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SENATE BILL 407

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO CHILDREN; CLARIFYING PROCEDURES FOR THE PLACEMENT
OF CHILDREN ALLEGED TO BE ABUSED OR NEGLECTED; AMENDING
SECTIONS OF THE CHILDREN'S CODE.

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

Section 1. Section 32A-1-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 12) is amended to read:

"32A-1-3. PURPOSE OF ACT. --The Children's Code shall be
interpreted and construed to effectuate the following
legislative purposes:

A. first to provide for the care, protection and
wholesome mental and physical development of children coming
within the provisions of the Children's Code and then to
preserve the unity of the family whenever possible. The
child's health and safety shall be the paramount concern.

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1 Permanent separation of the child from the family, however,
2 would especially be considered when the child or another child
3 of the parent has suffered permanent or severe injury or
4 repeated abuse. It is the intent of the legislature that, to
5 the maximum extent possible, children in New Mexico shall be
6 reared as members of a family unit;

7 B. to provide judicial and other procedures
8 through which the provisions of the Children's Code are
9 executed and enforced and in which the parties are assured a
10 fair hearing and their constitutional and other legal rights
11 are recognized and enforced;

12 C. to provide a continuum of services for children
13 and their families, from prevention to treatment, considering
14 whenever possible prevention, diversion and early
15 intervention, particularly in the schools;

16 D. to provide children with services that are
17 sensitive to their cultural needs;

18 E. to provide for the cooperation and coordination
19 of the civil and criminal systems for investigation,
20 intervention and disposition of cases, to minimize interagency
21 conflicts and to enhance the coordinated response of all
22 agencies to achieve the best interests of the child victim;
23 and

24 F. to provide continuity for children and families
25 appearing before the children's court by assuring that,

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1 whenever possible, a single judge hears all successive cases
2 or proceedings involving a child or family."

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

5 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

6 A. "adult" means an individual who is eighteen
7 years of age or older;

8 B. "child" means an individual who is less than
9 eighteen years old;

10 C. "court", when used without further
11 qualification, means the children's court division of the
12 district court and includes the judge, special master or
13 commissioner appointed pursuant to the provisions of the
14 Children's Code or supreme court rule;

15 D. "court appointed special advocate" or "CASA"
16 means a person appointed as a CASA, pursuant to the provisions
17 of the Children's Court Rules and Forms, who assists the court
18 in determining the best interests of the child by
19 investigating the case and submitting a report to the court;

20 E. "custodian" means a person, other than a parent
21 or guardian, who exercises physical control, care or custody
22 of the child, including any employee of a residential facility
23 or any persons providing out-of-home care;

24 F. "department" means the children, youth and
25 families department, unless otherwise specified;

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1 G. "foster parent" means a person, including a
2 relative of the child, licensed or certified by the department
3 or a child placement agency to provide care for children in
4 the custody of the department or agency;

5 H. "guardian" means the person having the duty and
6 authority of guardianship;

7 I. "guardianship" means the duty and authority to
8 make important decisions in matters having a permanent effect
9 on the life and development of a child and to be concerned
10 about the child's general welfare and includes [~~but is not~~
11 ~~necessarily limited in either number or kind to~~]:

12 (1) the authority to consent to marriage, to
13 enlistment in the armed forces of the United States or to
14 major medical, psychiatric and surgical treatment;

15 (2) the authority to represent the child in
16 legal actions and to make other decisions of substantial legal
17 significance concerning the child;

18 (3) the authority and duty of reasonable
19 visitation of the child;

20 (4) the rights and responsibilities of legal
21 custody when the physical custody of the child is exercised by
22 the child's parents, except when legal custody has been vested
23 in another person; and

24 (5) when the rights of the child's parents
25 have been terminated as provided for in the laws governing

1 termination of parental rights or when both of the child's
2 parents are deceased, the authority to consent to the adoption
3 of the child and to make any other decision concerning the
4 child that the child's parents could have made;

5 J. "guardian ad litem" means an attorney appointed
6 by the children's court to represent and protect the best
7 interests of the child in a court proceeding; provided that no
8 party or employee or representative of a party to the
9 proceeding shall be appointed to serve as a guardian ad litem;

10 K. "Indian child" means an unmarried person who
11 is:

12 (1) less than eighteen years old;

13 (2) a member of an Indian tribe or is
14 eligible for membership in an Indian tribe; and

15 (3) the biological child of a member of an
16 Indian tribe;

17 L. "Indian child's tribe" means:

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

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

24 M "judge", when used without further
25 qualification, means the judge of the court;

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1 N. "legal custody" means a legal status created by
2 the order of the court or other court of competent
3 jurisdiction that vests in a person, department or agency the
4 right to determine where and with whom a child shall live; the
5 right and duty to protect, train and discipline the child and
6 to provide the child with food, shelter, education and
7 ordinary and emergency medical care; the right to consent to
8 major medical, psychiatric, psychological and surgical
9 treatment and to the administration of legally prescribed
10 psychotropic medications pursuant to the Children's Mental
11 Health and Developmental Disabilities Act; and the right to
12 consent to the child's enlistment in the armed forces of the
13 United States, all subject to the powers, rights, duties and
14 responsibilities of the guardian of the child and subject to
15 any existing parental rights and responsibilities. An
16 individual granted legal custody of a child shall exercise the
17 rights and responsibilities as custodian personally, unless
18 otherwise authorized by the court entering the order;

19 O. "parent" or "parents" includes a biological or
20 adoptive parent if the biological or adoptive parent has a
21 constitutionally protected liberty interest in the care and
22 custody of the child. A parent retains all of the duties and
23 authority of guardianship and legal custody of the child,
24 unless otherwise limited or altered by court order;

25 P. "permanency plan" means a determination by the

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1 court that the child's interest will be served best by:

2 (1) return to the parent;

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

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

8 (4) placement in the custody of the
9 department until the child reaches the age of majority, unless
10 the child is emancipated, pursuant to the Emancipation of
11 Minors Act; or

12 (5) placement in the custody of the
13 department under a planned permanent living arrangement that
14 meets the department's definition of long-term foster care;

15 [P.] Q. "person" means an individual or any other
16 form of entity recognized by law;

17 R. "preadoptive parent" means a person with whom a
18 child has been placed for adoption;

19 [Q.] S. "tribal court" means:

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

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

24 [R.] T. "tribal court order" means a document
25 issued by a tribal court that is signed by an appropriate

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1 authority, including a judge, governor or tribal council
2 member, and that orders an action that is within the tribal
3 court's jurisdiction; and

4 [S.] U. "tribunal" means any judicial forum other
5 than the court. "

6 Section 3. Section 32A-4-2 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 96, as amended) is amended to read:

8 "32A-4-2. DEFINITIONS. --As used in the Abuse and Neglect
9 Act:

10 A. "abandonment" includes [~~but is not limited to~~]
11 instances when the parent, without justifiable cause:

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

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

17 (a) three months if the child was under
18 six years of age at the commencement of the three-month
19 period; or

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

22 B. "abused child" means a child:

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

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

4 (3) who has suffered sexual abuse or sexual
5 exploitation inflicted by the child's parent, guardian or
6 custodian;

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

10 (5) whose parent, guardian or custodian has
11 knowingly or intentionally tortured, cruelly confined or
12 cruelly punished the child;

13 C. "aggravated circumstances" include those
14 circumstances in which the parent, guardian or custodian has:

15 (1) attempted, conspired to cause or caused
16 great bodily harm to the child or great bodily harm or death
17 to the child's sibling;

18 (2) attempted, conspired to cause or caused
19 great bodily harm or death to another parent, guardian or
20 custodian of the child;

21 (3) attempted, conspired to subject or has
22 subjected the child to torture, chronic abuse or sexual abuse;
23 or

24 (4) had his parental rights over a sibling of
25 the child terminated involuntarily;

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1 D. "great bodily harm" means an injury to a person
2 that creates a high probability of death, that causes serious
3 disfigurement or that results in permanent or protracted loss
4 or impairment of the function of any member or organ of the
5 body;

6 [~~C-~~] E. "neglected child" means a child:

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

9 (2) who is without proper parental care and
10 control or subsistence, education, medical or other care or
11 control necessary for the child's well-being because of the
12 faults or habits of the child's parent, guardian or custodian
13 or the [~~neglect~~] failure or refusal of the parent, guardian or
14 custodian, when able to do so, to provide them;

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

19 (4) whose parent, guardian or custodian is
20 unable to discharge his responsibilities to and for the child
21 because of incarceration, hospitalization or [~~other~~] physical
22 or mental disorder or incapacity; or

23 (5) who has been placed for care or adoption
24 in violation of the law; provided that nothing in the
25 Children's Code shall be construed to imply that a child who

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1 is being provided with treatment by spiritual means alone
2 through prayer, in accordance with the tenets and practices of
3 a recognized church or religious denomination, by a duly
4 accredited practitioner thereof is for that reason alone a
5 neglected child within the meaning of the Children's Code; and
6 further provided that no child shall be denied the protection
7 afforded to all children under the Children's Code;

8 ~~[D.]~~ F. "physical abuse" includes but is not
9 limited to any case in which the child exhibits evidence of
10 skin bruising, bleeding, malnutrition, failure to thrive,
11 burns, fracture of any bone, subdural hematoma, soft tissue
12 swelling or death and:

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

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

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

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

21 ~~[E.]~~ G. "sexual abuse" includes but is not limited
22 to criminal sexual contact, incest or criminal sexual
23 penetration, as those acts are defined by state law; and

24 ~~[F.]~~ H. "sexual exploitation" includes but is not
25 limited to:

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

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

5 (3) filming or depicting a child for obscene
6 or pornographic commercial purposes, as those acts are defined
7 by state law. "

8 Section 4. Section 32A-4-7 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 101) is amended to read:

10 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY. --

11 A. A person taking a child into custody shall,
12 with all reasonable speed:

13 (1) release the child to the child's parent,
14 guardian or custodian and issue verbal counsel or warning as
15 may be appropriate; or

16 (2) deliver the child to the department or to
17 an appropriate shelter-care facility [~~and~~] or, in the case of
18 a child who is believed to be suffering from a serious
19 physical or mental condition or illness that requires prompt
20 treatment or diagnosis, deliver the child to a medical
21 facility. If a law enforcement officer delivers a child to a
22 shelter-care facility or a medical facility, the officer shall
23 immediately notify the department that the child has been
24 placed in the department's custody.

25 B. When an alleged neglected or abused child is

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1 delivered to the department, a department caseworker shall
2 review the need for placing the child in custody and shall
3 release the child from custody unless custody is appropriate
4 or has been ordered by the court. When a child is delivered
5 to an appropriate shelter-care facility, a department
6 caseworker shall review the need for retention of custody
7 within a reasonable time after delivery of the child to the
8 facility and shall release the child from custody unless
9 custody is appropriate or has been ordered by the court.

10 C. If a child is placed in the custody of the
11 department and is not released to the child's parent, guardian
12 or custodian, the department shall give written notice thereof
13 as soon as possible, and in no case later than twenty-four
14 hours, to the child's parent, guardian or custodian together
15 with a statement of the reason for taking the child into
16 custody.

17 D. Reasonable efforts shall be made to prevent or
18 eliminate the need for removing the child from the child's
19 home, with the paramount concern being the child's health and
20 safety. In all cases when a child is taken into custody, the
21 child shall be released to the child's parent, guardian or
22 custodian, unless the department files a petition within two
23 days from the date that the child was taken into custody. "

24 Section 5. Section 32A-4-18 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 112) is amended to read:

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1 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
2 PROBABLE CAUSE.--

3 A. When a child alleged to be neglected or abused
4 has been taken into custody by the department or the
5 department has petitioned the court for temporary custody, a
6 custody hearing shall be held within ten days from the date
7 the petition is filed to determine if the child should remain
8 in or be placed in the department's custody pending
9 adjudication. Upon written request of the respondent, the
10 hearing may be held earlier, but in no event shall the hearing
11 be held sooner than two days after the date the petition was
12 filed.

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

16 C. At the custody hearing, the court shall release
17 the child to his parent, guardian or custodian unless probable
18 cause exists to believe that:

19 (1) the child is suffering from an illness or
20 injury, and the parent, guardian or custodian is not providing
21 adequate care for the child;

22 (2) the child is in immediate danger from his
23 surroundings and removal from those surroundings is necessary
24 for the child's safety or well-being;

25 (3) the child will be subject to injury by

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1 others if not placed in the custody of the department;

2 (4) there has been an abandonment of the
3 child by his parent, guardian or custodian; or

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

7 D. At the conclusion of the custody hearing, if
8 the court determines that custody pending adjudication is
9 appropriate, the court may:

10 (1) return the child to his parent, guardian
11 or custodian upon such conditions as will reasonably assure
12 the safety and well-being of the child; or

13 (2) award custody of the child to the
14 department with or without provision for visitation rights for
15 the parent, guardian or custodian of the child.

16 Reasonable efforts shall be made to preserve and reunify
17 the family, with the paramount concern being the child's
18 health and safety.

19 E. At the conclusion of the custody hearing, the
20 court may order the respondent or the child alleged to be
21 neglected or abused, or both, to undergo appropriate
22 diagnostic examinations or evaluations. Copies of any
23 diagnostic or evaluation reports ordered by the court shall be
24 provided to the parties at least five days before the
25 adjudicatory hearing is scheduled. The reports shall not be

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1 sent to the court.

2 F. The Rules of Evidence shall not apply to
3 custody hearings. "

4 Section 6. Section 32A-4-20 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 114, as amended) is amended to read:

6 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
7 DISPOSITIONAL MATTERS--PENALTY.--

8 A. The proceedings shall be recorded by
9 stenographic notes or by electronic, mechanical or other
10 appropriate means.

11 B. All abuse and neglect hearings shall be closed
12 to the general public.

13 C. Only the parties, their counsel, witnesses and
14 other persons approved by the court may be present at a closed
15 hearing. The foster parent, preadoptive parent or relative
16 providing care for the child shall be given notice and an
17 opportunity to be heard at the dispositional phase. Those
18 other persons the court finds to have a proper interest in the
19 case or in the work of the court may be admitted by the court
20 to closed hearings on the condition that they refrain from
21 divulging any information that would identify the child or
22 family involved in the proceedings.

23 D. Accredited representatives of the news media
24 shall be allowed to be present at closed hearings, subject to
25 the condition that they refrain from divulging information

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1 that would identify any child involved in the proceedings or
2 the parent, guardian or custodian of that child and subject to
3 enabling regulations as the court finds necessary for the
4 maintenance of order and decorum and for the furtherance of
5 the purposes of the Children's Code.

6 E. If the court finds that it is in the best
7 interest of the child, the child may be excluded from a
8 neglect or an abuse hearing. Under the same conditions, a
9 child may be excluded by the court during a hearing on
10 dispositional issues.

11 F. Those persons or parties granted admission to a
12 closed hearing who intentionally divulge information in
13 violation of this section are guilty of a petty misdemeanor.

14 G. The court shall determine if the allegations of
15 the petition are admitted or denied. If the allegations are
16 denied, the court shall proceed to hear evidence on the
17 petition. The court after hearing all of the evidence bearing
18 on the allegations of neglect or abuse shall make and record
19 its findings on whether the child is a neglected child, an
20 abused child or both. If the petition alleges that the
21 parent, guardian or custodian has subjected the child to
22 aggravated circumstances, then the court shall also make and
23 record its findings on whether the aggravated circumstances
24 have been proved.

25 H. If the court finds on the basis of a valid

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1 admission of the allegations of the petition or on the basis
2 of clear and convincing evidence, competent, material and
3 relevant in nature, that the child is neglected or abused, the
4 court may proceed immediately or at a postponed hearing to
5 make disposition of the case. If the court does not find that
6 the child is neglected or abused, the court shall dismiss the
7 petition and may refer the family to the department for
8 appropriate services.

9 I. In that part of the hearings held under the
10 Children's Code on dispositional issues, all relevant and
11 material evidence helpful in determining the questions
12 presented, including oral and written reports, may be received
13 by the court and may be relied upon to the extent of its
14 probative value even though not competent had it been offered
15 during the part of the hearings on adjudicatory issues.

16 J. On the court's motion or that of a party, the
17 court may continue the hearing on the petition for a period
18 not to exceed thirty days to receive reports and other
19 evidence in connection with disposition. The court shall
20 continue the hearing pending the receipt of the predisposition
21 study and report if that document has not been prepared and
22 received. During any continuances under this subsection, the
23 court shall make an appropriate order for legal custody. "

24 Section 7. Section 32A-4-22 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 116, as amended) is amended to read:

1 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR
2 NEGLECTED CHILD. --

3 A. If not held in conjunction with the
4 adjudicatory hearing, the dispositional hearing shall be
5 commenced within thirty days after the conclusion of the
6 adjudicatory hearing. At the conclusion of the dispositional
7 hearing, the court shall make and include in the dispositional
8 judgment its findings on the following:

9 (1) the interaction and interrelationship of
10 the child with his parent, siblings and any other person who
11 may significantly affect the child's best interest;

12 (2) the child's adjustment to his home,
13 school and community;

14 (3) the mental and physical health of all
15 individuals involved;

16 (4) the wishes of the child as to his
17 custodian;

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

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

23 (7) the availability of services recommended
24 in the treatment plan prepared as a part of the predisposition
25 study in accordance with the provisions of Section 32A-4-21

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1 NMSA 1978;

2 (8) the ability of the parent to care for the
3 child in the home so that no harm will result to the child;

4 (9) whether reasonable efforts were used by
5 the department to prevent removal of the child from the home
6 prior to placement in substitute care and whether reasonable
7 efforts were used to attempt reunification of the child with
8 the natural parent; and

9 (10) if the child is an Indian child, whether
10 the placement preferences set forth in the federal Indian
11 Child Welfare Act of 1978 or the placement preferences of the
12 child's Indian tribe have been followed and whether the Indian
13 child's treatment plan provides for maintaining the Indian
14 child's cultural ties. When placement preferences have not
15 been followed, good cause for noncompliance shall be clearly
16 stated and supported.

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

20 (1) permit the child to remain with his
21 parent, guardian or custodian, subject to those conditions and
22 limitations the court may prescribe;

23 (2) place the child under protective
24 supervision of the department; or

25 (3) transfer legal custody of the child to

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1 any of the following:

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

4 (b) an agency responsible for the care
5 of neglected or abused children; or

6 (c) a child-placement agency willing
7 and able to assume responsibility for the education, care and
8 maintenance of the child and licensed or otherwise authorized
9 by law to receive and provide care for the child.

10 C. If a child is found to be neglected or abused,
11 in its dispositional judgment the court shall also order the
12 department to implement and the child's parent, guardian or
13 custodian to cooperate with any treatment plan approved by the
14 court. Reasonable efforts shall be made to preserve and
15 reunify the family, with the paramount concern being the
16 child's health and safety. The court may determine that
17 reasonable efforts are not required to be made when the court
18 finds that:

19 (1) the efforts would be futile;

20 (2) the parent, guardian or custodian has
21 subjected the child to aggravated circumstances; or

22 (3) the parental rights of the parent to a
23 sibling have been terminated involuntarily.

24 D. Any parent, guardian or custodian of a child
25 who is placed in the legal custody of the department or other

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1 person pursuant to Subsection B of this section shall have
2 reasonable rights of visitation with the child as determined
3 by the court, unless the court finds that the best interests
4 of the child preclude any visitation.

5 E. The court may order reasonable visitation
6 between a child placed in the custody of the department and
7 the child's siblings or any other person who may significantly
8 affect the child's best interest, if the court finds the
9 visitation to be in the child's best interest.

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

14 G. When the court vests legal custody in an
15 agency, institution or department, the court shall transmit
16 with the dispositional judgment copies of the clinical
17 reports, the predisposition study and report and any other
18 information it has pertinent to the care and treatment of the
19 child.

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

25 I. When a child is placed in the custody of the

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1 department, the department shall investigate whether the child
2 is eligible for enrollment as a member of an Indian tribe and,
3 if so, the department shall pursue the enrollment on the
4 child's behalf.

5 J. When the court determines pursuant to
6 Subsection C of this section that no reasonable efforts at
7 reunification are required, the court shall conduct, within
8 thirty days, a permanency hearing as described in Section
9 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
10 implement and finalize the permanency plan in a timely
11 manner. "

12 Section 8. Section 32A-4-25 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 119, as amended) is amended to read:

14 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

15 A. The initial judicial review shall be held
16 within sixty days of the disposition. At the initial review,
17 the parties shall demonstrate to the court efforts made to
18 implement the treatment plan approved by the court in its
19 dispositional order. The court shall determine the extent to
20 which the treatment plan has been implemented and make
21 supplemental orders as necessary to assure compliance with the
22 treatment plan and the safety of the child. Prior to the
23 initial judicial review, the department shall submit a copy of
24 the adjudicatory order, the dispositional order and notice of
25 the initial judicial review to the local substitute care

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1 review board for that judicial district created under the
2 Citizen Substitute Care Review Act. A representative of the
3 local substitute care review board shall be permitted to
4 attend and comment to the court.

5 B. Subsequent periodic reviews of dispositional
6 orders shall be held within six months of the conclusion of
7 the permanency hearing or, if a motion has been filed for
8 termination of parental rights or permanent guardianship,
9 within six months of the decision on that motion and every six
10 months thereafter. Prior to the review, the department shall
11 submit a progress report to the local substitute care review
12 board for that judicial district created under the Citizen
13 Substitute Care Review Act. Prior to any judicial review by
14 the court pursuant to this section, the local substitute care
15 review board may review the dispositional order or the
16 continuation of the order and the department's progress report
17 and report its findings and recommendations to the court. The
18 review may be carried out by either of the following:

19 (1) a judicial review hearing conducted by
20 the court; or

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

24 C. The children's court attorney shall give notice
25 to all parties, the child's guardian ad litem, the child's

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1 CASA, a contractor administering the local substitute care
2 review board and the child's foster parent or substitute care
3 provider of the time, place and purpose of any judicial review
4 hearing held pursuant to [~~Subsections~~] Subsection A or B of
5 this section.

6 D. At any judicial review hearing held pursuant to
7 Subsection B of this section, the department, the child's
8 guardian ad litem and all parties given notice under
9 Subsection C of this section shall have the opportunity to
10 present evidence and to cross-examine witnesses. At the
11 hearing, the department shall show that it has made reasonable
12 effort to implement any treatment plan approved by the court
13 in its dispositional order and shall present a treatment plan
14 consistent with the purposes of the Children's Code for any
15 period of extension of the dispositional order. The
16 respondent shall demonstrate to the court that efforts to
17 comply with the treatment plan approved by the court in its
18 dispositional order and efforts to maintain contact with the
19 child were diligent and made in good faith. The court shall
20 determine the extent of compliance with the treatment plan and
21 whether progress is being made toward establishing a stable
22 and permanent placement for the child.

23 E. The Rules of Evidence shall not apply to
24 hearings held pursuant to this section. The court may admit
25 testimony by any person given notice of the hearing who has

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1 information about the status of the child or the status of the
2 treatment plan.

3 F. At the conclusion of any hearing held pursuant
4 to this section, the court shall make findings of fact and
5 conclusions of law.

6 G. When the child is an Indian child, the court
7 shall determine during review of a dispositional order whether
8 the placement preferences set forth in the federal Indian
9 Child Welfare Act of 1978 or the placement preferences of the
10 child's Indian tribe were followed and whether the child's
11 treatment plan provides for maintaining the child's cultural
12 ties. When placement preferences have not been followed, good
13 cause for noncompliance shall be clearly stated and supported.

14 H. Based on its findings at a judicial review
15 hearing held pursuant to Subsection B of this section, the
16 court shall order one of the following dispositions:

17 (1) dismiss the action and return the child
18 to his parent without supervision if the court finds that
19 conditions in the home that led to abuse have been corrected
20 and it is now safe for the return of the abused child;

21 (2) permit the child to remain with his
22 parent, guardian or custodian subject to those conditions and
23 limitations the court may prescribe, including protective
24 supervision of the child by the department;

25 (3) return the child to his parent and place

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1 the child under the protective supervision of the department;

2 (4) transfer or continue legal custody of the
3 child to:

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

6 (b) a relative or other individual who,
7 after study by the department or other agency designated by
8 the court, is found by the court to be qualified to receive
9 and care for the child and is appointed as a permanent
10 guardian of the child; or

11 (c) the department, subject to the
12 provisions of Paragraph (6) of this subsection;

13 (5) continue the child in the legal custody
14 of the department with or without any required parental
15 involvement in a treatment plan. Reasonable efforts shall be
16 made to preserve and reunify the family, with the paramount
17 concern being the child's health and safety unless the court
18 finds that such efforts are not required. The court may
19 determine that reasonable efforts are not required to be made
20 when the court finds that:

21 (a) the efforts would be futile;

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

24 (c) the parental rights of the parent
25 to a sibling have been terminated involuntarily;

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1 (6) make additional orders regarding the
2 treatment plan or placement of the child to protect the
3 child's best interests if the court determines the department
4 has failed in implementing any material provision of the
5 treatment plan or abused its discretion in the placement or
6 proposed placement of the child; or

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

11 (a) the child's parent, guardian or
12 custodian to show cause why he should not be held in contempt
13 of court; or

14 (b) a hearing on the merits of
15 terminating parental rights.

16 I. Dispositional orders entered pursuant to this
17 section shall remain in force for a period of six months,
18 except for orders that provide for transfer of the child to
19 the child's noncustodial parent or to a permanent guardian.

20 J. The report of the local substitute care review
21 board submitted to the court pursuant to Subsection B of this
22 section shall become a part of the child's permanent court
23 record.

24 K. When the court determines, pursuant to
25 Paragraph (5) of Subsection H of this section, that no

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1 reasonable efforts at reunification are required, the court
2 shall conduct, within thirty days, a permanency hearing as
3 described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts
4 shall be made to place the child in a timely manner in
5 accordance with the permanency plan and to complete whatever
6 steps are necessary to finalize the permanent placement of the
7 child. "

8 Section 9. Section 32A-4-27 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 121) is amended to read:

10 "32A-4-27. INTERVENTION-- PERSONS PERMITTED TO
11 INTERVENE. --

12 A. At any stage of an abuse or neglect proceeding,
13 a person described in this subsection may be permitted to
14 intervene as a party with a motion for affirmative relief:

- 15 (1) a foster parent whom the child has
16 resided with for at least six months;
- 17 (2) a relative within the fifth degree of
18 consanguinity with whom the child has resided;
- 19 (3) a stepparent with whom the child has
20 resided; or
- 21 (4) a person who wishes to become the child's
22 permanent guardian.

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

1 (1) the person's rationale for the purposed
2 intervention; and

3 (2) whether intervention is in the best
4 interest of the child.

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

12 D. The persons described in this subsection shall
13 be permitted to intervene during any stage of an abuse or
14 neglect proceeding:

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

17 (2) when the child is an Indian child, the
18 child's Indian tribe.

19 E. The child's foster parent shall be permitted to
20 intervene when:

21 (1) the foster parent desires to adopt the
22 child;

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

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

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

7 F. The foster parent, preadoptive parent or
8 relative providing care for the child shall be given notice
9 of, and an opportunity to be heard in, any review or hearing
10 with respect to the child, except that this subsection shall
11 not be construed to require that any foster parent,
12 preadoptive parent or relative providing care for the child be
13 made a party to such a review or hearing solely on the basis
14 of the notice and opportunity to be heard. "

15 Section 10. Section 32A-4-28 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 122, as amended) is amended to read:

17 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
18 DECREE. --

19 A. In proceedings to terminate parental rights,
20 the court shall give primary consideration to the physical,
21 mental and emotional welfare and needs of the child, including
22 the likelihood of the child being adopted if parental rights
23 are terminated.

24 B. The court shall terminate parental rights with
25 respect to a child when:

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(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

(a) there is a clear showing that the efforts would be futile [~~or when a parent has caused great bodily harm to the child or great bodily harm or death to the child's sibling; or~~];

(b) the parent has subjected the child to aggravated circumstances; or

(c) the parental rights of the parent to a sibling have been terminated involuntarily; or

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

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

(b) the parent-child relationship has

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1 disintegrated;

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

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

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

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

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

17 D. The termination of parental rights involving a
18 child subject to the federal Indian Child Welfare Act of 1978
19 shall comply with the requirements of that act.

20 E. If the court finds that parental rights should
21 be terminated; that the requirements for the adoption of a
22 child have been satisfied; that the prospective adoptive
23 parent is a party to the action; and that good cause exists to
24 waive the filing of a separate petition for adoption, the
25 court may proceed to grant adoption of the child, absent an

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1 appeal of the termination of parental rights. The court shall
2 not waive any time requirements set forth in the Adoption Act
3 unless the termination of parental rights occurred pursuant to
4 the provisions of Paragraph (3) of Subsection B of this
5 section. The court may enter a decree of adoption only after
6 finding that the party seeking to adopt the child has
7 satisfied all of the requirements set forth in the Adoption
8 Act. Unless otherwise stipulated by all parties, an adoption
9 decree shall take effect sixty days after the termination of
10 parental rights, to allow the department sufficient time to
11 provide counseling for the child and otherwise prepare the
12 child for the adoption. The adoption decree shall conform to
13 the requirements of the Adoption Act and shall have the same
14 force and effect as other adoption decrees entered pursuant to
15 that act. The court clerk shall assign an adoption case
16 number to the adoption decree. "

17 Section 11. Section 32A-4-29 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 123, as amended) is amended to read:

19 "32A-4-29. TERMINATION PROCEDURE. --

20 A. A motion to terminate parental rights may be
21 filed at any stage of the abuse or neglect proceeding. The
22 proceeding may be initiated by any of the following:

- 23 (1) the department;
- 24 (2) a licensed child placement agency; or
- 25 (3) any other person having a legitimate

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1 interest in the matter, including the child's guardian ad
2 litem, a petitioner for adoption, a foster parent or a
3 relative of the child.

4 B. The motion for termination of parental rights
5 shall be signed, verified by the moving party and filed with
6 the court. The motion shall set forth:

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

9 (2) the grounds for termination and the facts
10 and circumstances supporting the grounds for termination;

11 (3) the names and addresses of the persons or
12 authorized agency or agency officer to whom custody might be
13 transferred;

14 (4) whether the child resides or has resided
15 with a foster parent who desires to adopt this child;

16 (5) whether the motion is in contemplation of
17 adoption;

18 (6) the relationship or legitimate interest
19 of the moving party to the child; and

20 (7) whether the child is subject to the
21 federal Indian Child Welfare Act of 1978 and, if so:

22 (a) the tribal affiliations of the
23 child's parents;

24 (b) the specific actions taken by the
25 moving party to notify the parents' tribes and the results of

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1 the contacts, including the names, addresses, titles and
2 telephone numbers of the persons contacted. Copies of any
3 correspondence with the tribes shall be attached as exhibits
4 to the petition; and

5 (c) what specific efforts were made to
6 comply with the placement preferences set forth in the federal
7 Indian Child Welfare Act of 1978 or the placement preferences
8 of the appropriate Indian tribes.

9 C. A parent who has not previously been a party to
10 the proceeding shall be named in the motion and shall become a
11 party to the proceeding unless the court determines that the
12 parent has not established a protected liberty interest in his
13 relationship with the child.

14 D. Notice of the filing of the motion, accompanied
15 by a copy of the motion, shall be served by the moving party
16 on all other parties, [~~foster parents~~] the foster parent,
17 preadoptive parent or relative providing care for the child
18 with whom the child is residing, foster parents with whom the
19 child has resided for six months within the previous twelve
20 months, the custodian of the child, any person appointed to
21 represent any party and any other person the court orders.
22 Service shall be in accordance with the Rules of Civil
23 Procedure for the District Courts for the service of motions
24 in a civil action in this state, except that foster parents
25 and attorneys of record in this proceeding shall be served by

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1 certified mail. The notice shall state specifically that the
2 person served shall file a written response to the motion
3 within twenty days if the person intends to contest the
4 termination. In any case involving a child subject to the
5 federal Indian Child Welfare Act of 1978, notice shall also be
6 sent by certified mail to the tribes of the child's parents
7 and upon any "Indian custodian" as that term is defined in 25
8 U.S.C. Section 1903(6). Further notice shall not be required
9 on a parent who has been provided notice previously pursuant
10 to Section [~~32A-2-17~~] 32A-4-17 NMSA 1978 and who failed to
11 make an appearance.

12 E. If the identity or whereabouts of a person
13 entitled to service are unknown, the moving party shall file a
14 motion for an order granting service by publication supported
15 by the affidavit of the moving party or his agent or attorney
16 detailing the efforts made to locate the person entitled to
17 service. Upon being satisfied that reasonable efforts to
18 locate the person entitled to service have been made and that
19 information as to the identity or whereabouts of the person is
20 still insufficient to effect service in accordance with the
21 Rules of Civil Procedure for the District Courts, the court
22 shall order service by publication pursuant to the Rules of
23 Civil Procedure for the District Courts.

24 F. After a motion for the termination of parental
25 rights is filed, the parent shall be advised of the right to

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1 counsel unless the parent is already represented by counsel.
2 Counsel shall be appointed, upon request, for any parent who
3 is unable to obtain counsel due to financial reasons or, if in
4 the court's discretion, the interests of justice require
5 appointment of counsel.

6 G. The court shall assure that a guardian ad litem
7 represents the child in all proceedings for the termination of
8 parental rights.

9 H. When a motion to terminate parental rights is
10 filed, the moving party shall request a hearing on the motion.
11 The hearing date shall be at least thirty days, but no more
12 than sixty days, after service is effected upon the parties
13 entitled to service under this section.

14 I. In any action for the termination of parental
15 rights brought by a party other than the department and
16 involving a child in the custody of the department, the
17 department may:

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

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

22 J. The grounds for any attempted termination shall
23 be proved by clear and convincing evidence. In any proceeding
24 involving a child subject to the federal Indian Child Welfare
25 Act of 1978, the grounds for any attempted termination shall

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1 be proved beyond a reasonable doubt and shall meet the
2 requirements set forth in 25 U.S.C. Section 1912(f).

3 K. When the court terminates parental rights, it
4 shall appoint a custodian for the child and fix responsibility
5 for the child's support.

6 L. In any termination proceeding involving a child
7 subject to the federal Indian Child Welfare Act of 1978, the
8 court shall in any termination order make specific findings
9 that the requirements of that act have been met.

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

17 Section 12. Section 32A-4-32 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 126) is amended to read:

19 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE. --

20 A. A motion for permanent guardianship may be
21 filed by any party.

22 B. Any application for permanent guardianship
23 shall be signed and verified by the petitioner, filed with the
24 court and set forth:

25 (1) the date, place of birth and marital

1 status of the child, if known;

2 (2) the facts and circumstances supporting
3 the ground for permanent guardianship;

4 (3) the name and address of the prospective
5 guardian and a statement that the person agrees to accept the
6 duties and responsibilities of guardianship;

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

8 (5) the relationship of the child to the
9 petitioner and the prospective guardian; and

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

12 (a) the tribal affiliations of the
13 child's parents;

14 (b) the specific actions taken by the
15 petitioner to notify the parents' tribe and the results of the
16 contacts, including the names, addresses, titles and telephone
17 numbers of the persons contacted. Copies of any
18 correspondence with the tribes shall be attached as exhibits
19 to the petition; and

20 (c) what specific efforts were made to
21 comply with the placement preferences set forth in the federal
22 Indian Child Welfare Act of 1978 or the placement preferences
23 of the appropriate Indian tribes.

24 C. If the petition is not filed by the prospective
25 guardian, the petition shall be verified by the prospective

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1 guardian.

2 D. Notice of the filing of the motion, accompanied
3 by a copy of the motion, shall be served by the moving party
4 on any parent who has not previously been made a party to the
5 proceeding, the parents of the child, foster parents with whom
6 the child is residing, [~~foster parents~~] the foster parent,
7 preadoptive parent or relative providing care for the child
8 with whom the child has resided for six months, the child's
9 custodian, the department, any person appointed to represent
10 any party, including the child's guardian ad litem, and any
11 other person the court orders provided with notice. Service
12 shall be in accordance with the Rules of Civil Procedure for
13 the District Courts for the service of [~~process~~] motions in a
14 civil action in this state. The notice shall state
15 specifically that the person served [~~must~~] shall file a
16 written response to the application within twenty days if the
17 person intends to contest the guardianship.

18 E. When the child is an Indian child, subject to
19 the federal Indian Child Welfare Act of 1978, notice shall
20 also be served upon the Indian tribes of the child's parents
21 and upon any "Indian custodian" as that term is defined in
22 25 U.S.C. Section 1903(6).

23 F. The grounds for permanent guardianship shall be
24 proved by clear and convincing evidence. The grounds for
25 permanent guardianship [~~must~~] shall be proved beyond a

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1 reasonable doubt and meet the requirements of 25 U.S.C.
2 Section 1912(f) in any proceeding involving a child subject to
3 the federal Indian Child Welfare Act of 1978.

4 G. A judgment of the court vesting permanent
5 guardianship with an individual divests the biological or
6 adoptive parent of legal custody or guardianship of the child,
7 but is not a termination of the parent's rights. A child's
8 inheritance rights from and through the child's biological or
9 adoptive parents are not affected by this proceeding.

10 H. Upon a finding that grounds exist for a
11 permanent guardianship, the court may incorporate into the
12 final order provisions for visitation with the natural
13 parents, siblings or other relatives of the child and any
14 other provision necessary to rehabilitate the child or provide
15 for the child's continuing safety and well being.

16 I. The court shall retain jurisdiction to enforce
17 its judgment of permanent guardianship.

18 J. Any party to the abuse or neglect proceeding,
19 the child or a parent of the child may make a motion for
20 revocation of the order granting guardianship when there is a
21 significant change of circumstances including:

22 (1) the child's parent is able and willing to
23 properly care for the child; or

24 (2) the child's guardian is unable to
25 properly care for the child.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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5
6 February 27, 1999

7
8 Mr. President:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 SENATE BILL 407

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

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18 Respectfully submitted,

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23 _____
24 Michael S. Sanchez, Chairman

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Adopted _____ Not

1 Adopted _____

2 (Chief Clerk)

(Chief Clerk)

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6 Date _____

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9 The roll call vote was 5 For 0 Against

10 Yes: 5

11 No: None

12 Excused: Lopez, Sanchez, Tsosie

13 Absent: None

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16 S0407JU1

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FORTY- FOURTH LEGISLATURE

FIRST SESSION, 1999

March 9, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 407

AMENDMENT sponsored by SENATOR SANCHEZ

1. On page 13, line 5, after "facility" and insert "or medical facility".

2. On page 17, line 24, strike "proved" and insert "proven".

3. On page 21, line 23, after "sibling" and insert "of the child".

4. On page 27, line 25, after "sibling" and insert "of the child".

5. On page 32, line 19, after "sibling" and insert "of the child".

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Senator Michael S. Sanchez

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

S0407FS1

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 8, 1999
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 407, as amended
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16 Respectfully submitted,
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21 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/SB 407 aa

Page 49

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Godbey, Luna, T. Taylor, Thompson, Sanchez

Absent: None

J:\99BillsWP\s0407

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