

1 SENATE BILL 237

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Crystal Brantley

10 AN ACT

11 RELATING TO CHILDREN; CREATING THE CRITICAL INCIDENT
12 INVESTIGATION TEAM WITHIN THE PROTECTIVE SERVICES DIVISION OF
13 THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; ESTABLISHING
14 INVESTIGATION UNITS AND A TEAM COORDINATOR; AMENDING AND
15 ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT; PROVIDING FOR
16 SPECIALIZED INVESTIGATION PROCESSES FOR REPORTS OF CRITICAL
17 INCIDENTS OR SERIOUS CRITICAL INCIDENTS AT CERTAIN PROGRAMS OR
18 FACILITIES; REQUIRING REPORTING TO THE OFFICE OF CHILD
19 ADVOCATE; REQUIRING RULES; MAKING AN APPROPRIATION.

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

22 SECTION 1. Section 32A-4-2 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 96, as amended) is amended to read:

24 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
25 Act:

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

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

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

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

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

B. "abused child" means a child:

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

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

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

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

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

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

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

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

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

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

D. "critical incident" means any action or inaction that implicates the well-being or safety of a child in a placement location;

E. "critical incident investigation team" means the team within the protective services division of the department responsible for investigating reports of critical incidents or serious critical incidents;

[D-] F. "educational decision maker" means an individual appointed by the children's court to attend school

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meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's educational setting and the development and implementation of an individual education plan for the child;

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

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

[G.] I. "neglected child" means a child:

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

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

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

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

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

[H.] J. "personal identifier information" means a person's name and contact information, including home or business address, email address or phone number;

[F.] K. "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

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

(2) the explanation given for the condition is

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1 at variance with the degree or nature of the condition;

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

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

6 L. "placement location" means a program or facility
7 at which the department places a child in the department's
8 custody, whether or not the program or facility is
9 administratively connected to the department, receives state or
10 federal funds or is licensed or certified to serve children,
11 and includes emergency or temporary placements;

12 [J.] M. "relative" means a person related to
13 another person by birth, adoption or marriage within the fifth
14 degree of consanguinity;

15 N. "serious critical incident" means an allegation
16 that a child in a placement location is abused or neglected as
17 provided in:

18 (1) the Abuse and Neglect Act;
19 (2) Sections 30-6-1 through 30-6-4 NMSA 1978;
20 (3) the Sexual Exploitation of Children Act;
21 (4) Sections 30-9-1 or 30-9-11 through 30-9-13
22 NMSA 1978; or
23 (5) rules adopted by the department;

24 [K.] O. "sexual abuse" includes criminal sexual
25 contact, incest or criminal sexual penetration, as those acts

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1 are defined by state law;

2 [L.] P. "sexual exploitation" includes:

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

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

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

10 [M.] Q. "sibling" means a brother or sister having
11 one or both parents in common by birth or adoption;

12 [N.] R. "strangulation" has the same meaning as set
13 forth in Section 30-3-11 NMSA 1978;

14 [O.] S. "suffocation" has the same meaning as set
15 forth in Section 30-3-11 NMSA 1978; and

16 [P.] T. "transition plan" means an individualized
17 written plan for a child, based on the unique needs of the
18 child, that outlines all appropriate services to be provided to
19 the child to increase independent living skills. The plan
20 shall also include responsibilities of the child, and any other
21 party as appropriate, to enable the child to be self-sufficient
22 upon emancipation."

23 SECTION 2. Section 32A-4-3 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 97, as amended) is amended to read:

25 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--

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1 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--

2 NOTIFICATION OF PLAN OF SAFE CARE--CRITICAL INCIDENT

3 INVESTIGATION TEAM--LOCAL LAW ENFORCEMENT.--

4 A. Every person, including a licensed physician; a
5 resident or an intern examining, attending or treating a child;
6 a law enforcement officer; a judge presiding during a
7 proceeding; a registered nurse; a visiting nurse; a school
8 employee; a social worker acting in an official capacity; or a
9 member of the clergy who has information that is not privileged
10 as a matter of law, who knows or has a reasonable suspicion
11 that a child is an abused or a neglected child shall report the
12 matter immediately to:

13 (1) a local law enforcement agency;
14 (2) the department; or
15 (3) a tribal law enforcement or social
16 services agency for any Indian child residing in Indian
17 country.

18 B. A law enforcement agency receiving the report
19 shall immediately transmit the facts of the report and the
20 name, address and phone number of the reporter by telephone to
21 the department and shall transmit the same information in
22 writing within forty-eight hours. The department shall
23 immediately transmit the facts of the report and the name,
24 address and phone number of the reporter by telephone to a
25 local law enforcement agency and shall transmit the same

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1 information in writing within forty-eight hours. The written
2 report shall contain the names and addresses of the child and
3 the child's parents, guardian or custodian, the child's age,
4 the nature and extent of the child's injuries, including any
5 evidence of previous injuries, and other information that the
6 maker of the report believes might be helpful in establishing
7 the cause of the injuries and the identity of the person
8 responsible for the injuries. The written report shall be
9 submitted upon a standardized form agreed to by the law
10 enforcement agency and the department.

11 C. The recipient of a report under Subsection A of
12 this section shall take immediate steps to ensure prompt
13 investigation of the report. The investigation shall ensure
14 that immediate steps are taken to protect the health or welfare
15 of the alleged abused or neglected child, as well as that of
16 any other child under the same care who may be in danger of
17 abuse or neglect. A local law enforcement officer trained in
18 the investigation of child abuse and neglect is responsible for
19 investigating reports of alleged child abuse or neglect at
20 schools, daycare facilities or child care facilities.

21 D. If the child alleged to be abused or neglected
22 is in the care or control of or in a facility administratively
23 connected to the department, the report shall be investigated
24 by a local law enforcement officer trained in the investigation
25 of child abuse and neglect; provided that if the report alleges

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1 a critical incident or serious critical incident, the report
2 shall be sent immediately to the critical incident
3 investigation team, and the team shall collaborate in the
4 investigation with the local law enforcement officer. The
5 investigation shall ensure that immediate steps are taken to
6 protect the health or welfare of the alleged abused or
7 neglected child, as well as that of any other child under the
8 same care who may be in danger of abuse or neglect.

9 E. The critical incident investigation team, a law
10 enforcement agency or the department shall have access to any
11 of the records pertaining to a child abuse or neglect case
12 maintained by any of the persons enumerated in Subsection A of
13 this section, except as otherwise provided in the Abuse and
14 Neglect Act.

15 F. A person who violates the provisions of
16 Subsection A of this section is guilty of a misdemeanor and
17 shall be sentenced pursuant to the provisions of Section
18 31-19-1 NMSA 1978.

19 G. A finding that a pregnant woman is using or
20 abusing drugs made pursuant to an interview, self-report,
21 clinical observation or routine toxicology screen shall not
22 alone form a sufficient basis to report child abuse or neglect
23 to the department pursuant to Subsection A of this section. A
24 volunteer, contractor or staff of a hospital or freestanding
25 birthing center shall not make a report based solely on that

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finding and shall make a notification pursuant to Subsection H of this section. Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child based on other criteria as defined by Section 32A-4-2 NMSA 1978, or a combination of criteria that includes a finding pursuant to this subsection.

H. A contractor or staff of a hospital, freestanding birthing center or clinic that provides prenatal or perinatal care shall:

(1) complete a written plan of safe care for a substance-exposed newborn or a pregnant person who agrees to creating a plan of safe care, as provided for by department rule and the Children's Code; and

(2) provide notification to the health care authority. Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.

I. As used in this section, "notification" means informing the health care authority that a substance-exposed newborn was born and providing a copy of the plan of safe care that was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect. The health care authority shall be responsible for ensuring compliance with federal

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1 reporting requirements related to plans of safe care.

2 J. As used in this section, "school employee"
3 includes employees of a school district or a public school."

4 SECTION 3. Section 32A-4-4 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 98, as amended) is amended to read:

6 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

7 A. Reports alleging neglect or abuse shall be
8 referred to the department, which shall conduct an
9 investigation to determine the best interests of the child with
10 regard to any action to be taken. The name and information
11 regarding the person making the report shall not be disclosed
12 absent the consent of the informant or a court order.

13 B. Unless a report pursuant to Subsection A of this
14 section is a report of a critical incident or serious critical
15 incident involving a child in a placement location, if a report
16 alleging neglect or abuse meets the criteria established
17 pursuant to Section 32A-4-4.1 NMSA 1978, the department may
18 assign the case to the multilevel response system.

19 C. During the investigation of a report alleging
20 neglect or abuse, the matter may be referred to another
21 appropriate agency and conferences may be conducted for the
22 purpose of effecting adjustments or agreements that will
23 obviate the necessity for filing a petition. A representative
24 of the department shall, at the initial time of contact with
25 the party subject to the investigation, advise the party of the

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reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made.

D. After completion of the investigation on a neglect or abuse report, the department shall either recommend or refuse to recommend the filing of a petition.

E. When a child is taken into custody, the department shall file a petition within three days, unless the provisions of Subsection F of Section 32A-4-7 NMSA 1978 apply, in which case the petition shall be filed within five days.

F. When the department files a petition, it shall simultaneously provide to the office of family representation and advocacy, and if a child is an Indian child, to the child's Indian nation, tribe or pueblo:

- (1) the petition;
- (2) the name, telephone numbers and addresses of each respondent; and

(3) the names, dates of birth and placement information for each child who is a subject of the petition, including:

(a) the type of placement; and

(b) the name, telephone number and address for the person or entity that holds the license for each child's placement.

G. If a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian."

SECTION 4. Section 32A-4-4.1 NMSA 1978 (being Laws 2019, Chapter 137, Section 2, as amended) is amended to read:

"32A-4-4.1. MULTILEVEL RESPONSE SYSTEM.--

A. The department shall establish a multilevel response system to evaluate and provide services to a child or the family, relatives, caretakers or guardians of a child with respect to whom a report alleging neglect or abuse has been made. The multilevel response system may include an alternative to investigation upon completion of an evaluation that may be completed at intake by the department, the results of which indicate that there is no immediate concern for the child's safety; provided, however, that an investigation shall be conducted for any report:

(1) alleging sexual abuse of a child or serious or imminent harm to a child;

(2) indicating a child fatality;

(3) requiring law enforcement involvement, as identified pursuant to rules promulgated by the department; or

(4) requiring a specialized assessment or a

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1 traditional investigative approach, as determined pursuant to
2 rules promulgated by the department.

3 B. The department may remove a case from the
4 multilevel response system and conduct an investigation if
5 imminent danger of serious harm to the child becomes evident.
6 Unless a case reported is a critical incident or serious
7 critical incident involving a child in a placement location,
8 the department may reassign a case from investigation to the
9 multilevel response system at the discretion of the department.

10 C. For each family, including the child who is the
11 subject of a report to the department and that child's
12 relatives, caretakers or guardians, that receives services
13 under the multilevel response system, the department shall
14 conduct a family assessment. Based on the results of the
15 family assessment, the department may offer or provide
16 referrals for counseling, training or other services aimed at
17 addressing the underlying causative factors jeopardizing the
18 safety or well-being of the child who is the subject of a
19 report to the department. A family member, relative, caretaker
20 or guardian may choose to accept or decline any services or
21 programs offered under the multilevel response system;
22 provided, however, that if a family member, relative, caretaker
23 or guardian declines services, the department may choose to
24 proceed with an investigation.

25 D. The department shall employ licensed social

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1 workers to provide services to families, relatives, caretakers
2 or guardians participating in the multilevel response system to
3 the extent that licensed social workers are available for
4 employment.

5 E. The department shall:

6 (1) provide an annual report of system
7 implementation and outcomes to the legislative finance
8 committee, the interim legislative health and human services
9 committee, the interim legislative committee that studies
10 courts, corrections and justice and the department of finance
11 and administration as part of the department's budget
12 submission;

13 (2) arrange for an independent evaluation of
14 the multilevel response system, including examining outcomes
15 for child safety and well-being and cost-effectiveness;

16 (3) incorporate the multilevel response system
17 into the department's quality assurance review process;

18 (4) develop performance measures, as provided
19 in the Accountability in Government Act, for the multilevel
20 response system; and

21 (5) implement the multilevel response system
22 statewide no later than July 1, 2027.

23 F. The department shall promulgate rules to
24 implement the provisions of this section.

25 G. As used in this section, "family assessment"

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1 means a comprehensive, evidence-based assessment tool used by
2 the department to determine the needs of a child and the
3 child's family, relatives, caretakers or guardians at the time
4 the department receives a report of child abuse and neglect,
5 including an assessment of the likelihood of:

- 6 (1) imminent danger to a child's well-being;
- 7 (2) the child becoming an abused child or a
neglected child; and
- 9 (3) the strengths and needs of the child's
10 family members, relatives, caretakers or guardians with respect
11 to providing for the health and safety of the child."

12 **SECTION 5.** A new section of the Abuse and Neglect Act,
13 Section 32A-4-4.2 NMSA 1978, is enacted to read:

14 "32A-4-4.2. [NEW MATERIAL] CRITICAL INCIDENT
15 INVESTIGATION TEAM CREATED--TEAM COORDINATOR--LOCAL CRITICAL
16 INCIDENT INVESTIGATION UNITS--DUTIES--WRITTEN FINDINGS--
17 REPORTS--

18 A. The "critical incident investigation team" is
19 created within the protective services division of the
20 department. The team consists of a team coordinator, locally
21 assigned critical incident investigation units and other
22 personnel necessary to carry out the duties of the team. The
23 team is responsible for investigating reports of critical
24 incidents or serious critical incidents referred to the team by
25 the department or local law enforcement.

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B. The team coordinator shall:

(1) determine the local authority of each

critical incident investigation unit based on the department's resources, including field offices and access to trained local law enforcement for collaboration and coordination of investigations;

(2) handle all aspects of the intake of reports of critical incidents or serious critical incidents directed to the critical incident investigation team, including documentation and recordkeeping, tracking and transparency as necessary for each report;

(3) immediately assign the appropriate local critical incident investigation unit to investigate each report directed to the critical incident investigation team;

(4) assist in an ongoing manner each local critical incident investigation unit with coordination and collaboration with local law enforcement as necessary or appropriate; provided also that the department shall adopt rules governing coordination with law enforcement to prevent interference with criminal investigations; and

(5) perform any other duties as required and assigned by the department.

C. A critical incident investigation unit shall investigate reports of critical incidents or serious critical incidents involving children in a placement location located in

1 the unit's local area of authority as determined and assigned
2 by the team coordinator. An investigation initiated pursuant
3 to this section:

4 (1) shall commence within twenty-four hours of
5 assignment to the unit;

6 (2) shall include, as appropriate, interviews
7 with the alleged victim, witnesses and placement location
8 staff;

9 (3) shall include review of incident reports,
10 including prior incident reports, applicable medical reports
11 and treatment plans, other relevant records, video or audio
12 recordings, on-site visits and any history of complaints or
13 violations at the placement location;

14 (4) shall include consultations or interviews
15 with experts such as medical, behavioral health or other
16 specialists, including department staff as appropriate;

17 (5) may include additional unannounced or
18 announced site visits to the placement location to observe the
19 environment, interview additional staff, review pertinent
20 records or gather additional information deemed appropriate or
21 necessary; and

22 (6) shall be completed within sixty days of
23 assignment unless the team coordinator documents in writing to
24 the office of child advocate good cause for an extension.

25 D. In conducting an investigation of a critical

incident or serious critical incident involving a child at a placement location pursuant to this section, the critical incident investigation unit shall, to the extent allowed under state or federal law, be provided immediate and unrestricted access to:

(1) the alleged victim;

(2) placement location administrators and

staff;

(3) the physical premises of the placement

location; and

(4) records relevant to the investigation,

including personnel files, incident reports, video or audio

recordings, medical records, treatment plans and licensing or

contract compliance material.

E. The placement location and its employees shall cooperate fully with the critical incident investigation unit and shall not obstruct, interfere with or retaliate against any person who makes a report, participates in an interview or otherwise assists the unit.

F. At the initial contact with an alleged perpetrator, the critical incident investigation unit shall provide to the alleged perpetrator written notice of the allegations and a description of the investigative process.

G. Interviews conducted pursuant to an investigation as provided in this section shall, to the extent

practicable:

(1) be conducted privately;

(2) be documented in an investigation record;

and

(3) include interpreter services when necessary to facilitate effective communication.

H. If information obtained during an investigation identifies a new alleged perpetrator or otherwise expands the allegations, the critical incident investigation unit, in a separate interview conducted pursuant to this section, shall provide the identified new alleged perpetrator an opportunity to respond to the allegation.

I. If the critical incident investigation unit determines that the alleged victim or another child faces immediate risk to health or safety, the unit shall implement or recommend a plan for immediate protective action in coordination with the department and appropriate authorities.

J. An investigation completed pursuant to Subsection C of this section shall be fully documented in a report with written findings and notifications provided to the office of child advocate. The report shall include:

(1) determinations by the critical incident investigation unit as to whether:

(a) the allegations of a critical incident or serious critical incident are substantiated and

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established by a preponderance of evidence or are not established and, when supported by the evidence, include findings as to each specific alleged perpetrator;

(b) concerns are identified regarding a caregiver with a placement location or the placement location as a whole;

(c) a criminal referral is made regarding the allegations; or

(d) the alleged incident did or did not occur, and written documentation of those findings; and

(2) notifications by the critical incident investigation unit to the following parties of the unit's findings, not to include the investigative materials:

(a) the alleged victim and the alleged victim's parent, guardian or custodian;

(b) the administrator, director or similarly titled manager of the placement location where the alleged incident occurred;

(c) appropriate law enforcement if the critical incident investigation unit suspects criminal activity; and

(d) any alleged perpetrator identified in the report, with notice of the right to request administrative review of the findings pursuant to rule of the department.

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1 K. For an allegation investigated pursuant to this
2 section occurring in a placement location, the department may
3 restrict new placements in that placement location during the
4 pendency of the investigation unless the department determines
5 that continued placements do not pose a risk to child safety.

6 L. At the conclusion of an investigation involving
7 a placement location, in its written findings, the critical
8 incident investigation unit shall, as appropriate, require
9 corrective actions or monitoring to ensure that the placement
10 location is compliant with the applicable licensing or contract
11 requirements.

12 M. The critical incident investigation unit shall
13 report any substantiated finding of a critical incident or
14 serious critical incident to the secretary of children, youth
15 and families and the secretary of health care authority. The
16 substantiated findings shall be entered into the abuse and
17 neglect data system.

18 N. For an investigation involving a placement
19 location in Indian country, the department and the critical
20 incident investigation team shall coordinate the investigation
21 with the appropriate tribal authorities."

22 SECTION 6. TEMPORARY PROVISION--RULES.--The children,
23 youth and families department shall adopt and promulgate rules
24 to carry out the provisions of this act no later than September
25 30, 2026.

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1 **SECTION 7. APPROPRIATION.**--Two hundred fifty thousand
2 dollars (\$250,000) is appropriated from the general fund to the
3 children, youth and families department for expenditure in
4 fiscal year 2027 to carry out the provisions of this act. Any
5 unexpended balance remaining at the end of fiscal year 2027
6 shall revert to the general fund.

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