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SENATE BILL

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

INTRODUCED BY

Katy M. Duhigg and Linda M. Lopez and Siah Correa Hemphill

AN ACT

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

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

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

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

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

1 school district enrollment during a single school year as the
2 result of:

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

6 (2) adjudication:

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

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

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

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

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

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1 records within two days of having received the receiving public
2 school's or school district's communication.

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

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

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

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

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

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

25 (3) timely assistance and advice from

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1 counselors to improve the student's college or career
2 readiness; and

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

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

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

17 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

18 A. "active efforts" means efforts that are
19 affirmative, active, thorough and timely and that represent a
20 higher standard of conduct than reasonable efforts;

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

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

25 D. "council" means the substitute care advisory

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1 council established pursuant to Section 32A-8-4 NMSA 1978;

2 E. "court", when used without further
3 qualification, means the children's court division of the
4 district court and includes the judge, special master or
5 commissioner appointed pursuant to the provisions of the
6 Children's Code or supreme court rule;

7 F. "court-appointed special advocate" means a
8 person appointed pursuant to the provisions of the Children's
9 Court Rules to assist the court in determining the best
10 interests of the child by investigating the case and submitting
11 a report to the court;

12 G. "custodian" means an adult with whom the child
13 lives who is not a parent or guardian of the child;

14 H. "department" means the children, youth and
15 families department, unless otherwise specified;

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

20 J. "fictive kin" means a person:

21 (1) who is not a relative or an extended
22 family member of a child and who has a significant, family-like
23 relationship with the child or the child's family, which
24 relationship existed prior to the child's entry into foster
25 care; or

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1 (2) chosen by a child who is fourteen years of
2 age or older, when it is in the best interest of the child to
3 identify that person as fictive kin;

4 [~~J.~~] K. "federal Indian Child Welfare Act of 1978"
5 means the federal Indian Child Welfare Act of 1978, as that act
6 may be amended or its sections renumbered;

7 [~~K.~~] L. "foster parent" means a person, including a
8 relative of the child, licensed or certified by the department
9 or a child placement agency to provide care for children in the
10 custody of the department or agency;

11 [~~L.~~] M. "guardian" means a person appointed as a
12 guardian by a court or Indian tribal authority [~~or a person~~
13 ~~authorized to care for the child by a parental power of~~
14 ~~attorney as permitted by law];~~

15 [~~M.~~] N. "guardian ad litem" means an attorney
16 appointed by the children's court to represent and protect the
17 best interests of the child in a case; provided that no party
18 or employee or representative of a party to the case shall be
19 appointed to serve as a guardian ad litem;

20 [~~N.~~] O. "Indian" means, whether an adult or child,
21 a person who is:

- 22 (1) a member of an Indian tribe; or
23 (2) eligible for membership in an Indian
24 tribe;

25 [~~O.~~] P. "Indian child" means an Indian person, or a

1 person whom there is reason to know is an Indian person, under
2 eighteen years of age, who is neither:

3 (1) married; or

4 (2) emancipated;

5 ~~[P-]~~ Q. "Indian child's tribe" means:

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

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

12 ~~[Q-]~~ R. "Indian custodian" means an Indian who,
13 pursuant to tribal law or custom or pursuant to state law:

14 (1) is an adult with legal custody of an
15 Indian child; or

16 (2) has been transferred temporary physical
17 care, custody and control by the parent of the Indian child;

18 ~~[R-]~~ S. "Indian tribe" means an Indian nation,
19 tribe, pueblo or other band, organized group or community of
20 Indians recognized as eligible for the services provided to
21 Indians by the secretary because of their status as Indians,
22 including an Alaska native village as defined in 43 U.S.C.
23 Section 1602(c) or a regional corporation as defined in 43
24 U.S.C. Section 1606. For the purposes of notification to and
25 communication with a tribe as required in the Indian Family

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1 Protection Act, "Indian tribe" also includes those tribal
2 officials and staff who are responsible for child welfare and
3 social services matters;

4 ~~[S.]~~ T. "judge", when used without further
5 qualification, means the judge of the court;

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

19 ~~[H.]~~ V. "member" or "membership" means a
20 determination made by an Indian tribe that a person is a member
21 of or eligible for membership in that Indian tribe;

22 ~~[V.]~~ W. "parent" or "parents" means a biological or
23 adoptive parent if the biological or adoptive parent has a
24 constitutionally protected liberty interest in the care and
25 custody of the child or a person who has lawfully adopted an

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1 Indian child pursuant to state law or tribal law or tribal
2 custom;

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

5 (1) reunification;

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

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

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

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

16 ~~[X.]~~ Y. "person" means an individual or any other
17 form of entity recognized by law;

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

25 ~~[Z.]~~ AA. "preadoptive parent" means a person with

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1 whom a child has been placed for adoption;

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

7 ~~[BB.]~~ CC. "relative" means a person related to
8 another person:

9 (1) by blood within the fifth degree of
10 consanguinity or through marriage by the fifth degree of
11 affinity; or

12 (2) with respect to an Indian child, as
13 established or defined by the Indian child's tribe's custom or
14 law;

15 ~~[CC.]~~ DD. "reservation" means:

16 (1) "Indian country" as defined in 18 U.S.C.
17 Section 1151;

18 (2) any lands to which the title is held by
19 the United States in trust for the benefit of an Indian tribe
20 or individual; or

21 (3) any lands held by an Indian tribe or
22 individual subject to a restriction by the United States
23 against alienation;

24 ~~[DD.]~~ EE. "reunification" means either a return of
25 the child to the parent or to the home from which the child was

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1 removed or a return to the noncustodial parent;

2 [EE.] FF. "secretary" means the United States
3 secretary of the interior;

4 [FF.] GG. "tribal court" means a court with
5 jurisdiction over child custody proceedings that is either a
6 court of Indian offenses, a court established and operated
7 under the law or custom of an Indian tribe or any other
8 administrative body that is vested by an Indian tribe with
9 authority over child custody proceedings;

10 [GG.] HH. "tribal court order" means a document
11 issued by a tribal court that is signed by an appropriate
12 authority, including a judge, governor or tribal council
13 member, and that orders an action that is within the tribal
14 court's jurisdiction; and

15 [HH.] II. "tribunal" means any judicial forum other
16 than the court."

17 SECTION 3. Section 32A-3A-15 NMSA 1978 (being Laws 2019,
18 Chapter 247, Section 14) is recompiled as Section 32A-1-22 NMSA
19 1978 and is amended to read:

20 "32A-1-22. MEDICAL CANNABIS PROGRAM--REMOVAL OF
21 CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--
22 MEDICAL CARE.--

23 A. An individual's participation in the state's
24 medical cannabis program established pursuant to the Lynn and
25 Erin Compassionate Use Act shall not in itself constitute

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1 grounds for:

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

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

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

12 C. A school shall not refuse to enroll or otherwise
13 penalize a person solely for conduct allowed pursuant to the
14 Lynn and Erin Compassionate Use Act, unless failing to do so
15 would cause the school to lose a monetary or licensing-related
16 benefit under federal law or regulation.

17 D. For the purposes of medical care, including an
18 organ transplant, a qualified patient's use of cannabis
19 pursuant to the Lynn and Erin Compassionate Use Act shall be
20 considered the equivalent of the use of any other medication
21 under the direction of a physician and shall not be considered
22 to constitute the use of an illicit substance or otherwise
23 disqualify a qualified patient from medical care."

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

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

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

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

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

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

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

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

16 "32A-3A-2. DEFINITIONS.--As used in the Voluntary
17 Placement and Family Services Act:

18 A. "child or family in need of family services"
19 means a family:

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

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

24 (3) whose child is absent from the child's
25 place of residence for twenty-four hours or more without the

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1 consent of the parent, guardian or custodian;

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

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

7 B. "family services" means services that address
8 specific needs of the child or family;

9 C. "guardian" means a person appointed as a
10 guardian by a court or Indian tribal authority;

11 D. "guardianship assistance agreement" means a
12 written agreement entered into by the prospective kinship
13 guardian and the department or Indian tribe prior to the
14 establishment of the guardianship by a court;

15 E. "guardianship assistance payments" means
16 payments made by the department to a kinship guardian or
17 successor guardian on behalf of a child pursuant to the terms
18 of a guardianship assistance agreement;

19 F. "guardianship assistance program" means the
20 financial subsidy program provided for in the Voluntary
21 Placement and Family Services Act;

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

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1 H. "voluntary placement agreement" means a written
2 agreement between the department and the parent or guardian of
3 a child."

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

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

8 A. [~~Upon written application by a parent, guardian~~
9 ~~or custodian and, if good cause is shown~~] The department may
10 accept legal custody of a minor child from a parent or guardian
11 for temporary voluntary placement outside the home through a
12 voluntary placement agreement.

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

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

19 ~~(2) any determination that the services are~~
20 ~~not available;~~

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

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

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1 ~~C. If the department accepts custody of a child,~~
2 ~~the department shall provide the child with shelter in an~~
3 ~~appropriate facility, pursuant to the provisions of Section~~
4 ~~32-3B-6 NMSA 1978, that is located as close as possible to the~~
5 ~~child's residence. The child shall not be held in a jail or~~
6 ~~other facility intended or used for the incarceration of adults~~
7 ~~charged or convicted of criminal offenses or a facility for the~~
8 ~~detention of children alleged to be or adjudicated as~~
9 ~~delinquent children.]~~

10 B. When a parent is considering a voluntary
11 placement agreement, the department shall notify the office of
12 family representation and advocacy. The office of family
13 representation and advocacy shall assign the parent or guardian
14 legal counsel prior to the signing and for the duration of the
15 voluntary placement agreement. Prior to the signing of the
16 voluntary placement agreement, counsel shall explain to the
17 parent or guardian:

18 (1) the terms and consequences of the consent
19 to the voluntary placement agreement, in detail;

20 (2) that the parent or guardian can withdraw
21 consent at any time and the child shall be returned within
22 forty-eight hours of when the written or verbal demand was
23 made; and

24 (3) that before the expiration of the
25 forty-eight hours, the department may prevent the immediate

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1 return of the child by filing a petition alleging neglect or
2 abuse and by obtaining a court order granting the department
3 temporary custody of the child.

4 C. The department shall notify the office of family
5 representation and advocacy when the voluntary placement
6 agreement is terminated or expires.

7 D. The parent or guardian may request a
8 collaborative meeting with the department prior to signing or
9 at any point throughout the duration of the voluntary placement
10 agreement. The department shall schedule the collaborative
11 meeting in a timely manner.

12 E. Upon the signing of a voluntary placement
13 agreement, the department shall notify the office of family
14 representation and advocacy. The office of family
15 representation and advocacy shall assign the child a guardian
16 ad litem. Only an attorney with appropriate experience shall
17 be appointed as guardian ad litem of the child. When a
18 voluntary placement agreement is subject to court review, the
19 child's attorney shall inform the court as to the child's
20 wishes.

21 F. The parent or guardian, child or department may
22 file a petition for court review of the voluntary placement
23 agreement prior to the signing or at any point throughout the
24 duration of the voluntary placement agreement.

25 G. If court review is requested prior to signing

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1 the voluntary placement agreement, before approving the
2 voluntary placement agreement, the court shall ensure that the
3 voluntary placement agreement is executed in writing. The
4 court shall certify on the record that:

5 (1) the terms and consequences of the consent
6 were fully explained in detail and in a manner that is
7 understandable to the parent or guardian;

8 (2) the child's parent or guardian fully
9 understands the English language or that the voluntary
10 placement agreement was interpreted into the primary language
11 of the child's parent or guardian;

12 (3) the child's parent or guardian is
13 voluntarily entering into the voluntary placement agreement;

14 (4) confidentiality has been requested or
15 indicated and execution of consent was made in a closed court
16 proceeding not open to the public; and

17 (5) the child's parent or guardian is of sound
18 mind and judgment."

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

21 "32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

22 ~~[A. No child shall remain in voluntary placement~~
23 ~~for longer than one hundred eighty consecutive days or for more~~
24 ~~than one hundred eighty days in any calendar year; provided~~
25 ~~that a child may remain in voluntary placement up to an~~

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1 ~~additional one hundred eighty consecutive days upon order of~~
2 ~~the court after the filing of a petition by the department for~~
3 ~~extension of voluntary placement, a hearing and a finding that~~
4 ~~additional voluntary placement is in the best interests of the~~
5 ~~child.]~~

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

8 B. Prior to the expiration of the voluntary
9 placement agreement, if the parent or guardian agrees in
10 writing that the child is to remain in voluntary placement for
11 up to an additional one hundred eighty days, the department
12 shall file a petition to extend the voluntary placement. The
13 department shall provide notice of the hearing on the petition
14 for extension to the parent or guardian.

15 C. The court shall hold a hearing and enter a
16 written final order within thirty days of the filing of the
17 petition. If the court grants an extension of up to one
18 hundred eighty days, the order shall contain findings that
19 proper notice was given, the parent or guardian consents to the
20 extension of the voluntary placement and the voluntary
21 placement agreement is in the child's best interest. If an
22 extension is denied, the court shall enter a written order
23 denying the extension and directing the department to
24 immediately return the child to the parent or guardian.

25 ~~[B-]~~ D. In no event shall a child remain in

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1 voluntary placement for a period in excess of three hundred
2 sixty-five days in any two-year period.

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

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

8 "32A-3A-8. ~~[DUTY TO FILE A PETITION]~~ VOLUNTARY
9 PLACEMENT--RETURN OF CHILD TO PARENT--DEPARTMENT DUTY UPON
10 PARENT REFUSAL TO REGAIN CUSTODY.--

11 A. At any time, a parent or guardian may demand and
12 obtain the return of a child voluntarily placed outside the
13 home without seeking or obtaining court approval. The child
14 shall be returned within forty-eight hours of when the written
15 or verbal demand was made. However, before the expiration of
16 the forty-eight-hour period, the department may prevent the
17 immediate return of the child by filing a petition alleging
18 neglect or abuse and by obtaining a court order granting the
19 department temporary custody of the child.

20 B. If ~~[any child has remained in voluntary~~
21 ~~placement for longer than three hundred sixty-five days in any~~
22 ~~two-year period and]~~ the parent or guardian ~~[or custodian]~~ of
23 the child refuses to or cannot accept the child back into the
24 parent's or guardian's ~~[or custodian's]~~ custody, ~~[the~~
25 ~~department shall immediately file]~~ before the department files

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1 a petition alleging that the child is a neglected child or that
2 the child's family needs court-ordered family services, the
3 department shall:

4 (1) make reasonable efforts to place the child
5 back in the custody of the parent or guardian and tailor the
6 reasonable efforts to the facts and circumstances of the case
7 and shall:

8 (a) document in writing the details
9 demonstrating the quality and quantity of services and
10 assistance provided to alleviate the causes and conditions
11 leading to the parent or guardian's refusal or inability to
12 accept the child back into the parent or guardian's custody, on
13 the court record;

14 (b) assist the child's parent or
15 guardian through the steps of a department case plan and with
16 accessing or developing the resources necessary to satisfy the
17 department case plan; and

18 (c) conduct a comprehensive assessment
19 of the circumstances of the child's family with a goal of
20 reunification;

21 (2) make reasonable efforts to maintain or
22 reunite a child with the child's family by:

23 (a) identifying and establishing
24 appropriate services and assisting the child's parent or
25 guardian to overcome barriers to reunification, including

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1 assisting the parent or guardian in obtaining those services;

2 (b) conducting or causing to be
3 conducted a diligent search for the child's extended family
4 members and contacting and consulting with the child's extended
5 family members and adult relatives to provide family structure
6 and support for the child and the child's parent or guardian;

7 (c) offering and employing culturally
8 appropriate family preservation strategies;

9 (d) taking steps to keep the child and
10 the child's siblings together whenever possible; and

11 (e) identifying community resources,
12 including housing, financial assistance, transportation, mental
13 health services, health care, substance use prevention and
14 treatment and peer support services, and assisting the child's
15 parent or guardian; and

16 (3) record all efforts made toward reasonable
17 efforts and report them to the court."

18 SECTION 9. Section 32A-3A-10 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 72) is amended to read:

20 "32A-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--~~[Any~~
21 ~~parent, guardian or custodian whose child is in voluntary~~
22 ~~placement shall have the following rights with respect to the~~
23 ~~child:~~

24 ~~A. the right of reasonable visitation with the~~
25 ~~child;~~

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1 ~~B. the right to be informed of changes in the~~
2 ~~child's school or of changes in the child's placement by the~~
3 ~~department; and~~

4 ~~C. the right of decision as to all nonemergency and~~
5 ~~nonroutine medical care provided for the child]~~ The parent or
6 guardian whose child is in voluntary placement shall have the
7 following rights to:

8 A. have visitation with the child;

9 B. be informed of changes in the child's school or
10 of changes in the child's placement by the department;

11 C. authorize decisions regarding medical and dental
12 care and behavioral health services, including decisions that
13 affect the daily care, support, safety and well-being of the
14 child;

15 D. permit the department to consent to emergency
16 services to ensure the safety and well-being of the child,
17 including medical, dental or behavioral health treatment, if
18 the department is unable to make immediate prior contact with
19 the parent or guardian. The department shall notify the parent
20 or guardian within two hours of making emergency decisions due
21 to inability to make prior contact;

22 E. consent to all nonemergency and nonroutine
23 medical care provided for the child;

24 F. make decisions regarding participation and
25 attendance in cultural and religious events;

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1 G. make decisions of substantial legal
2 significance; and

3 H. serve as the educational decision maker unless
4 the department determines that doing so would be contrary to
5 the best interests of the child, in which case the foster
6 parent or other substitute care provider will serve as the
7 educational decision maker."

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

10 "[NEW MATERIAL] CONFIDENTIALITY.--

11 A. All records or information, whether on file with
12 the court, an agency, the department, an attorney or other
13 provider of professional services, concerning a party to a
14 voluntary placement proceeding shall be confidential and closed
15 to the public.

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

19 C. The records described in Subsection A of this
20 section, other than mental health and developmental disability
21 records, shall be disclosed only to the parties and:

22 (1) court personnel and persons or entities
23 authorized by contract with the court to review, inspect or
24 otherwise have access to records or information in the court's
25 possession;

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1 (2) the attorney, including a public defender,
2 representing the child in any child proceeding pursuant to the
3 Children's Code;

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

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

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

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

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

21 (8) school personnel involved with the child
22 if the records concern the child's cultural, social or
23 educational needs;

24 (9) a grandparent, parent of a sibling,
25 relative or fictive kin, if the records or information pertain

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1 to a child being considered for placement with that
2 grandparent, parent of a sibling, relative or fictive kin and
3 the records or information concern the cultural, social,
4 medical, psychological or educational needs of the child;

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

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

13 (12) children's safehouse organizations
14 conducting investigatory interviews of children on behalf of a
15 law enforcement agency or the department;

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

21 (14) any person or entity attending a meeting
22 arranged by the department to discuss the safety, well-being
23 and permanency of a child when the parent, guardian or child
24 over the age of fourteen years has consented to the disclosures
25 occurring during the meeting; and

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1 (15) any other person or entity, by order of
2 the court, having a legitimate interest in the case or the work
3 of the court.

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

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

14 SECTION 11. A new section of the Voluntary Placement and
15 Family Services Act is enacted to read:

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

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

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

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1 child or family involved in the proceedings."

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

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

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

- 12 (1) a relative of the child;
- 13 (2) a licensed foster home or any home
14 authorized by law for the provision of foster care or group
15 care or use as a protective residence;
- 16 (3) a facility operated by a licensed child
17 welfare services agency; or
- 18 (4) a facility provided for in the Children's
19 Shelter Care Act.

20 B. The department shall provide the child with
21 shelter in an appropriate facility, pursuant to the provisions
22 of Section 32A-3B-6 NMSA 1978, that is located as close as
23 possible to the child's residence. The child shall not be held
24 in a jail or other facility intended or used for the
25 incarceration of adults charged or convicted of criminal

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1 offenses or a facility for the detention of children alleged to
2 be or adjudicated as delinquent children.

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

7 D. The department shall make reasonable efforts to
8 place siblings in custody by court order or voluntary placement
9 agreement together, unless such joint placement would be
10 contrary to the safety or well-being of any of the siblings in
11 custody, and whether any siblings not jointly placed have been
12 provided reasonable visitation or other ongoing interaction,
13 unless visitation or other ongoing interaction would be
14 contrary to the safety or well-being of any of the siblings."

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

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

18 A. Prior to a guardianship being granted pursuant
19 to the Kinship Guardianship Act or the Abuse and Neglect Act
20 and in order to be eligible for guardianship assistance
21 payments, the following conditions shall be satisfied:

22 (1) the child shall be in the custody of the
23 department and have been removed from the child's home:

24 (a) pursuant to a voluntary placement
25 agreement; or

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1 (b) as a result of a judicial
2 determination that the placement and care of the child should
3 be vested in the department;

4 (2) the child shall be eligible for foster
5 care maintenance payments while in the home of the fully
6 licensed prospective guardian;

7 (3) the child shall have been placed or lived
8 with the fully licensed prospective guardian for at least six
9 consecutive months pursuant to a court order or a voluntary
10 placement agreement;

11 (4) the child has a strong attachment to the
12 fully licensed prospective guardian and the fully licensed
13 prospective guardian is a relative or fictive kin of the child;

14 (5) the fully licensed prospective guardian
15 has a strong commitment to caring permanently for the child,
16 documented via a meeting held prior to the proposed
17 guardianship between the fully licensed prospective guardian
18 and the department discussing the fully licensed prospective
19 guardian's long-term commitment;

20 (6) if the child is fourteen years of age or
21 older, the child has been consulted by the department and
22 consents to the guardianship arrangement; and

23 (7) a fully executed guardianship assistance
24 agreement is approved by the department; or

25 (8) the child is a sibling of a child who

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1 meets the eligibility criteria set forth in this subsection.

2 B. The department shall promulgate rules for
3 guardianship assistance payments and payment of nonrecurring
4 expenses."

5 SECTION 14. A new section of the Voluntary Placement and
6 Family Services Act is enacted to read:

7 "[NEW MATERIAL] FINANCIAL SUBSIDIES--NONRECURRING
8 EXPENSES.--Nonrecurring expenses incurred by a fully licensed
9 prospective guardian associated with establishing a subsidized
10 guardianship may be reimbursed for each eligible child, up to
11 an amount established by the department, and also for any of an
12 eligible child's siblings."

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

15 "[NEW MATERIAL] FINANCIAL SUBSIDIES--GUARDIANSHIP
16 ASSISTANCE AGREEMENT.--

17 A. In order for a fully licensed prospective
18 guardian to receive guardianship assistance payments, the
19 department shall negotiate and enter into a written
20 guardianship assistance agreement before the guardianship is
21 finalized with the fully licensed prospective guardian of an
22 eligible child. The agreement shall specify the following:

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

25 (2) additional services and assistance for

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1 which the child and the fully licensed prospective guardian
2 will be eligible;

3 (3) a procedure by which the fully licensed
4 prospective guardian may apply for additional services;

5 (4) the responsibility of the fully licensed
6 prospective guardian to report changes in the needs of the
7 child or the circumstances of the fully licensed prospective
8 guardian that affect guardianship assistance payments;

9 (5) reasonable and verified nonrecurring
10 expenses associated with establishing a subsidized guardianship
11 pursuant to the provisions of Section 14 of this 2023 act; and

12 (6) terms by which the guardianship assistance
13 agreement may be terminated and the ability of the department
14 to recoup funds received due to improper payment.

15 B. A copy of the fully executed guardianship
16 assistance agreement shall be given to the fully licensed
17 prospective guardian and to the department."

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

20 "[NEW MATERIAL] FINANCIAL SUBSIDIES--SUCCESSOR
21 GUARDIANS.--

22 A. In order for a successor guardian to be eligible
23 for guardianship assistance payments if the successor guardian
24 serves as guardian in the event the guardian dies or is
25 incapacitated, the successor guardian shall be named in the

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1 guardianship assistance agreement and any amendments thereto.

2 B. The department may pay the cost of nonrecurring
3 expenses associated with the successor guardian obtaining a
4 subsidized guardianship of the child, up to an amount
5 established by the department.

6 C. The successor guardian does not need to be a
7 relative and does not need to be licensed as a foster parent to
8 receive guardianship assistance payments."

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

11 "[NEW MATERIAL] FINANCIAL SUBSIDIES--DISCONTINUANCE OF
12 GUARDIANSHIP ASSISTANCE PAYMENTS.--

13 A. The department shall immediately discontinue
14 guardianship assistance payments when the department is advised
15 or determines a child or guardian no longer meets the criteria
16 to be eligible for guardianship assistance payments.

17 B. The department shall notify the guardian in
18 writing of a discontinuation of guardianship assistance
19 payments and the reasons for discontinuation.

20 C. The discontinuance of guardianship assistance
21 payments does not terminate a guardianship or a guardian's
22 legal responsibility that has been established by a court."

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

25 "[NEW MATERIAL] FINANCIAL SUBSIDIES--ADMINISTRATIVE APPEAL

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1 OF DECISIONS.--A child or prospective guardian may appeal a
2 decision by the department to establish, deny, reduce or
3 discontinue guardianship assistance payments within thirty days
4 of the department's decision."

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

7 "[NEW MATERIAL] DEPARTMENT DUTIES--RULEMAKING.--The
8 department shall promulgate rules as necessary to implement the
9 provisions of the Voluntary Placement and Family Services Act."

10 SECTION 20. Section 32A-4-2 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 96, as amended) is amended to read:

12 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
13 Act:

14 A. "abandonment" includes instances when the
15 parent, without justifiable cause:

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

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

21 (a) three months if the child was under
22 six years of age at the commencement of the three-month period;
23 or

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

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1 B. "abused child" means a child:

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

5 (2) who has suffered physical abuse, emotional
6 abuse or psychological abuse inflicted or caused by the child's
7 parent, guardian or custodian;

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

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

14 (5) whose parent, guardian or custodian has
15 knowingly or intentionally tortured, cruelly confined or
16 cruelly punished the child;

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

19 (1) attempted, conspired to cause or caused
20 great bodily harm to the child or great bodily harm or death to
21 the child's sibling;

22 (2) attempted, conspired to cause or caused
23 great bodily harm or death to another parent, guardian or
24 custodian of the child;

25 (3) attempted, conspired to subject or has

1 subjected the child to torture, chronic abuse or sexual abuse;
2 or

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

5 D. "educational decision maker" means an individual
6 appointed by the children's court to attend school meetings and
7 to make decisions about the child's education that a parent
8 could make under law, including decisions about the child's
9 educational setting, and the development and implementation of
10 an individual education plan for the child;

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

14 ~~F.]~~ E. "great bodily harm" means an injury to a
15 person that creates a high probability of death, that causes
16 serious disfigurement or that results in permanent or
17 protracted loss or impairment of the function of a member or
18 organ of the body;

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

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

22 (2) who is without proper parental care and
23 control or subsistence, education, medical or other care or
24 control necessary for the child's well-being because of the
25 faults or habits of the child's parent, guardian or custodian

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1 or the failure or refusal of the parent, guardian or custodian,
2 when able to do so, to provide them;

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

7 (4) whose parent, guardian or custodian is
8 unable to discharge that person's responsibilities to and for
9 the child because of incarceration, hospitalization or physical
10 or mental disorder or incapacity; or

11 (5) who has been placed for care or adoption
12 in violation of the law; provided that nothing in the
13 Children's Code shall be construed to imply that a child who is
14 being provided with treatment by spiritual means alone through
15 prayer, in accordance with the tenets and practices of a
16 recognized church or religious denomination, by a duly
17 accredited practitioner thereof is for that reason alone a
18 neglected child within the meaning of the Children's Code; and
19 further provided that no child shall be denied the protection
20 afforded to all children under the Children's Code;

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

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

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

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

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

9 [~~F.~~] H. "relative" means a person related to
10 another person by birth, adoption or marriage within the fifth
11 degree of consanguinity;

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

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

16 (1) allowing, permitting or encouraging a
17 child to engage in prostitution;

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

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

23 [~~L.~~] K. "sibling" means a brother or sister having
24 one or both parents in common by birth or adoption;

25 [~~M.~~] L. "strangulation" has the same meaning as set

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1 forth in Section 30-3-11 NMSA 1978;

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

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

11 **SECTION 21.** Section 32A-28-2 NMSA 1978 (being Laws 2022,
12 Chapter 41, Section 2) is amended to read:

13 "32A-28-2. DEFINITIONS.--As used in the Indian Family
14 Protection Act:

15 A. "active efforts" means efforts that are
16 affirmative, active, thorough and timely and that represent a
17 higher standard of conduct than reasonable efforts;

18 B. "adoptive placement" means a permanent placement
19 of an Indian child for adoption, including an action resulting
20 in a final decree of adoption;

21 C. "child custody proceeding" means an action for
22 foster care placement, termination of parental rights,
23 permanent guardianship or adoptive placement or an action
24 pursuant to Section 32A-3A-8 NMSA 1978 or the Family in Need of
25 Court-Ordered Services Act and includes investigations and

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1 other preliminary activities preceding the formal initiation of
2 an action, but does not include:

- 3 (1) delinquency proceedings; and
4 (2) custodial proceedings or kinship
5 guardianships pursuant to Chapter 40 NMSA 1978;

6 D. "cultural compact" means an agreement that
7 documents how an Indian child placed in an adoptive or
8 guardianship home will continue to actively participate in the
9 child's cultural learning and activities and that is entered
10 into among:

11 (1) the adoptive parents or guardians of the
12 Indian child, which parents or guardians are not members of the
13 Indian child's tribe; and

14 (2) the Indian child's tribe;

15 E. "discussion with an Indian tribe" means
16 documented good faith efforts to actively communicate and work
17 with an Indian tribe;

18 F. "extended family member" means a person who is
19 defined to be an extended family member by law or custom of an
20 Indian child's tribe or, in the absence of such law or custom,
21 means a person who is eighteen years of age or older and who is
22 an Indian child's grandparent, aunt or uncle, brother or
23 sister, brother-in-law or sister-in-law, niece or nephew, first
24 or second cousin, stepparent or godparent;

25 G. "fictive kin" means a person:

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1 (1) who is not a relative or an extended
2 family member of an Indian child and who has a significant,
3 family-like relationship with the child or the child's family,
4 which relationship existed prior to the child's entry into
5 foster care;

6 (2) who meets the definition of "fictive kin"
7 as established by an Indian child's tribe's law, custom or
8 tradition; or

9 (3) chosen by an Indian child who is fourteen
10 years of age or older, regardless of when the relationship
11 between the person and the Indian child was established, when
12 it is in the best interest of the child to identify that person
13 as fictive kin; and

14 H. "foster care placement" means:

15 (1) an action pursuant to the Abuse and
16 Neglect Act removing an Indian child from the child's parent,
17 guardian or Indian custodian for temporary placement in a
18 foster home or institution or the home of a guardian where the
19 parent or Indian custodian cannot have the child returned upon
20 demand, but in which parental rights have not been terminated;
21 or

22 (2) the temporary placement of an Indian child
23 in foster care pursuant to a voluntary agreement entered into
24 between a parent, guardian or Indian custodian and the
25 department pursuant to the Voluntary Placement and Family

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1 Services Act."

2 SECTION 22. A new section of the Kinship Guardianship Act
3 is enacted to read:

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

5 A. It is the policy of the state of New Mexico that
6 the interests of children are best served when they are raised
7 by their parents. When neither parent is able or willing to
8 provide appropriate care, guidance and supervision to a child,
9 it is the policy of the state that, whenever possible, a child
10 should be raised by family members or kinship caregivers.

11 B. The Kinship Guardianship Act is intended to
12 address cases where a parent has left a child or children in
13 the care of another for ninety consecutive days and that
14 arrangement leaves the child or children without appropriate
15 care, guidance or supervision.

16 C. The purposes of the Kinship Guardianship Act are
17 to:

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

21 (2) provide a child with a stable and
22 consistent relationship with a kinship caregiver that will
23 enable the child to develop physically, mentally and
24 emotionally to the maximum extent possible when the child's
25 parents are not willing or able to do so or when there are

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1 extraordinary circumstances."

2 SECTION 23. Section 40-10B-3 NMSA 1978 (being Laws 2001,
3 Chapter 167, Section 3, as amended) is amended to read:

4 "40-10B-3. DEFINITIONS.--As used in the Kinship
5 Guardianship Act:

6 A. "caregiver" means an adult, who is not a parent
7 of a child, with whom a child resides and who provides that
8 child with the care, maintenance and supervision consistent
9 with the duties and responsibilities of a parent of the child;

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

11 C. "department" means the children, youth and
12 families department;

13 D. "guardian" means a person appointed as a
14 guardian by a court or Indian tribal authority; ~~[or a person~~
15 ~~authorized to care for the child by a parental power of~~
16 ~~attorney as permitted by law;~~

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

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

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1 G. ~~"guardianship assistance program" means the~~
2 ~~financial subsidy program provided for in the Kinship~~
3 ~~Guardianship Act;]~~

4 E. "Indian" means, whether an adult or child, a
5 person who is:

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

7 (2) eligible for membership in an Indian
8 tribe;

9 F. "Indian child" means an Indian person, or a
10 person whom there is reason to know is an Indian person, under
11 eighteen years of age, who is neither:

12 (1) married; or

13 (2) emancipated;

14 G. "Indian child's tribe" means:

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

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

21 H. "Indian custodian" means an Indian who, pursuant
22 to tribal law or custom or pursuant to state law:

23 (1) is an adult with legal custody of an
24 Indian child; or

25 (2) has been transferred temporary physical

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1 care, custody and control by the parent of the Indian child;

2 I. "Indian tribe" means an Indian nation, tribe,
3 pueblo or other band, organized group or community of Indians
4 recognized as eligible for the services provided to Indians by
5 the secretary of the interior because of their status as
6 Indians, including an Alaska native village as defined in 43
7 U.S.C. Section 1602(c) or a regional corporation as defined in
8 43 U.S.C. Section 1606. For the purposes of notification to
9 and communication with a tribe as required in the Indian Family
10 Protection Act, "Indian tribe" also includes those tribal
11 officials and staff who are responsible for child welfare and
12 social services matters;

13 ~~[H.]~~ J. "kinship" means the relationship that
14 exists between a child and a relative of the child, a
15 godparent, a member of the child's tribe or clan or an adult
16 with whom the child has a significant bond;

17 ~~[I. "legal custody" means a legal status that vests~~
18 ~~in a person, department or agency the rights and obligations~~
19 ~~that would otherwise vest by law in a parent;~~

20 ~~J.]~~ K. "parent" means a biological or adoptive
21 parent of a child whose parental rights have not been
22 terminated and includes an individual identified as a parent
23 under the New Mexico Uniform Parentage Act; and

24 ~~[K.]~~ L. "relative" means an individual related to a
25 child as a spouse, parent, stepparent, brother, sister,

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1 stepbrother, stepsister, half-brother, half-sister, uncle,
2 aunt, niece, nephew, first cousin or any person denoted by the
3 prefix "grand" or "great", or the spouse or former spouse of
4 the persons specified

5 ~~[L. "subsidized guardianship" means a guardianship~~
6 ~~that meets subsidy eligibility criteria pursuant to the Kinship~~
7 ~~Guardianship Act; and~~

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

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

20 ~~(2) the rights and obligations of the parents~~
21 ~~or guardians, the child and the department, including that the~~
22 ~~parent or guardian has the right to revoke or terminate the~~
23 ~~placement agreement and grant of legal custody to the~~
24 ~~department at any time; and~~

25 ~~(3) such other criteria as set forth by rule~~

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1 ~~promulgated by the department as necessary to comply with state~~
2 ~~and federal law]."~~

3 SECTION 24. Section 40-10B-5 NMSA 1978 (being Laws 2001,
4 Chapter 167, Section 5, as amended) is amended to read:

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

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

8 (1) a kinship caregiver;

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

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

16 (a) the purpose and effect of the
17 guardianship;

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

21 (c) that the parent may appear in court
22 to contest the guardianship; or

23 (4) a caregiver with whom the department has
24 placed the child pursuant to the Children's Code and who has
25 obtained the written consent of the department to file the

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1 petition.

2 B. A petition seeking the appointment of a guardian
3 shall be verified by the petitioner and allege the following
4 with respect to the child:

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

7 (2) the date and place of birth of the child,
8 if known, and if not known, the reason for the lack of
9 knowledge;

10 (3) the legal residence of the child and the
11 place where the child resides, if different from the legal
12 residence;

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

14 (5) the kinship, if any, between the
15 petitioner and the child;

16 (6) the names and addresses of the parents of
17 the child;

18 (7) the names and addresses of persons having
19 legal custody of the child;

20 (8) the existence of any matters pending
21 involving the custody of the child;

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

24 (10) the existence of any matters pending
25 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978

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1 and, if so, a statement that the [~~children, youth and families~~]
2 department consents to the relief requested in the petition;

3 (11) whether the child is an Indian child or
4 there is reason to know that the child is an Indian child, and
5 subject to provisions of the Indian Family Protection Act and,
6 if so:

7 (a) the Indian child's tribe;

8 [~~(a)~~] (b) the tribal affiliations of the
9 Indian child's parents; and

10 [~~(b) the specific actions taken by the~~
11 ~~petitioner to notify the parents' tribes and the results of the~~
12 ~~contacts, including the names, addresses, titles and telephone~~
13 ~~numbers of the persons contacted, and copies of correspondence~~
14 ~~with the tribe]~~

15 (c) active efforts made to comply with
16 the notice requirements pursuant to the Indian Family
17 Protection Act, including results of the contact and the names,
18 addresses, titles and telephone numbers of the persons
19 contacted. Copies of any correspondence with the Indian
20 child's tribe shall be attached as exhibits to the petition;

21 and

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

24 SECTION 25. Section 40-10B-6 NMSA 1978 (being Laws 2001,
25 Chapter 167, Section 6, as amended) is amended to read:

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1 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

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

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

7 (1) the [~~children, youth and families~~]
8 department if there is any pending matter relating to the child
9 pursuant to the provisions of [~~Chapter 32A, Article 4 NMSA~~
10 ~~1978~~] the Children's Code;

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

13 (3) the parents of the child;

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

16 (5) if the child is an Indian child or there
17 is reason to know the child is an Indian child [~~as defined in~~
18 ~~the Children's Code~~] subject to the provisions of the Indian
19 Family Protection Act, the appropriate Indian tribe and [~~the~~
20 ~~child's parent or~~] any "Indian custodian", together with a
21 notice of pendency of the guardianship proceedings, pursuant to
22 the provisions of the Indian Family Protection Act.

23 C. Service of process required by Subsection A of
24 this section shall be made in accordance with the requirements
25 for giving notice of a hearing pursuant to Subsection A of

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1 Section 45-1-401 NMSA 1978.

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

6 SECTION 26. Section 40-10B-7 NMSA 1978 (being Laws 2001,
7 Chapter 167, Section 7) is amended to read:

8 "40-10B-7. TEMPORARY GUARDIANSHIP PENDING HEARING.--

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

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

21 C. An order pursuant to Subsection A of this
22 section may be entered ex parte upon good cause shown. If the
23 order is entered ex parte, a copy of the order shall be served
24 on the persons required to be served pursuant to Subsection B
25 of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA

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1 1978. If a person files an objection to the order, the court
2 immediately shall schedule a hearing to be held within ten days
3 of the date the objection is filed. Notice of the hearing
4 shall be given to the petitioner and all persons required to be
5 served pursuant to Subsection B of Section [~~6 of the Kinship~~
6 ~~Guardianship Act~~] 40-10B-6 NMSA 1978."

7 SECTION 27. Section 40-10B-8 NMSA 1978 (being Laws 2001,
8 Chapter 167, Section 8, as amended) is amended to read:

9 "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--
10 JUDGMENT--CHILD SUPPORT.--

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

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

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

25 (2) a parent of the child is living but all

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1 parental rights in regard to the child have been terminated or
2 suspended by prior court order; or

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

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

11 C. The burden of proof shall be by clear and
12 convincing evidence.

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

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

25 SECTION 28. Section 40-10B-11 NMSA 1978 (being Laws 2001,
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1 Chapter 167, Section 11) is amended to read:

2 "40-10B-11. NOMINATION OBJECTION BY CHILD.--In a
3 proceeding for appointment of a guardian pursuant to the
4 Kinship Guardianship Act:

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

9 B. the court shall not appoint a person as guardian
10 if a child who has reached [~~his fourteenth birthday~~] the age of
11 fourteen files a written objection in the proceeding before the
12 person accepts appointment as guardian unless the court makes a
13 specific finding that it is in the best interest of the child."

14 SECTION 29. Section 40-10B-12 NMSA 1978 (being Laws 2001,
15 Chapter 167, Section 12) is amended to read:

16 "40-10B-12. REVOCATION OF GUARDIANSHIP.--

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

25 B. If the court finds that a preponderance of the

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1 evidence proves a change in circumstances and the revocation is
2 in the best interests of the child, it shall grant the motion
3 and:

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

6 (2) propose and adopt its own transition plan;
7 or

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

10 SECTION 30. REPEAL.--Sections 32A-3A-9 and 40-10B-16
11 through 40-10B-21 NMSA 1978 (being Laws 1993, Chapter 77,
12 Section 71 and Laws 2020, Chapter 51, Sections 4 through 9) are
13 repealed.

14 SECTION 31. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2023.