 motion for affirmative relief:

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

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

24 (3) a stepparent with whom the child has
25 resided; or

.219414.1

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

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

6 (1) the person's rationale for the proposed
7 intervention; and

8 (2) whether intervention is in the best
9 interest of the child.

10 C. When the court determines that the child's best
11 interest will be served as a result of intervention by a person
12 described in Subsection A of this section, the court may permit
13 intervention unless the party opposing intervention can
14 demonstrate that a viable plan for reunification with the
15 respondents is in progress and that intervention could impede
16 the progress of the reunification plan.

17 D. The persons described in this subsection shall
18 be permitted to intervene during any stage of an abuse or
19 neglect proceeding:

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

22 (2) when the child is an Indian child, the
23 child's Indian tribe, the Indian child's relative or a member
24 of the Indian child's extended family as provided by the State
25 Indian Child Welfare Act.

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1 E. The [~~child's~~] foster parent of a child that is
2 not an Indian child shall be permitted to intervene when:

3 (1) the foster parent desires to adopt the
4 child;

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

8 (3) a motion for termination of parental
9 rights has been filed by a person other than the foster parent;
10 and

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

14 F. The foster parent, preadoptive parent or
15 relative providing care for the child shall be given notice of,
16 and an opportunity to be heard in, any review or hearing with
17 respect to the child, except that this subsection shall not be
18 construed to require that any foster parent, preadoptive parent
19 or relative providing care for the child be made a party to
20 such a review or hearing solely on the basis of the notice and
21 opportunity to be heard."

22 SECTION 41. Section 32A-4-28 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 122, as amended) is amended to read:

24 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
25 DECREE.--

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1 A. In proceedings to terminate parental rights,
2 unless extraordinary circumstances are present, the court shall
3 ~~[give primary consideration to]~~ make the determination based on
4 the physical, mental, ~~[and]~~ emotional and cultural welfare,
5 well being and needs of the child, including the likelihood of
6 the child being adopted if parental rights are terminated. If
7 the child is an Indian child, the court shall also make the
8 determination pursuant to the State Indian Child Welfare Act
9 and the importance of maintained connections between Indian
10 children and their Indian tribes and tribal culture. In
11 proceedings to terminate parental rights with respect to an
12 Indian child, the court shall consider whether an alternative
13 to termination of parental rights, including permanent
14 guardianship of the child, would best support the Indian child,
15 the State Indian Child Welfare Act and the federal Indian Child
16 Welfare Act of 1978.

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

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

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

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

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

7 (b) notwithstanding the provisions of
8 Subsection H of Section 32A-4-20 NMSA 1978, the parent has
9 subjected the child to aggravated circumstances; or

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

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

15 (b) the parent-child relationship has
16 disintegrated;

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

20 (d) if the court deems the child of
21 sufficient capacity to express a preference, the child no
22 longer prefers to live with the natural parent;

23 (e) the substitute family desires to
24 adopt the child; and

25 (f) a presumption of abandonment created

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1 by the conditions described in Subparagraphs (a) through (e) of
2 this paragraph has not been rebutted.

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

7 D. The department shall not file a motion, and
8 shall not join a motion filed by another party, to terminate
9 parental rights:

10 (1) when the sole factual basis for the motion
11 is that a child's parent is or was formerly incarcerated; or

12 (2) if the motion is based, to any extent, on
13 the fact that the child is an Indian child or that the child's
14 parent or parents are Indian.

15 E. The termination of parental rights involving a
16 child subject to the federal Indian Child Welfare Act of 1978
17 and the State Indian Child Welfare Act shall:

18 (1) comply with the requirements of [~~that act~~]
19 those respective acts;

20 (2) not be ordered unless the Indian child's
21 tribe was provided timely notice of the proceeding in
22 accordance with the State Indian Child Welfare Act and provided
23 an opportunity to state whether it opposes the termination; and

24 (3) not be ordered if the Indian child's tribe
25 proposes an alternate permanency plan, unless the department

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1 can show good cause why the alternate permanency plan should
2 not be ordered.

3 F. If the court finds that parental rights should
4 be terminated; that the requirements for the adoption of a
5 child have been satisfied; that the prospective adoptive parent
6 is a party to the action; and that good cause exists to waive
7 the filing of a separate petition for adoption, the court may
8 proceed to grant adoption of the child, absent an appeal of the
9 termination of parental rights. The court shall not waive any
10 time requirements set forth in the Adoption Act unless the
11 termination of parental rights occurred pursuant to the
12 provisions of Paragraph (3) of Subsection B of this section.
13 The court may enter a decree of adoption only after finding
14 that the party seeking to adopt the child has satisfied all of
15 the requirements set forth in the Adoption Act. The court
16 shall not waive any time requirements set forth in the Adoption
17 Act, the federal Indian Child Welfare Act of 1978 and the State
18 Indian Child Welfare Act. Unless otherwise stipulated by all
19 parties, including Indian tribes when applicable regardless if
20 the Indian tribe is a party, an adoption decree shall take
21 effect sixty days after the termination of parental rights, to
22 allow the department sufficient time to provide counseling for
23 the child and otherwise prepare the child for the adoption.
24 The adoption decree shall conform to the requirements of the
25 Adoption Act, federal Indian Child Welfare Act of 1978 and

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1 State Indian Child Welfare Act and shall have the same force
2 and effect as other adoption decrees entered pursuant to that
3 act. In the case of a child who is an Indian child or a child
4 the department or the court has reason to believe is an Indian
5 child, a copy of the cultural compact shall be included in the
6 adoption decree. The court clerk shall assign an adoption case
7 number to the adoption decree."

8 SECTION 42. 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 the State Indian
6 Child Welfare Act and, if so:

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

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

16 (c) what [~~specific~~] active efforts were
17 made to comply with the placement preferences set forth in the
18 federal Indian Child Welfare Act of 1978, the State Indian
19 Child Welfare Act or the placement preferences of the
20 appropriate Indian tribes.

21 C. Notice of the filing of the motion, accompanied
22 by a copy of the motion, shall be served by the moving party on
23 all other parties, the foster parent, preadoptive parent or
24 relative providing care for the child with whom the child is
25 residing, foster parents with whom the child has resided for

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1 six months within the previous twelve months, the custodian of
2 the child, any person appointed to represent any party and any
3 other person the court orders. Service shall be in accordance
4 with the Children's Court Rules for the service of motions,
5 except that foster parents and attorneys of record in this
6 proceeding shall be served by certified mail. The notice shall
7 state specifically that the person served shall file a written
8 response to the motion within twenty days if the person intends
9 to contest the termination. In any case involving a child
10 subject to the federal Indian Child Welfare Act of 1978 and the
11 State Indian Child Welfare Act, notice shall also be sent by
12 certified mail to the [~~tribes of the child's parents~~] Indian
13 child's tribe and upon any "Indian custodian" as that term is
14 defined in 25 U.S.C. Section 1903(6) and the State Indian Child
15 Welfare Act. Further notice shall not be required on a parent
16 who has been provided notice previously pursuant to Section
17 32A-4-17 NMSA 1978 and who failed to make an appearance. If
18 the child is an Indian child, the person shall meet the
19 standards set forth in the federal Indian Child Welfare Act of
20 1978 and the State Indian Child Welfare Act.

21 D. When a motion to terminate parental rights is
22 filed, the moving party shall request a hearing on the motion.
23 The hearing date shall be at least thirty days, but no more
24 than sixty days, after service is effected upon the parties
25 entitled to service under this section. The moving party shall

.219414.1

1 also file a motion for court-ordered mediation between the
2 parent and any prospective adoptive parent to discuss an open
3 adoption agreement. In the case of a child who is an Indian
4 child or a child whom the department or the court has reason to
5 believe is an Indian child, the court-ordered mediation shall
6 not be waived and the Indian child's tribe shall be allowed to
7 participate, whether or not it intervenes. If an open adoption
8 agreement is reached at any time before termination of parental
9 rights, it shall be made a part of the court record.

10 E. In any action for the termination of parental
11 rights brought by a party other than the department and
12 involving a child in the legal custody of the department, the
13 department may:

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

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

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

20 G. When a child has been in foster care for not
21 less than fifteen of the previous twenty-two months, unless
22 this time was incurred during voluntary placement agreements,
23 the department shall file a motion to terminate parental
24 rights, unless:

25 (1) a parent has made substantial progress

1 toward eliminating the problem that caused the child's
2 placement in foster care; it is likely that the child will be
3 able to safely return to the parent's home within three months;
4 and the child's return to the parent's home will be in the
5 child's best interests;

6 (2) the child has a close and positive
7 relationship with a parent and a permanent plan that does not
8 include termination of parental rights will provide the most
9 secure and appropriate placement for the child;

10 (3) the child is fourteen years of age or
11 older, is firmly opposed to termination of parental rights and
12 is likely to disrupt an attempt to place the child with an
13 adoptive family;

14 (4) a parent is terminally ill, but in
15 remission, and does not want parental rights to be terminated;
16 provided that the parent has designated a guardian for the
17 child;

18 (5) the child is not capable of functioning if
19 placed in a family setting. In such a case, the court shall
20 reevaluate the status of the child every ninety days unless
21 there is a final court determination that the child cannot be
22 placed in a family setting;

23 (6) grounds do not exist for termination of
24 parental rights;

25 (7) the child is an unaccompanied, refugee

1 minor and the situation regarding the child involves
2 international legal issues or compelling foreign policy issues;

3 (8) adoption is not an appropriate plan for
4 the child; or

5 (9) the parent's incarceration or
6 participation in a court-ordered residential substance abuse
7 treatment program constitutes the primary factor in the child's
8 placement in substitute care and termination of parental rights
9 is not in the child's best interest.

10 H. In the case of an Indian child or a child who is
11 believed to be an Indian child, the department shall prove
12 beyond a reasonable doubt that the department has complied with
13 the active efforts to give notice, prevent removal, work toward
14 reunification and comply with placement preferences pursuant to
15 the Abuse and Neglect Act, federal Indian Child Welfare Act of
16 1978 and State Indian Child Welfare Act.

17 [~~H.~~] I. For purposes of this section, a child shall
18 be considered to have entered foster care on the earlier of:

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

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

23 [~~H.~~] J. The grounds for any attempted termination
24 shall be proved by clear and convincing evidence. In any
25 proceeding involving a child subject to the federal Indian

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1 Child Welfare Act of 1978 and the State Indian Child Welfare
2 Act, the grounds for any attempted termination shall be proved
3 beyond a reasonable doubt and shall meet the requirements set
4 forth in [~~25 U.S.C. Section 1912(f)~~] those acts.

5 [~~J.~~] K. When the court terminates parental rights,
6 it shall appoint a custodian for the child and fix
7 responsibility for the child's support.

8 [~~K.~~] L. In any termination proceeding involving a
9 child subject to the federal Indian Child Welfare Act of 1978
10 and the State Indian Child Welfare Act, the court shall in any
11 termination order make specific findings of all active efforts
12 that the requirements of [~~that act~~] those acts have been met.

13 [~~L.~~] M. A judgment of the court terminating
14 parental rights divests the parent of all legal rights and
15 privileges and dispenses with both the necessity for the
16 consent to or receipt of notice of any subsequent adoption
17 proceeding concerning the child. A judgment of the court
18 terminating parental rights shall not affect the child's rights
19 of inheritance from and through the child's biological parents.

20 [~~M.~~] N. When the court denies a motion to terminate
21 parental rights, the court shall issue appropriate orders
22 immediately. The court shall direct the parties to file a
23 stipulated order and interim plan or a request for hearing
24 within thirty days of the date of the hearing denying the
25 termination of parental rights."

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1 SECTION 43. Section 32A-4-32 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 126, as amended) is amended to read:

3 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

4 A. A motion for permanent guardianship may be filed
5 by any party.

6 B. A motion for permanent guardianship shall set
7 forth:

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

10 (2) the facts and circumstances supporting the
11 grounds for permanent guardianship;

12 (3) the name and address of the prospective
13 guardian and a statement that the person agrees to accept the
14 duties and responsibilities of guardianship;

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

16 (5) the relationship of the child to the
17 petitioner and the prospective guardian; and

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

20 ~~[(a) the tribal affiliations of the~~
21 ~~child's parents;~~

22 ~~(b) the specific actions taken by the~~
23 ~~petitioner to notify the parents' tribe and the results of the~~
24 ~~contacts, including the names, addresses, titles and telephone~~
25 ~~numbers of the persons contacted. Copies of any correspondence~~

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1 ~~with the tribes shall be attached as exhibits to the petition;~~
2 and

3 ~~(c) what specific efforts were made to~~
4 ~~comply with the placement preferences set forth in the federal~~
5 ~~Indian Child Welfare Act of 1978 or the placement preferences~~
6 ~~of the appropriate Indian tribes]~~ any additional requirements
7 for that motion as provided pursuant to the State Indian Child
8 Welfare Act.

9 C. If the motion is not filed by the prospective
10 guardian, the motion shall be verified by the prospective
11 guardian.

12 D. Notice of the filing of the motion, accompanied
13 by a copy of the motion, shall be served by the moving party on
14 any parent who has not previously been made a party to the
15 proceeding, the parents of the child, foster parents with whom
16 the child is residing, the foster parent, preadoptive parent or
17 relative providing care for the child with whom the child has
18 resided for six months, the child's custodian, the department,
19 any person appointed to represent any party, including the
20 child's guardian ad litem, and any other person the court
21 orders provided with notice. Service shall be in accordance
22 with the Children's Court Rules for the service of motions. In
23 a case involving a child subject to the ~~[federal Indian Child~~
24 ~~Welfare Act of 1978, notice shall also be sent by certified~~
25 ~~mail to the Indian tribes of the child's parents and to any~~

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1 ~~"Indian custodian" as that term is defined in 25 U.S.C. Section~~
2 ~~1903(6)]~~ State Indian Child Welfare Act and the federal Indian
3 Child Welfare Act of 1978, notice shall also be sent as
4 required pursuant to those acts. Further notice shall not be
5 required to a parent who has been provided notice previously
6 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
7 an appearance.

8 E. The grounds for permanent guardianship shall be
9 proved by clear and convincing evidence. The grounds for
10 permanent guardianship shall be proved beyond a reasonable
11 doubt and meet the requirements of:

12 (1) 25 U.S.C. Section 1912(f) in ~~[any]~~ a
13 proceeding involving a child subject to the federal Indian
14 Child Welfare Act of 1978; and

15 (2) the State Indian Child Welfare Act in a
16 proceeding involving a child subject to that act or a child the
17 department or the court believes to be subject to that act.

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

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 44. 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.

13 B. The records described in Subsection A of this
14 section shall be disclosed only to the parties and:

15 (1) court personnel and persons or entities
16 authorized by contract with the court to review, inspect or
17 otherwise have access to records or information in the court's
18 possession;

19 (2) court-appointed special advocates
20 appointed to the neglect or abuse proceeding;

21 (3) the child's guardian ad litem;

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

25 (5) department personnel and persons or

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1 entities authorized by contract with the department to review,
2 inspect or otherwise have access to records or information in
3 the department's possession;

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

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

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

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

15 (10) those persons or entities of an Indian
16 tribe specifically authorized to inspect the records pursuant
17 to the State Indian Child Welfare Act, the federal Indian Child
18 Welfare Act of 1978 or any regulations promulgated [~~thereunder~~]
19 under those acts;

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

25 (12) school personnel involved with the child

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1 if the records concern the child's social or educational needs;

2 (13) a grandparent, parent of a sibling,
3 relative or fictive kin, if the records or information pertain
4 to a child being considered for placement with that
5 grandparent, parent of a sibling, relative or fictive kin and
6 the records or information concern the social, medical,
7 psychological or educational needs of the child;

8 (14) health care or mental health
9 professionals involved in the evaluation or treatment of the
10 child or of the child's parents, guardian, custodian or other
11 family members;

12 (15) protection and advocacy representatives
13 pursuant to the federal Developmental Disabilities Assistance
14 and Bill of Rights Act and the federal Protection and Advocacy
15 for Mentally Ill Individuals Amendments Act of 1991;

16 (16) children's safehouse organizations
17 conducting investigatory interviews of children on behalf of a
18 law enforcement agency or the department;

19 (17) representatives of the federal government
20 or their contractors authorized by federal statute or
21 regulation to review, inspect, audit or otherwise have access
22 to records and information pertaining to neglect or abuse
23 proceedings;

24 (18) any person or entity attending a meeting
25 arranged by the department to discuss the safety, well-being

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1 and permanency of a child, when the parent or child, or parent
2 or legal custodian on behalf of a child younger than fourteen
3 years of age, has consented to the disclosure; and

4 (19) any other person or entity, by order of
5 the court, having a legitimate interest in the case or the work
6 of the court.

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

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1 of Section 31-19-1 NMSA 1978.

2 E. 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 45. Section 32A-5-4 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 131) is amended to read:

8 "32A-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE
9 ACT OF 1978 AND THE STATE INDIAN CHILD WELFARE ACT.--The
10 protections set forth in the federal Indian Child Welfare Act
11 of 1978 and the State Indian Child Welfare Act, including
12 provisions concerning notice to the Indian child's tribe,
13 transfer to tribal court and placement preferences, apply to
14 all proceedings involving an Indian child under the Adoption
15 Act."

16 SECTION 46. Section 32A-5-7 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 134, as amended) is amended to read:

18 "32A-5-7. CLERK OF THE COURT--DUTIES.--

19 A. The clerk of the court shall file pleadings
20 captioned pursuant to the provisions of Section 32A-5-9 NMSA
21 1978. The clerk of the court shall not file incorrectly
22 captioned pleadings.

23 B. The clerk of the court shall mail a copy of the
24 request for placement to the department within one working day
25 of the request for placement being filed with the court. The

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1 attorney for the person requesting placement shall provide to
2 the clerk of the court a copy of the request for placement and
3 a stamped envelope addressed to the department as specified in
4 department regulation.

5 C. The clerk of the court shall mail a copy of the
6 petition for adoption within one working day of the petition
7 for adoption being filed with the court. The attorney for the
8 petitioner shall provide to the clerk of the court a copy of
9 the petition for adoption and a stamped envelope addressed to
10 the department as specified in department regulation.

11 D. The clerk of the court shall mail a copy of the
12 decree of adoption to the department within one working day of
13 the entry of the decree of adoption. The attorney for the
14 petitioner shall provide to the clerk of the court a copy of
15 the decree of adoption and a stamped envelope addressed to the
16 department as specified in department regulation.

17 ~~[E. In any adoption involving an Indian child, the~~
18 ~~clerk of the court shall provide the secretary of the interior~~
19 ~~with a copy of any decree of adoption or adoptive placement~~
20 ~~order and other information as required by the federal Indian~~
21 ~~Child Welfare Act of 1978. The attorney for the petitioner~~
22 ~~shall provide to the clerk of the court a copy of an adoption~~
23 ~~decree, an adoptive placement order, any other information~~
24 ~~required by the federal Indian Child Welfare Act of 1978 and a~~
25 ~~stamped envelope addressed to the secretary of the interior.~~

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1 ~~F.]~~ E. The clerk of the court shall provide a
2 certificate of adoption with an adoptee's new name.

3 ~~G.]~~ F. The attorney for the petitioner shall
4 forward the certificate of adoption provided for in Subsection
5 ~~[F]~~ E of this section as follows:

6 (1) for a person born in the United States, to
7 the appropriate vital statistics office of the place, if known,
8 where the adoptee was born; or

9 (2) for all other persons, to the state
10 registrar of vital statistics."

11 **SECTION 47.** Section 32A-5-13 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 140, as amended) is amended to read:

13 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
14 PLACEMENT ORDER--CERTIFICATION.--

15 A. When a placement order is required, the
16 petitioner shall file a request with the court to allow the
17 placement. An order permitting the placement shall be obtained
18 prior to actual placement.

19 B. Only a pre-placement study that has been
20 prepared or updated within one year immediately prior to the
21 date of placement, approving the petitioner as an appropriate
22 adoptive parent, shall be filed with the court prior to
23 issuance of a placement order, except as provided in Subsection
24 C of Section 32A-5-12 NMSA 1978.

25 C. In order for a person to be certified to conduct

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1 pre-placement studies, the person shall meet the standards
2 promulgated by the department. If the child is an Indian
3 child, the person shall meet the standards set forth in the
4 federal Indian Child Welfare Act of 1978 and the State Indian
5 Child Welfare Act.

6 D. The pre-placement study shall be conducted by an
7 agency or a person certified by the department to conduct the
8 study. A person or agency that wants to be certified to
9 perform pre-placement studies shall file documents verifying
10 their qualifications with the department. The department shall
11 publish a list of persons or agencies certified to conduct a
12 pre-placement study. If necessary to defray additional costs
13 associated with compiling the list, the department may assess
14 and charge a reasonable administrative fee to the person or
15 agency listed.

16 E. When a person or agency that wants to be
17 certified to perform pre-placement studies files false
18 documentation with the department, the person or agency shall
19 be subject to the provisions of Section 32A-5-42 NMSA 1978.

20 F. A request for placement shall be filed and
21 verified by the petitioner and shall allege:

22 (1) the full name, age and place and duration
23 of residence of the petitioner and, if married, the place and
24 date of marriage;

25 (2) the date and place of birth of the

1 adoptee, if known, or the anticipated date and place of birth
2 of the adoptee;

3 (3) a detailed statement of the circumstances
4 and persons involved in the proposed placement;

5 (4) if the adoptee has been born, the address
6 where the adoptee is residing at the time of the request for
7 placement;

8 (5) if the adoptee has been born, the places
9 where the adoptee has lived within the past three years and the
10 names and addresses of the persons with whom the adoptee has
11 lived. If the adoptee is in the custody of an agency or the
12 department, the address shall be the address of the agency or
13 the county office of the department from which the child was
14 placed;

15 (6) the existence of any court orders that are
16 known to the petitioner and that regulate custody, visitation
17 or access to the adoptee, copies of which shall be attached to
18 the request for placement as exhibits; if copies of any such
19 court orders are unavailable at the time of filing the request
20 for placement, the copies shall be filed prior to the issuance
21 of the order of placement;

22 (7) that the petitioner desires to establish a
23 parent and child relationship between the petitioner and the
24 adoptee and that the petitioner is a fit and proper person able
25 to care and provide for the adoptee's welfare;

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1 (8) the relationship, if any, of the
2 petitioner to the adoptee;

3 (9) whether the adoptee is subject to the
4 federal Indian Child Welfare Act of 1978 and the State Indian
5 Child Welfare Act, and, if so, the petition shall allege the
6 actions taken to comply with the federal Indian Child Welfare
7 Act of 1978 and the State Indian Child Welfare Act and all
8 other allegations required pursuant to ~~[that act]~~ those acts;

9 (10) whether the adoption is subject to the
10 Interstate Compact on the Placement of Children and what
11 specific actions have been taken to comply with the Interstate
12 Compact on the Placement of Children; and

13 (11) the name, address and telephone number of
14 the agency or investigator who has agreed to do the
15 pre-placement study.

16 G. The request for placement shall be served on all
17 parties entitled to receive notice of the filing of a petition
18 for adoption, as provided in Section 32A-5-27 NMSA 1978. An
19 order allowing placement may be entered prior to service of the
20 request for placement.

21 H. A hearing and the court decision on the request
22 for placement shall occur within thirty days of the filing of
23 the request.

24 I. As part of any court order authorizing placement
25 under this section, the court shall find whether the pre-

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1 placement study complies with Section 32A-5-14 NMSA 1978 and
2 that the time requirements concerning placement set forth in
3 this section have been met."

4 SECTION 48. Section 32A-5-15 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 142, as amended) is amended to read:

6 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

7 A. The physical, mental and emotional welfare and
8 needs of the child shall be the primary consideration for the
9 termination of parental rights. The court may terminate the
10 rights of the child's parents as provided by the Adoption Act.

11 B. The court shall terminate parental rights with
12 respect to a child when:

13 (1) the child has been abandoned by the
14 parents;

15 (2) the child has been a neglected or abused
16 child and the court finds that the conditions and causes of the
17 neglect and abuse are unlikely to change in the foreseeable
18 future; or

19 (3) the child has been placed in the care of
20 others, including care by other relatives, either by a court
21 order or otherwise, and the following conditions exist:

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

24 (b) the parent-child relationship has
25 disintegrated;

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1 (c) a psychological parent-child
2 relationship has developed between the substitute family and
3 the child;

4 (d) if the court deems the child of
5 sufficient capacity to express a preference, the child no
6 longer prefers to live with the natural parent;

7 (e) the substitute family desires to
8 adopt the child; and

9 (f) a presumption of abandonment created
10 by the conditions described in Subparagraphs (a) through (e) of
11 this paragraph has not been rebutted.

12 C. A finding by the court that all of the
13 conditions set forth in [~~Subparagraph~~] Subparagraphs (a)
14 through (e) of Paragraph (3) of Subsection B of this section
15 exist shall create a rebuttable presumption of abandonment.

16 D. The termination of parental rights involving an
17 Indian child shall comply with the requirements of the federal
18 Indian Child Welfare Act of 1978 and the State Indian Child
19 Welfare Act."

20 SECTION 49. Section 32A-5-16 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 143, as amended) is amended to read:

22 "32A-5-16. TERMINATION PROCEDURES.--

23 A. A proceeding to terminate parental rights may be
24 initiated in connection with or prior to an adoption
25 proceeding. Venue shall be in the court for the county in

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1 which the child is physically present or in the county from
2 which the child was placed. The proceeding may be initiated by
3 any of the following:

- 4 (1) the department;
- 5 (2) an agency; or
- 6 (3) any other person having a legitimate
7 interest in the matter, including a petitioner for adoption,
8 the child's guardian, the child's guardian ad litem or attorney
9 in another action, a foster parent, a relative of the child or
10 the child.

11 B. A petition for termination of parental rights
12 shall be signed and verified by the petitioner, be filed with
13 the court and set forth:

- 14 (1) the date, place of birth and marital
15 status of the child, if known;
- 16 (2) the grounds for termination and the facts
17 and circumstances supporting the grounds for termination;
- 18 (3) the names and addresses of the person,
19 authorized agency or agency officer to whom custody might be
20 transferred;
- 21 (4) the basis for the court's jurisdiction;
- 22 (5) that the petition is in contemplation of
23 adoption;
- 24 (6) the relationship or legitimate interest of
25 the applicant to the child; and

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1 (7) whether the child is an Indian child and,
2 if so,

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

5 ~~(b) the specific actions taken by the~~
6 ~~moving party to notify the parents' tribe and the results of~~
7 ~~the contacts, including the names, addresses, titles and~~
8 ~~telephone numbers of the persons contacted. Copies of any~~
9 ~~correspondence with the Indian tribe shall be attached as~~
10 ~~exhibits to the petition; 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] any additional information as~~
15 ~~required pursuant to the State Indian Child Welfare Act and the~~
16 ~~federal Indian Child Welfare Act of 1978 for a petition to~~
17 ~~terminate parental rights.~~

18 C. Notice of the filing of the petition,
19 accompanied by a copy of the petition, shall be served by the
20 petitioner on the parents of the child, the child's guardian,
21 the legal custodian of the child, the person with whom the
22 child is residing, the individuals with whom the child has
23 resided within the past six months and the department. Service
24 shall be in accordance with the Rules of Civil Procedure for
25 the District Courts for the service of process in a civil

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1 action in this state, with the exception that the department
2 may be served by certified mail. The notice shall state
3 specifically that the person served shall file a written
4 response to the petition within twenty days if the person
5 intends to contest the termination. In any case involving an
6 Indian child, notice shall also be served on the child's Indian
7 tribe pursuant to the federal Indian Child Welfare Act of 1978
8 and the State Indian Child Welfare Act.

9 D. If the identification or whereabouts of a parent
10 is unknown, the petitioner shall file a motion for an order
11 granting service by publication or an order stating that
12 service by publication is not required. A motion for an order
13 granting service by publication shall be supported by the
14 affidavit of the petitioner, the agency or the petitioner's
15 attorney detailing the efforts made to locate the parent. Upon
16 being satisfied that reasonable efforts to locate the parent
17 have been made and that information as to the identity or
18 whereabouts of the parent is still insufficient to effect
19 service in accordance with SCRA, Rule 1-004, the court shall
20 order service by publication or order that publication is not
21 required because the parent's consent is not required pursuant
22 to the provisions of Section 32A-5-19 NMSA 1978.

23 E. The court shall, upon request, appoint counsel
24 for an indigent parent who is unable to obtain counsel or if,
25 in the court's discretion, appointment of counsel for an

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1 indigent parent is required in the interest of justice.
2 Payment for the appointed counsel shall be made by the
3 petitioner pursuant to the rate determined by the supreme court
4 of New Mexico for court-appointed attorneys.

5 F. The court shall appoint a guardian ad litem for
6 the child in all contested proceedings for termination of
7 parental rights. If the child is fourteen years of age or
8 older and in the custody of the department, the child's
9 attorney appointed pursuant to the Abuse and Neglect Act shall
10 represent the child in any proceedings for termination of
11 parental rights under this section.

12 G. Within thirty days after the filing of a
13 petition to terminate parental rights, the petitioner shall
14 request a hearing on the petition. The hearing date shall be
15 at least thirty days after service is effected upon the parent
16 of the child or completion of publication.

17 H. The grounds for any attempted termination shall
18 be proved by clear and convincing evidence. In any proceeding
19 involving an Indian child, the grounds for any attempted
20 termination shall be proved beyond a reasonable doubt and meet
21 the requirements set forth in the federal Indian Child Welfare
22 Act of 1978 and the State Indian Child Welfare Act.

23 I. If the court terminates parental rights, it
24 shall appoint a custodian for the child. Upon entering an
25 order terminating the parental rights of a parent, the court

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1 may commit the child to the custody of the department, the
2 petitioner or an agency willing to accept custody for the
3 purpose of placing the child for adoption. In any termination
4 proceeding involving an Indian child, the court shall, in any
5 termination order, make specific findings that the requirements
6 of the federal Indian Child Welfare Act of 1978 and the State
7 Indian Child Welfare Act were met.

8 J. A judgment of the court terminating parental
9 rights divests the parent of all legal rights. Termination of
10 parental rights shall not affect the child's right of
11 inheritance through the former parent."

12 SECTION 50. Section 32A-5-17 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 144, as amended) is amended to read:

14 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
15 REQUIRED.--

16 A. Consent to adoption or relinquishment of
17 parental rights to the department or an agency licensed by the
18 state of New Mexico shall be required of the following:

19 (1) the adoptee, if fourteen years of age or
20 older, except when the court finds that the adoptee does not
21 have the mental capacity to give consent;

22 (2) the adoptee's mother;

23 (3) the adoptee's proposed adoptive parent;

24 (4) the presumed father of the adoptee;

25 (5) the adoptee's acknowledged father;

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1 (6) the department or the agency to whom the
2 adoptee has been relinquished that has placed the adoptee for
3 adoption or the department or the agency that has custody of
4 the adoptee; provided, however, that the court may grant the
5 adoption without the consent of the department or the agency if
6 the court finds the adoption is in the best interests of the
7 adoptee and that the withholding of consent by the department
8 or the agency is unreasonable; and

9 (7) the guardian of the adoptee's parent when,
10 pursuant to provisions of the Uniform Probate Code, that
11 guardian has express authority to consent to adoption.

12 B. In any adoption involving an Indian child,
13 consent to adoption by the petitioner or relinquishment of
14 parental rights shall be obtained from an "Indian custodian",
15 as required pursuant to the provisions of the federal Indian
16 Child Welfare Act of 1978 and the State Indian Child Welfare
17 Act.

18 C. A consent or relinquishment executed by a parent
19 who is a minor shall not be subject to avoidance or revocation
20 solely by reason of the parent's minority."

21 SECTION 51. Section 32A-5-21 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 148, as amended) is amended to read:

23 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

24 A. Except when consent or relinquishment is
25 implied, a consent or relinquishment by a parent shall be in

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1 writing, signed by the parent consenting or relinquishing and
2 shall state the following:

3 (1) the date, place and time of execution;

4 (2) the date and place of birth of the adoptee
5 and any names by which the adoptee has been known;

6 (3) if a consent to adoption is being
7 executed, the identity of the petitioner, if known, or when the
8 adoption is an independent adoption and the identity of the
9 petitioner is unknown, how the petitioner was selected by the
10 consenting parent;

11 (4) if a relinquishment of parental rights is
12 being executed, the name and address of the agency or the
13 department;

14 (5) that the person executing the consent or
15 relinquishment has been counseled, as provided in Section
16 32A-5-22 NMSA 1978, by a certified counselor of the person's
17 choice and with this knowledge the person is voluntarily and
18 unequivocally consenting to the adoption of the named adoptee;

19 (6) that the consenting party has been advised
20 of the legal consequences of the relinquishment or consent
21 either by independent legal counsel or a judge;

22 (7) if the adoption is closed, that all
23 parties understand that the court will not enforce any contact,
24 regardless of any informal agreements that have made between
25 the parties;

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1 (8) that the consent to or relinquishment for
2 adoption cannot be withdrawn;

3 (9) that the person executing the consent or
4 relinquishment has received or been offered a copy of the
5 consent or relinquishment;

6 (10) that a counseling narrative has been
7 prepared pursuant to department regulations and is attached to
8 the consent or relinquishment;

9 (11) that the person who performed the
10 counseling meets the requirements set forth in the Adoption
11 Act; and

12 (12) that the person executing the consent or
13 relinquishment waives further notice of the adoption
14 proceedings.

15 B. The consent of an adoptee, if fourteen years of
16 age or older, shall be in writing, signed by the adoptee,
17 consenting to the adoption and shall state the following:

18 (1) the date, place and time of execution;

19 (2) the date and place of birth of the adoptee
20 and any names by which the adoptee has been known;

21 (3) the name of the petitioner;

22 (4) that the adoptee has been counseled
23 regarding the consent pursuant to department regulation;

24 (5) that the adoptee has been advised of the
25 legal consequences of the consent;

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1 (6) that the adoptee is voluntarily and
2 unequivocally consenting to the adoption;

3 (7) that the consent or relinquishment cannot
4 be withdrawn;

5 (8) that a counseling narrative has been
6 prepared pursuant to department regulation and is attached to
7 the consent; and

8 (9) that the person who performed the
9 counseling meets the requirements set forth in the Adoption
10 Act.

11 C. In cases when the consent or relinquishment is
12 in English and English is not the first language of the
13 consenting or relinquishing person, the person taking the
14 consent or relinquishment shall certify in writing that the
15 document has been read and explained to the person whose
16 consent or relinquishment is being taken in that person's first
17 language, by whom the document was so read and explained and
18 that the meaning and implications of the document are fully
19 understood by the person giving the consent or relinquishment.

20 D. Unconditional consents or relinquishments are
21 preferred, and, therefore, conditional consents or
22 relinquishments shall be for good cause and approved by the
23 court. However, if the condition is for a specific petitioner
24 or the condition requires the other parent to consent before
25 the decree of adoption is entered, the condition shall be

1 deemed for good cause. In any event, all conditions permitted
2 under this subsection shall be met within one hundred eighty
3 days of the execution of the conditional consent or
4 relinquishment or the conclusion of any litigation concerning
5 the petition for adoption. The court may grant an extension of
6 this time for good cause.

7 E. Agency or department consents required pursuant
8 to the provisions of Section 32A-5-17 NMSA 1978 shall state the
9 following:

- 10 (1) the date, place and time of execution;
11 (2) the date and place of birth of the adoptee
12 and any names by which the adoptee has been known;
13 (3) the name of the petitioner; and
14 (4) the consent of the agency or department.

15 F. A consent or relinquishment taken by an
16 individual appointed to take consents or relinquishments by an
17 agency shall be notarized, except that a consent or
18 relinquishment signed in the presence of a judge need not be
19 notarized. A hearing before the court for the purpose of
20 taking a consent or relinquishment shall be heard by the court
21 within seven days of request for setting.

22 G. No consent to adoption or relinquishment of
23 parental rights shall be valid if executed within forty-eight
24 hours after the adoptee's birth. Consent to adoption or
25 relinquishment of parental rights involving an Indian child

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1 shall comply with the more stringent requirements of the
2 federal Indian Child Welfare Act of 1978 and the State Indian
3 Child Welfare Act.

4 H. The requirements of a consent to adoption or
5 relinquishment of parental rights involving an Indian child
6 and the rights of a parent of an Indian child to withdraw the
7 consent or relinquishment shall be governed by the relevant
8 provisions of the federal Indian Child Welfare Act of 1978 and
9 the State Indian Child Welfare Act.

10 I. For non-Indian children, a consent to or
11 relinquishment for adoption shall not be withdrawn prior to the
12 entry of a decree of adoption unless the court finds, after
13 notice and opportunity to be heard is afforded to the
14 petitioner, to the person seeking the withdrawal and to the
15 agency placing a child for adoption, that the consent or
16 relinquishment was obtained by fraud. In no event shall a
17 consent or relinquishment be withdrawn after the entry of a
18 decree of adoption."

19 SECTION 52. Section 32A-5-26 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,
21 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended
22 to read:

23 "32A-5-26. PETITION--CONTENT.--A petition for adoption
24 shall be filed and verified by the petitioner and shall allege:

25 A. the full name, age and place and duration of

1 residence of the petitioner and, if married, the place and date
2 of marriage; the date and place of any prior marriage,
3 separation or divorce; and the name of any present or prior
4 spouse;

5 B. the date and place of birth of the adoptee, if
6 known;

7 C. the places where the adoptee has lived within
8 the past three years and the names and addresses of the persons
9 with whom the adoptee has lived, unless the adoptee is in the
10 custody of an agency or the department, in which case the
11 petitioner shall state the name and address of the agency or
12 the department's county office from which the child was placed;

13 D. the birth name of the adoptee, any other names
14 by which the adoptee has been known and the adoptee's proposed
15 new name; provided that in the case of an agency adoption, if
16 the petitioner and the biological parents have not agreed to
17 the release of the adoptee's identity to the other person, the
18 birth name and any other names by which the adoptee has been
19 known shall be filed with the court as separate documents at
20 the time the petition is filed;

21 E. where the adoptee is residing at the time of the
22 filing of the petition and, if the adoptee is not living with
23 the petitioner, when the adoptee will commence living with the
24 petitioner;

25 F. that the petitioner desires to establish a

1 parent and child relationship with the adoptee and that the
2 petitioner is a fit and proper person able to care and provide
3 for the adoptee's welfare;

4 G. the existence of any court orders, including
5 placement orders, that are known to the petitioner and that
6 regulate custody, visitation or access to the adoptee, copies
7 of which shall accompany and be attached to the petition as
8 exhibits;

9 H. the relationship, if any, of the petitioner to
10 the adoptee;

11 I. the name and address of the placing agency, if
12 any;

13 J. the names and addresses of all persons from whom
14 consents or relinquishments are required, attaching copies of
15 those obtained and alleging the facts that excuse or imply the
16 consents or relinquishments of the others; provided that if the
17 petitioner has not agreed to the release of ~~[his]~~ the
18 petitioner's identity to the parent or if the parent has not
19 agreed to the release of ~~[his]~~ the parent's identity to the
20 petitioner, the names and addresses of all persons from whom
21 consents or relinquishments are required shall be filed with
22 the court as separate documents at the time the petition for
23 adoption is filed;

24 K. whether the adoption will be an open adoption,
25 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

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1 L. when consent of the child's father is alleged to
2 be unnecessary, the results of a search of the putative father
3 registry;

4 M. whether the adoptee is an Indian child and, if
5 so, the petition shall ~~[allege:~~

6 ~~(1) the tribal affiliation of the adoptee's~~
7 ~~parents;~~

8 ~~(2) what specific actions have been taken and~~
9 ~~by whom to notify the parents' tribe and the results of the~~
10 ~~contact, including the names, addresses, titles and telephone~~
11 ~~numbers of the persons contacted. Copies of any correspondence~~
12 ~~with the Indian tribe shall be attached as exhibits to the~~
13 ~~petition; and~~

14 ~~(3) what specific efforts were made to comply~~
15 ~~with the placement preferences set forth in the federal Indian~~
16 ~~Child Welfare Act of 1978 or the placement preferences of the~~
17 ~~appropriate Indian tribe] include any specific allegations as~~
18 ~~required pursuant to the federal Indian Child Welfare Act of~~
19 ~~1978 and the State Indian Child Welfare Act;~~

20 N. whether the adoption is subject to the
21 Interstate Compact on the Placement of Children and, if so, a
22 copy of the interstate compact form indicating approval shall
23 be attached as an exhibit to the petition;

24 O. whether the adoptee is foreign-born and, if so,
25 copies of the child's passport and United States visa and of

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1 all documents demonstrating that the adoptee is legally free
2 for adoption, including a certificate from the United States
3 secretary of state that certifies that the adoption is a
4 convention adoption;

5 P. whether the adoption is a convention adoption
6 and, if so, the petition shall allege:

7 (1) that the country in which the child has
8 been residing is a party to the Hague Convention on Protection
9 of Children and Co-operation in Respect of Intercountry
10 Adoption;

11 (2) that the agency or person who is providing
12 the adoption service has been approved as an accrediting
13 entity; and

14 (3) that the certificate issued by the United
15 States secretary of state that certifies the adoption as a
16 convention adoption has been filed with the court; and

17 Q. the name, address and telephone number of the
18 agency or individual who has agreed to conduct the post-
19 placement report in accordance with Section 32A-5-31 NMSA 1978,
20 if different than the agency or individual who prepared the
21 pre-placement study in accordance with Section 32A-5-13 NMSA
22 1978."

23 SECTION 53. Section 32A-5-27 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 154, as amended) is amended to read:

25 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

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1 A. The petition for adoption shall be served by the
2 petitioner on the following, unless it has been previously
3 waived in writing:

4 (1) the department, by providing a copy to the
5 court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

6 (2) any person, agency or institution whose
7 consent or relinquishment is required by Section 32A-5-17 NMSA
8 1978, unless the notice has been previously waived;

9 (3) any acknowledged father of the adoptee;

10 (4) the legally appointed custodian or
11 guardian of the adoptee;

12 (5) the spouse of any petitioner who has not
13 joined in the petition;

14 (6) the spouse of the adoptee;

15 (7) the surviving parent of a deceased parent
16 of the adoptee;

17 (8) any person known to the petitioner having
18 custody of or visitation with the adoptee under a court order;

19 (9) any person in whose home the child has
20 resided for at least two months within the preceding six
21 months;

22 (10) the agency or individual authorized to
23 investigate the adoption under Section 32A-5-13 NMSA 1978; and

24 (11) any other person designated by the court.

25 B. Notice shall not be served on the following:

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1 (1) an alleged father; and

2 (2) a person whose parental rights have been
3 relinquished or terminated.

4 C. The petitioner shall provide the clerk of the
5 court with a copy of the petition for adoption, to be mailed to
6 the department pursuant to the provisions of Section 32A-5-7
7 NMSA 1978.

8 D. In an adoption in which the adoptee is an Indian
9 child, in addition to the notice required pursuant to
10 Subsection A of this section, notice of pendency of the
11 adoption proceeding shall be served by the petitioner on the
12 appropriate Indian tribe and on a parent or an "Indian
13 custodian" pursuant to the provisions of the federal Indian
14 Child Welfare Act of 1978 and the State Indian Child Welfare
15 Act.

16 E. The notice shall state that the person served
17 shall respond to the petition within twenty days if the person
18 intends to contest the adoption and shall state that the
19 failure to so respond shall be treated as a default and the
20 person's consent to the adoption shall not be required.
21 Provided, however, that this provision shall not apply to an
22 agency, the department or an investigator preparing the post-
23 placement report pursuant to Section 32A-5-31 NMSA 1978. If an
24 agency, the department or an investigator preparing the post-
25 placement report wants to contest the adoption, it shall notify

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1 the court within twenty days after completion of the post-
2 placement report.

3 F. Service shall be made pursuant to the Rules of
4 Civil Procedure for the District Courts. If the whereabouts of
5 a parent whose consent is required is unknown, the
6 investigator, department or agency charged with investigating
7 the adoption under Section 32A-5-13 NMSA 1978 shall investigate
8 the whereabouts of the parent and shall file by affidavit the
9 results of the investigation with the court. Upon a finding by
10 the court that information as to the whereabouts of a parent
11 has been sufficiently investigated and is still insufficient to
12 effect service in accordance with the Rules of Civil Procedure
13 for the District Courts, the court shall issue an order
14 providing for service by publication.

15 G. As to any other person for whom notice is
16 required under Subsection A of this section, service by
17 certified mail, return receipt requested, shall be sufficient.
18 If the service cannot be completed after two attempts, the
19 court shall issue an order providing for service by
20 publication.

21 H. The notice required by this section may be
22 waived in writing by the person entitled to notice.

23 I. Proof of service of the notice on all persons
24 for whom notice is required by this section shall be filed with
25 the court before any hearing adjudicating the rights of the

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1 persons."

2 SECTION 54. Section 32A-5-28 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 155) is amended to read:

4 "32A-5-28. RESPONSE TO PETITION.--

5 A. Any person responding to a notice of a petition
6 for adoption shall file a verified response to the petition
7 within the time limits specified in Section [~~32-5-25~~] 32A-5-25
8 NMSA 1978.

9 B. The verified response shall follow the Rules of
10 Civil Procedure for the District Courts and shall allege:

11 (1) the existence of any court orders known to
12 the respondent that regulate custody, visitation or access to
13 the adoptee but have not been filed with the court at the time
14 the response is filed and copies of which shall be attached to
15 the response;

16 (2) the relationship, if any, of the
17 respondent to the adoptee;

18 (3) whether the adoptee is an Indian child,
19 and, if so, the response shall set forth all allegations
20 required under the federal Indian Child Welfare Act of 1978 and
21 the State Indian Child Welfare Act;

22 (4) whether the adoption is subject to the
23 Interstate Compact on the Placement of Children; and

24 (5) whether the adoption is an open adoption."

25 SECTION 55. Section 32A-5-36 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,
2 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended
3 to read:

4 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
5 ADOPTION.--

6 A. The court shall conduct hearings on the petition
7 for adoption so as to determine the rights of the parties in a
8 manner that protects confidentiality. The petitioner and the
9 adoptee shall attend the hearing unless the court for good
10 cause waives a party's appearance. Good cause may include
11 burdensome travel requirements.

12 B. The petitioner shall file all documents required
13 pursuant to the Adoption Act and serve the department with
14 copies of the documents simultaneously with the request for
15 hearing on the petition for adoption.

16 C. If any person who claims to be the biological
17 father of the adoptee has appeared before the court and filed a
18 written petition or response seeking custody and assuming
19 financial responsibility of the adoptee, the court shall hear
20 evidence as to the merits of the petition. If the court
21 determines by a preponderance of the evidence that the person
22 is not the biological father of the adoptee or that the child
23 was conceived through an act of rape or incest, the petition
24 shall be dismissed and the person shall no longer be a party to
25 the adoption. If the court determines that the person is the

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1 biological father of the adoptee, the court shall further
2 determine whether the person qualifies as a presumed or
3 acknowledged father whose consent is necessary for adoption,
4 pursuant to Section 32A-5-17 NMSA 1978. If the court
5 determines that the person is the biological father, but does
6 not qualify as a presumed or acknowledged father, the court
7 shall adjudicate the person's rights pursuant to the provisions
8 of the Adoption Act.

9 D. If the mother or father of the adoptee has
10 appeared before the court and filed a written petition that
11 alleges the invalidity of the mother's or father's own consent
12 or relinquishment for adoption previously filed in the adoption
13 proceeding, the court shall hear evidence as to the merits of
14 the petition. If the court determines that the allegations
15 have not been proved by a preponderance of the evidence, the
16 petition shall be dismissed. If the court determines that the
17 allegations of the petition are true, the consent or
18 relinquishment for adoption shall be held invalid, and the
19 court shall determine, in the best interests of the adoptee,
20 the person who shall have custody of the child.

21 E. The petitioner shall present and prove each
22 allegation set forth in the petition for adoption by clear and
23 convincing evidence.

24 F. The court shall grant a decree of adoption if it
25 finds that the petitioner has proved by clear and convincing

1 evidence that:

2 (1) the court has jurisdiction to enter a
3 decree of adoption affecting the adoptee;

4 (2) the adoptee has been placed with the
5 petitioner for a period of ninety days if the adoptee is under
6 the age of one year at the time of placement or for a period of
7 one hundred eighty days if the adoptee is one year of age or
8 older at the time of placement, unless, for good cause shown,
9 the requirement is waived by the court;

10 (3) all necessary consents, relinquishments,
11 terminations or waivers have been obtained;

12 (4) the post-placement report required by
13 Section 32A-5-31 NMSA 1978 has been filed with the court;

14 (5) service of the petition for adoption has
15 been made or dispensed with as to all persons entitled to
16 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

17 (6) at least ninety days have passed since the
18 filing of the petition for adoption, except the court may
19 shorten or waive this period of time in cases in which the
20 child is being adopted by a stepparent, a relative or a person
21 named in the child's deceased parent's will pursuant to
22 provisions of Section 32A-5-12 NMSA 1978;

23 (7) the petitioner is a suitable adoptive
24 parent and the best interests of the adoptee are served by the
25 adoption;

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1 (8) if visitation between the biological
2 family and the adoptee is contemplated, that the visitation is
3 in the child's best interests;

4 (9) if the adoptee is foreign-born, the child
5 is legally free for adoption and a certificate issued by the
6 United States secretary of state that certifies the adoption as
7 a convention adoption has been filed with the court;

8 (10) the results of the criminal records check
9 required pursuant to provisions of the Adoption Act have been
10 received and considered;

11 (11) if the adoptee is an Indian child, the
12 requirements set forth in the federal Indian Child Welfare Act
13 of 1978 and the State Indian Child Welfare Act have been met;

14 (12) when the child is an Indian child, the
15 placement preferences set forth in the federal Indian Child
16 Welfare Act of 1978, the State Indian Child Welfare Act or the
17 placement preferences of the appropriate Indian tribes have
18 been followed or, if not followed, good cause for noncompliance
19 has been clearly stated and supported, as required by the
20 federal Indian Child Welfare Act of 1978 and the State Indian
21 Child Welfare Act and provision has been made to ensure that
22 the Indian child's cultural ties to the Indian child's tribe
23 are protected and fostered; and

24 (13) if the adoption involves the interstate
25 placement of the adoptee, the requirements of the Interstate

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1 Compact on the Placement of Children have been met.

2 G. In addition to the findings required by
3 Subsection F of this section, the court in any decree of
4 adoption shall make findings with respect to each allegation of
5 the petition.

6 H. If the court determines that any of the
7 requirements for a decree of adoption pursuant to provisions of
8 Subsections E and F of this section have not been met or that
9 the adoption is not in the best interests of the adoptee, the
10 court shall deny the petition and determine, in the best
11 interests of the adoptee, the person who shall have custody of
12 the child.

13 I. The decree of adoption shall include the new
14 name of the adoptee and shall not include any other name by
15 which the adoptee has been known or the names of the former
16 parents. The decree of adoption shall order that from the date
17 of the decree, the adoptee shall be the child of the petitioner
18 and accorded the status set forth in Section 32A-5-37 NMSA
19 1978.

20 J. A decree of adoption shall be entered within six
21 months of the filing of the petition if the adoptee is under
22 the age of one year at the time of placement or twelve months
23 if the adoptee is one year of age or older at the time of
24 placement, except that the time may be extended by the court
25 upon request of any of the parties or upon the court's own

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1 motion for good cause shown.

2 K. A decree of adoption may not be attacked upon
3 the expiration of one year from the entry of the decree;
4 provided, however, that in any adoption involving an Indian
5 child, the Indian child's parent or Indian custodian may
6 petition the court pursuant to the provisions of the federal
7 Indian Child Welfare Act of 1978 and the State Indian Child
8 Welfare Act to invalidate the adoption.

9 L. In any adoption involving an Indian child, the
10 clerk of the court shall provide the secretary of the interior
11 with a copy of any decree of adoption or adoptive placement
12 order and other information as required by the federal Indian
13 Child Welfare Act of 1978 and in accordance with the provisions
14 of the State Indian Child Welfare Act."

15 SECTION 56. Section 32A-5-40 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 167, as amended) is amended to read:

17 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

18 A. After the decree of adoption has been entered,
19 all court files containing records of judicial proceedings
20 conducted pursuant to the provisions of the Adoption Act and
21 records submitted to the court in the proceedings shall be kept
22 in separate locked files withheld from public inspection. Upon
23 application to the clerk of the court, the records shall be
24 open to inspection by a former parent if the adoptee is
25 eighteen years of age or older, by an adoptee if the adoptee is

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1 eight years of age or older at the time application is made
2 for inspection, by the adoptive parent if the adoptee is under
3 eighteen years of age at the time application is made for
4 inspection, by the attorney of any party, by any agency that
5 has exercised guardianship over or legal custody of a child who
6 was the adoptee in the particular proceeding, by the department
7 or by an adoptee's sibling; provided that the identity of the
8 former parents and of the adoptee shall be kept confidential
9 unless the former parents and the adoptee have consented to the
10 release of identity. In the absence of consent to release
11 identity, the inspection shall be limited to the following
12 nonidentifying information:

13 (1) the health and medical histories of the
14 adoptee's biological parents;

15 (2) the health and medical history of the
16 adoptee;

17 (3) the adoptee's general family background,
18 including ancestral information, without name references or
19 geographical designations;

20 (4) physical descriptions; and

21 (5) the length of time the adoptee was in the
22 care and custody of persons other than the petitioner.

23 B. After the entry of the decree of adoption, at
24 any time, a former parent may file with the court, with the
25 placing agency or with the department:

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1 (1) a consent or refusal or an amended consent
2 or refusal to be contacted;

3 (2) a release of the former parent's identity
4 to the adoptee if the adoptee is eighteen years of age or older
5 or to the adoptive parent if the adoptee is under eighteen
6 years of age; or

7 (3) information regarding the former parent's
8 location or changes in background information.

9 C. Any changes to post-adoption access to records
10 referred to in Subsection B of this section shall be filed with
11 the court, the placing agency and the department.

12 D. The consent or refusal referred to in Subsection
13 B of this section shall be honored by the court, the placing
14 agency or the department unless for good cause the court orders
15 to the contrary.

16 E. At any time, an adoptee who is eighteen years of
17 age or older may file with the court, a placing agency or the
18 department:

19 (1) information regarding the adoptee's
20 location; or

21 (2) a consent or refusal regarding opening of
22 the adoptee's adoption file to the adoptee's former parents.

23 F. If mutual authorizations for release of
24 identifying information by the parties are not available, an
25 adoptee who is eighteen years of age or older, the biological

1 parents if the adoptee is eighteen years of age or older or the
2 adoptive parents if the adoptee is under the age of eighteen
3 years may file a motion with the court to obtain the release of
4 identifying information for good cause shown. When hearing the
5 motion, the court shall give primary consideration to the best
6 interests of the adoptee, but shall also give due consideration
7 to the interests of the members of the adoptee's former and
8 adoptive families. In determining whether good cause exists
9 for the release of identifying information, the court shall
10 consider:

11 (1) the reason the information is sought;

12 (2) any procedure available for satisfying the
13 petitioner's request without disclosing the name or identity of
14 another individual, including appointment of a confidential
15 intermediary to contact the individual and request specific
16 information;

17 (3) whether the individual about whom
18 identifying information is sought is alive;

19 (4) the preference, to the extent known, of
20 the adoptee, the adoptive parents, the former parents and other
21 members of the adoptee's former and adoptive families and the
22 likely effect of disclosure on those individuals;

23 (5) the age, maturity and expressed needs of
24 the adoptee;

25 (6) the report or recommendation of any

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1 individual appointed by the court to assess the request for
2 identifying information; and

3 (7) any other factor relevant to an assessment
4 of whether the benefit to the adoptee of releasing the
5 information sought will be greater than the benefit to any
6 other individual of not releasing the information.

7 G. An adoptee shall have the right, for the purpose
8 of ~~[enrolling]~~ membership in the adoptee's tribe of origin, to
9 access information kept by the department. Information needed
10 by an adoptee to ~~[enroll]~~ obtain membership in ~~[his]~~ the
11 adoptee's tribe of origin may be requested from the department
12 ~~[by the following persons:~~

13 ~~(1) the adoptee, after he reaches eighteen~~
14 ~~years of age;~~

15 ~~(2) when the adoptee is a child, his adoptive~~
16 ~~parent or guardian; or~~

17 ~~(3) an adoptee's descendant or, if the~~
18 ~~adoptee's descendant is a child, an adult representative for~~
19 ~~the descendant] as provided pursuant to the State Indian Child~~
20 ~~Welfare Act and the federal Indian Child Welfare Act of 1978.~~

21 H. When the department receives a request for
22 information regarding an adoptee's tribe of origin, the
23 department shall examine its records to determine if the
24 adoptee is of Indian descent. If the department establishes
25 that an adoptee is of Indian descent, the department shall

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1 ~~[(1) provide the requester with the tribal~~
2 ~~affiliation of the adoptee's biological parents;~~

3 ~~(2) submit to the tribe information necessary~~
4 ~~to establish tribal enrollment for the adoptee and to protect~~
5 ~~any rights flowing from the adoptee's tribal relationship; and~~

6 ~~(3) provide notice to the requester of the~~
7 ~~department's submission of information to the adoptee's tribe]~~
8 provide any information or notice as required pursuant to the
9 State Indian Child Welfare Act and the federal Indian Child
10 Welfare Act of 1978."

11 SECTION 57. Section 40-10B-5 NMSA 1978 (being Laws 2001,
12 Chapter 167, Section 5, as amended) is amended to read:

13 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

16 (1) a kinship caregiver;

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

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

24 (a) the purpose and effect of the
25 guardianship;

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

4 (c) that the parent may appear in court
5 to contest the guardianship.

6 B. A petition seeking the appointment of a guardian
7 shall be verified by the petitioner and allege the following
8 with respect to the child:

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

11 (2) the date and place of birth of the child,
12 if known, and if not known, the reason for the lack of
13 knowledge;

14 (3) the legal residence of the child and the
15 place where the child resides, if different from the legal
16 residence;

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

18 (5) the kinship, if any, between the
19 petitioner and the child;

20 (6) the names and addresses of the parents of
21 the child;

22 (7) the names and addresses of persons having
23 legal custody of the child;

24 (8) the existence of any matters pending
25 involving the custody of the child;

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

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

7 (11) whether the child is subject to
8 provisions of the federal Indian Child Welfare Act of 1978 and
9 the State Indian Child Welfare Act and, if so,

10 [~~(a) the tribal affiliations of the~~
11 ~~child's parents; and~~

12 [~~(b) the specific actions taken by the~~
13 ~~petitioner to notify the parents' tribes and the results of the~~
14 ~~contacts, including the names, addresses, titles and telephone~~
15 ~~numbers of the persons contacted, and copies of correspondence~~
16 ~~with the tribe] shall include any information as required of a
17 petition for a child custody proceeding pursuant to those acts;
18 and~~

19 (12) other facts in support of the
20 guardianship sought."

21 SECTION 58. Section 40-10B-6 NMSA 1978 (being Laws 2001,
22 Chapter 167, Section 6, as amended) is amended to read:

23 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

24 A. The court shall set a date for hearing on the
25 petition, which date shall be no less than thirty and no more

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1 than ninety days from the date of filing the petition.

2 B. The petition and a notice of the hearing shall
3 be served upon:

4 (1) the children, youth and families
5 department if there is any pending matter relating to the child
6 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

7 (2) the child if the child has reached the age
8 of fourteen;

9 (3) the parents of the child;

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

12 (5) if the child is an Indian child as defined
13 in the federal Indian Child Welfare Act of 1978 and the State
14 Indian Child Welfare Act, the ~~[appropriate]~~ Indian tribe and
15 ~~[any]~~ the child's parent or "Indian custodian", together with a
16 notice of pendency of the guardianship proceedings, pursuant to
17 the provisions of the federal Indian Child Welfare Act of 1978
18 and the State Indian Child Welfare Act.

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

23 D. The persons required to be served pursuant to
24 Subsection B of this section have a right to file a response as
25 parties to this action. Other persons may intervene pursuant

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1 to Rule 1-024 NMRA."

2 SECTION 59. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
3 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
4 2005, Chapter 189, Section 37, as amended) are repealed.

5 SECTION 60. APPLICABILITY.--

6 A. The provisions of Section 7 of this act apply to
7 tribal-state agreements that become effective on or after July
8 1, 2021.

9 B. The provisions of this act apply to all open
10 cases prior to July 1, 2021.

11 SECTION 61. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2021.