

HOUSE BILL 196

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Stefani Lord and Tanya Mirabal Moya

AN ACT

RELATING TO CHILDREN; REVISING THE PREFERRED PLACEMENT OF  
CHILDREN IN TEMPORARY CUSTODY.

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

SECTION 1. Section 32A-4-8 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 102, as amended) is amended to read:

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

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

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

(2) there shall be a preference that the child  
be placed in the home of a relative of the child when a

.223715.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 relative is available to provide foster care; provided that:

2 (a) placement with a relative is in the  
3 best interest of the child;

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

9 (c) within three days of accepting  
10 custody of the child, the relative completes an application  
11 form for licensure to operate a foster home pursuant to the  
12 Children's Code.

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

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

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

22 ~~(3) a facility provided for in the Children's~~  
23 ~~Shelter Care Act] the child's preferred order of placement is:~~

24 (1) fictive kin;

25 (2) licensed family foster care;

.223715.1

underscoring material = new  
~~[bracketed material] = delete~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- (3) therapeutic foster care;
- (4) a group home or congregate care setting;
- or
- (5) a residential treatment facility.

C. Absent evidence to the contrary, a court may presume that continuation of the child's placement with the child's current caregivers is in the child's best interests.

D. A foster parent or fictive kin caregiver with whom the child has resided for six months or more is a person who has a significant relationship with the child."