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AN ACT

RELATING TO CHILDREN; MAKING REVISIONS TO THE CHILDREN'S
CODE; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER
32A NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE NMSA
1978 BY REPEALING LAWS 2003, CHAPTER 225, SECTION 10.

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

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

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

A. "adult" means a person who is eighteen years of
age or older;

B. "child" means a person who is less than
eighteen years old;

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

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

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

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

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

1 H. "guardian" means a person appointed as a
2 guardian by a court or Indian tribal authority or a person
3 authorized to care for the child by a parental power of
4 attorney as permitted by law;

5 I. "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
8 no party or employee or representative of a party to the
9 proceeding shall be appointed to serve as a guardian ad
10 litem;

11 J. "Indian child" means an unmarried person who
12 is:

- 13 (1) less than eighteen years old;
14 (2) a member of an Indian tribe or is
15 eligible for membership in an Indian tribe; and
16 (3) the biological child of a member of an
17 Indian tribe;

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

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

25 L. "Indian tribe" means a federally recognized
Indian tribe, community or group pursuant to
25 U.S.C. § 1903(1);

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

 N. "legal custody" means a legal status created by
order of the court or other court of competent jurisdiction
or by operation of statute that vests in a person, department

1 or agency the right to determine where and with whom a child
2 shall live; the right and duty to protect, train and
3 discipline the child and to provide the child with food,
4 shelter, personal care, education and ordinary and emergency
5 medical care; the right to consent to major medical,
6 psychiatric, psychological and surgical treatment and to the
7 administration of legally prescribed psychotropic medications
8 pursuant to the Children's Mental Health and Developmental
9 Disabilities Act; and the right to consent to the child's
10 enlistment in the armed forces of the United States;

11 O. "parent" or "parents" includes a biological or
12 adoptive parent if the biological or adoptive parent has a
13 constitutionally protected liberty interest in the care and
14 custody of the child;

15 P. "permanency plan" means a determination by the
16 court that the child's interest will be served best by:

17 (1) reunification
18 (2) placement for adoption after the
19 parents' rights have been relinquished or terminated or after
20 a motion has been filed to terminate parental rights;

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

23 (4) placement in the legal custody of the
24 department with the child placed in the home of a fit and
25 willing relative; or

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

Q. "person" means an individual or any other form
of entity recognized by law;

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

S. "protective supervision" means the right to

1 visit the child in the home where the child is residing,
2 inspect the home, transport the child to court-ordered
3 diagnostic examinations and evaluations and obtain
4 information and records concerning the child;

5 T. "reunification" means either a return of the
6 child to the parent or to the home from which the child was
7 removed or a return to the noncustodial parent;

8 U. "tribal court" means:

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

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

13 V. "tribal court order" means a document issued by
14 a tribal court that is signed by an appropriate authority,
15 including a judge, governor or tribal council member, and
16 that orders an action that is within the tribal court's
17 jurisdiction; and

18 W. "tribunal" means any judicial forum other than
19 the court."

20 Section 2. Section 32A-1-6 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 15, as amended) is amended to read:

22 "32A-1-6. CHILDREN'S COURT ATTORNEY.--

23 A. The "office of children's court attorney" is
24 established in each judicial district. Except as provided by
25 Subsection C, D or E of this section, each district attorney
is the ex-officio children's court attorney for the judicial
district of the district attorney.

B. Except as provided by Subsection C, D or E of
this section, the children's court attorney may represent the
state in any matter arising under the Children's Code when
the state is the petitioner or complainant. The children's
court attorney shall represent the petitioner in matters

1 arising under the Children's Code when, in the discretion of
2 the judge, the matter presents legal complexities requiring
3 representation by the children's court attorney, whether or
4 not the state is petitioner or complainant, but not in those
5 matters when there is a conflict of interest between the
6 petitioner or complainant and the state. A petitioner or
7 complainant may be represented by counsel in any matter
8 arising under the Children's Code.

9 C. In cases involving civil abuse or civil neglect
10 and the periodic review of their dispositions, the attorney
11 selected by and representing the department is the children's
12 court attorney. The attorney selected by and representing
13 the department shall provide the district attorney of the
14 appropriate judicial district with a copy of any abuse or
15 neglect petition filed in that judicial district. Upon the
16 request of the district attorney, the attorney selected by
17 and representing the department shall provide the district
18 attorney with reports, investigations and pleadings relating
19 to any abuse or neglect petition.

20 D. In cases involving families in need of
21 court-ordered services, the periodic review of their
22 dispositions and voluntary placements, the attorney selected
23 by and representing the department is the children's court
24 attorney. The attorney selected by and representing the
25 department shall provide the district attorney of the
appropriate judicial district with a copy of any family in
need of court-ordered services petition filed in that
judicial district. Upon the request of the district
attorney, the attorney selected by and representing the
department shall provide the district attorney with reports,
investigations and pleadings relating to any family in need
of court-ordered services petition.

1 E. In cases involving a child subject to the
2 provisions of the Children's Mental Health and Developmental
3 Disabilities Act that also involves civil abuse, civil
4 neglect or a family in need of court-ordered services, the
5 attorney selected by and representing the department is the
6 children's court attorney. In cases involving a child
7 subject to the provisions of the Children's Mental Health and
8 Developmental Disabilities Act that does not also involve
9 civil abuse, civil neglect or a family in need of
10 court-ordered services, the district attorney is the ex-
11 officio children's court attorney.

12 F. In those counties where the children's court
13 attorney has sufficient staff and the workload requires it,
14 the children's court attorney may delegate children's court
15 functions to a staff attorney."

16 Section 3. Section 32A-1-7 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 16, as amended) is amended to read:

18 "32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

19 A. A guardian ad litem shall zealously represent
20 the child's best interests in the proceeding for which the
21 guardian ad litem has been appointed and in any subsequent
22 appeals.

23 B. Unless excused by a court, a guardian ad litem
24 appointed to represent a child's best interests shall
25 continue the representation in any subsequent appeals.

 C. Any party may petition the court for an order
to remove a guardian ad litem on the grounds that the
guardian ad litem has a conflict of interest or is unwilling
or unable to zealously represent the child's best interests.

 D. After consultation with the child, a guardian
ad litem shall convey the child's declared position to the
court at every hearing.

1 E. Unless a child's circumstances render the
2 following duties and responsibilities unreasonable, a
3 guardian ad litem shall:

4 (1) meet with and interview the child prior
5 to custody hearings, adjudicatory hearings, dispositional
6 hearings, judicial reviews and any other hearings scheduled
7 in accordance with the provisions of the Children's Code;

8 (2) communicate with health care, mental
9 health care and other professionals involved with the child's
10 case;

11 (3) review medical and psychological reports
12 relating to the child and the respondents;

13 (4) contact the child prior to any proposed
14 change in the child's placement;

15 (5) contact the child after changes in the
16 child's placement;

17 (6) attend local substitute care review
18 board hearings concerning the child and if unable to attend
19 the hearings, forward to the board a letter setting forth the
20 child's status during the period since the last local
21 substitute care review board review and include an assessment
22 of the department's permanency and treatment plans;

23 (7) report to the court on the child's
24 adjustment to placement, the department's and respondent's
25 compliance with prior court orders and treatment plans and
the child's degree of participation during visitations; and

 (8) represent and protect the cultural needs
of the child.

 F. A guardian ad litem may retain separate counsel
to represent the child in a tort action on a contingency fee
basis or any other cause of action in proceedings that are
outside the jurisdiction of the children's court. When a

1 guardian ad litem retains separate counsel to represent the
2 child, the guardian ad litem shall provide the court with
3 written notice within ten days of retaining the separate
4 counsel. A guardian ad litem shall not retain or
5 subsequently obtain any pecuniary interest in an action filed
6 on behalf of the child outside of the jurisdiction of the
7 children's court.

8 G. In the event of a change of venue, the
9 originating guardian ad litem shall remain on the case until
10 a new guardian ad litem is appointed by the court in the new
11 venue and the new guardian ad litem has communicated with and
12 received all pertinent information from the former guardian
13 ad litem.

14 H. A guardian ad litem shall receive notices,
15 pleadings or other documents required to be provided to or
16 served upon a party. A guardian ad litem may file motions
17 and other pleadings and take other actions consistent with
18 the guardian ad litem's powers and duties.

19 I. A guardian ad litem shall not serve
20 concurrently as both the child's delinquency attorney and
21 guardian ad litem."

22 Section 4. Section 32A-1-8 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 17, as amended by Laws 1999, Chapter 46,
24 Section 1 and also by Laws 1999, Chapter 78, Section 1) is
25 amended to read:

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

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

- 1 (1) a delinquent child;
2 (2) a child of a family in need of
3 court-ordered services or a child in need of services
4 pursuant to the Family in Need of Services Act;
5 (3) a neglected child;
6 (4) an abused child;
7 (5) a child subject to adoption; or
8 (6) a child subject to placement for a
9 developmental disability or a mental disorder.

10 B. The court has exclusive original jurisdiction
11 to emancipate a minor.

12 C. During abuse or neglect proceedings in which
13 New Mexico is the home state, pursuant to the provisions of
14 the Uniform Child-Custody Jurisdiction and Enforcement Act,
15 the court shall have jurisdiction over both parents to
16 determine the best interest of the child and to decide all
17 matters incident to the court proceedings.

18 D. Nothing in this section shall be construed to
19 in any way abridge the rights of any Indian tribe to exercise
20 jurisdiction over child custody matters as defined by and in
21 accordance with the federal Indian Child Welfare Act of 1978.

22 E. A tribal court order pertaining to an Indian
23 child in an action under the Children's Code shall be
24 recognized and enforced by the district court for the
25 judicial district in which the tribal court is located. A
tribal court order pertaining to an Indian child that
accesses state resources shall be recognized and enforced
pursuant to the provisions of intergovernmental agreements
entered into by the Indian child's tribe and the department
or another state agency. An Indian child residing on or off
a reservation, as a citizen of this state, shall have the
same right to services that are available to other children

1 of the state, pursuant to intergovernmental agreements. The
2 cost of the services provided to an Indian child shall be
3 determined and provided for in the same manner as services
4 are made available to other children of the state, utilizing
5 tribal, state and federal funds and pursuant to
6 intergovernmental agreements. The tribal court, as the court
7 of original jurisdiction, shall retain jurisdiction and
8 authority over the Indian child."

9 Section 5. Section 32A-1-9 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 18, as amended) is amended to read:

11 "32A-1-9. VENUE AND TRANSFER.--

12 A. Proceedings in the court under the provisions
13 of the Children's Code shall begin in the county where the
14 child resides. If delinquency is alleged, the proceeding may
15 also be begun in the county where the act constituting the
16 alleged delinquent act occurred or in the county in which the
17 child is detained. Neglect, abuse, family in need of
18 court-ordered services or mental health proceedings may also
19 begin in the county where the child is present when the
20 proceeding is commenced.

21 B. The venue for proceedings under other laws will
22 be determined by the venue provisions of the other laws. If
23 the other laws contain no venue provisions, then the venue
24 and transfer provisions of Subsections A and C of this
25 section apply.

C. If a proceeding is begun in a court for a
county other than the county in which the child resides, that
court, on its own motion or on the motion of a party made at
any time prior to disposition of the proceeding, may transfer
the proceeding to the court for the county of the child's
residence for such further proceedings as the receiving court
deems proper. A like transfer may be made if the residence

1 of the child changes during or after the proceeding.
2 Certified copies of all legal and social records pertaining
3 to the proceeding shall accompany the case on transfer.

4 D. In neglect, abuse, family in need of
5 court-ordered services or adoption proceedings for the
6 placement of an Indian child, the court shall, in the absence
7 of good cause to the contrary, transfer the proceeding to the
8 jurisdiction of the Indian child's tribe upon the petition of
9 the Indian child's parent, the Indian child's guardian or the
10 Indian child's tribe. The transfer shall be barred if there
11 is an objection to the transfer by a parent of the Indian
12 child or the Indian child's tribe."

13 Section 6. Section 32A-1-11 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 20) is amended to read:

15 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
16 initiating proceedings pursuant to the provisions of
17 Chapter 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be
18 entitled, "In the Matter of, a child", and shall
19 set forth with specificity:

20 A. the facts necessary to invoke the jurisdiction
21 of the court;

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

24 C. the name, birth date and residence address of
25 the child;

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

1 E. whether the child is in custody or detention
2 pursuant to the Delinquency Act and, if so, the place of
3 custody or detention and the time the child was taken into
4 custody;

5 F. whether the child is an Indian child; and

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

9 Section 7. Section 32A-1-13 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 22, as amended) is amended to read:

11 "32A-1-13. SUMMONS--SERVICE.--

12 A. If a party to be served with a summons can be
13 found within the state, the summons shall be served upon the
14 party as provided by the Rules of Civil Procedure for the
15 District Courts at least forty-eight hours before the
16 hearing, except that for a child party to an action pursuant
17 to the Abuse and Neglect Act, service shall be on the child's
18 guardian ad litem or attorney and not personally pursuant to
19 children's court rule.

20 B. If a party to be served is within the state and
21 cannot be found but the party's address is known, service of
22 the summons may be made by mailing a copy of the summons to
23 the party by certified mail at least fifteen days before the
24 hearing.

25 C. If after reasonable effort a party to be served
cannot be found, or address ascertained, within or without
the state, the court may order service of the summons by
publication in accordance with the provisions of Rule 1-004
of the Rules of Civil Procedure for the District Courts, in
which event the hearing shall not be less than five days
after the date of last publication.

 D. The court may authorize the payment from court

1 funds of the costs of service and of necessary travel
2 expenses incurred by persons summoned or otherwise required
3 to appear at the hearing."

4 Section 8. Section 32A-1-14 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 23) is amended to read:

6 "32A-1-14. NOTICE TO INDIAN TRIBES.--

7 A. In a case involving a family in need of
8 court-ordered services, if the child is an Indian child, the
9 Indian child's tribe shall be notified when the petition is
10 filed. The form of the notice shall comply with the
11 provisions of the federal Indian Child Welfare Act of 1978.

12 B. In abuse, neglect or adoption proceedings, if
13 the child is an Indian child, the Indian child's tribe shall
14 be notified. The form of the notice shall comply with the
15 provisions of the federal Indian Child Welfare Act of 1978."

16 Section 9. Section 32A-1-19 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 28) is amended to read:

18 "32A-1-19. COURT COSTS AND EXPENSES.--

19 A. The following expenses shall be a charge upon
20 the funds of the court upon their certification by the court:

21 (1) reasonable compensation for services and
22 related expenses for counsel appointed by the court;

23 (2) reasonable compensation for services and
24 related expenses of a guardian ad litem or a child's attorney
25 appointed by the court; and

(3) the expenses of service of summonses,
notices, subpoenas, traveling expenses of witnesses and other
like expenses incurred in any proceeding under the Children's
Code.

B. The court may order the parent or other person
legally obligated to care for and support a child to pay all
or part of the costs and expenses pursuant to Subsection A of

1 this section when:

2 (1) the child has been found to be a
3 delinquent child, a child of a family in need of
4 court-ordered services, an abused or neglected child or a
5 child with a mental illness or a developmental disability;

6 (2) the parent or other person legally
7 obligated to care for and support a child is given notice and
8 a hearing to determine the parent or person's financial
9 ability to pay the costs and expenses; and

10 (3) the court finds that the parent or
11 person is able to pay all or part of the costs and expenses.

12 Unless otherwise ordered, payment shall be made to the
13 court for remittance to those to whom compensation is due or,
14 if costs and expenses have been paid by the court, to the
15 court for remittance to the state. The court may prescribe
16 the manner of payment.

17 C. Whenever legal custody of an adjudicated child
18 is vested in someone other than the child's parents,
19 including an agency, institution or department of this state,
20 if the court, after notice to the parents or other persons
21 legally obligated to support the child and after a hearing,
22 finds that the parents or other legally obligated persons are
23 financially able to pay all or part of the costs and expenses
24 of the support and treatment, the court may order the parents
25 or other legally obligated persons to pay to the custodian in
the manner the court directs a reasonable sum that will cover
all or part of the expenses of the support and treatment of
the child subsequent to the entry of the custody order. The
court may use the child support guidelines set forth in
Section 40-4-11.1 NMSA 1978 to calculate a reasonable
payment. If the parents or other legally obligated persons
willfully fail or refuse to pay the sum ordered, the court

1 may proceed with contempt charges and the order for payment
2 may be filed and if filed shall have the effect of a civil
3 judgment."

4 Section 10. A new section of the Children's Code
5 General Provisions Act is enacted to read:

6 "CHILD'S ATTORNEY--POWERS AND DUTIES.--

7 A. An attorney shall represent a child in a
8 proceeding for which the attorney has been retained or
9 appointed. The attorney shall provide the same manner of
10 legal representation and be bound by the same duties to the
11 child as is due an adult client, in accordance with the rules
12 of professional conduct.

13 B. Unless excused by a court, an attorney
14 appointed to represent a child shall represent the child in
15 any subsequent appeals.

16 C. An attorney representing a child in a
17 proceeding pursuant to the Abuse and Neglect Act may retain
18 separate counsel to represent the child in a tort action on a
19 contingency fee basis or any other cause of action in
20 proceedings that are outside the jurisdiction of the
21 children's court. When a child's attorney retains separate
22 counsel to represent the child, the attorney shall provide
23 the court with written notice within ten days of retaining
24 the separate counsel. The child's attorney shall not retain
25 or subsequently obtain any pecuniary interest in an action
filed on behalf of the child outside of the jurisdiction of
the children's court."

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

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a
child that would be designated as a crime under the law if

1 committed by an adult, including the following offenses:

2 (1) an offense pursuant to municipal traffic
3 codes or the Motor Vehicle Code:

4 (a) driving while under the influence
5 of intoxicating liquor or drugs;

6 (b) failure to stop in the event of an
7 accident causing death, personal injury or damage to
8 property;

9 (c) unlawful taking of a vehicle or
10 motor vehicle;

11 (d) receiving or transferring of a
12 stolen vehicle or motor vehicle;

13 (e) homicide by vehicle;

14 (f) injuring or tampering with a
15 vehicle;

16 (g) altering or changing of an engine
17 number or other vehicle identification numbers;

18 (h) altering or forging of a driver's
19 license or permit or any making of a fictitious license or
20 permit;

21 (i) reckless driving;

22 (j) driving with a suspended or revoked
23 license; or

24 (k) an offense punishable as a felony;

25 (2) buying, attempting to buy, receiving,
possessing or being served any alcoholic liquor or being
present in a licensed liquor establishment, other than a
restaurant or a licensed retail liquor establishment, except
in the presence of the child's parent, guardian, custodian or
adult spouse. As used in this paragraph, "restaurant" means
an establishment where meals are prepared and served
primarily for on-premises consumption and that has a dining

1 room, a kitchen and the employees necessary for preparing,
2 cooking and serving meals. "Restaurant" does not include an
3 establishment, as defined in regulations promulgated by the
4 director of the special investigations division of the
5 department of public safety, that serves only hamburgers,
6 sandwiches, salads and other fast foods;

7 (3) a violation of Section 30-29-2 NMSA
8 1978, regarding the illegal use of a glue, aerosol spray
9 product or other chemical substance;

10 (4) a violation of the Controlled Substances
11 Act;

12 (5) escape from the custody of a law
13 enforcement officer or a juvenile probation or parole officer
14 or from any placement made by the department by a child who
15 has been adjudicated a delinquent child;

16 (6) a violation of Section 30-15-1.1 NMSA
17 1978 regarding unauthorized graffiti on personal or real
18 property; or

19 (7) a violation of an order of protection
20 issued pursuant to the provisions of the Family Violence
21 Protection Act;

22 B. "delinquent child" means a child who has
23 committed a delinquent act;

24 C. "delinquent offender" means a delinquent child
25 who is subject to juvenile sanctions only and who is not a
youthful offender or a serious youthful offender;

D. "detention facility" means a place where a
child may be detained under the Children's Code pending court
hearing and does not include a facility for the care and
rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if
committed by an adult;

1 F. "misdemeanor" means an act that would be a
2 misdemeanor or petty misdemeanor if committed by an adult;

3 G. "restitution" means financial reimbursement by
4 the child to the victim or community service imposed by the
5 court and is limited to easily ascertainable damages for
6 injury to or loss of property, actual expenses incurred for
7 medical, psychiatric and psychological treatment for injury
8 to a person and lost wages resulting from physical injury,
9 which are a direct and proximate result of a delinquent act.
10 "Restitution" does not include reimbursement for damages for
11 mental anguish, pain and suffering or other intangible
12 losses. As used in this subsection, "victim" means a person
13 who is injured or suffers damage of any kind by an act that
14 is the subject of a complaint or referral to law enforcement
15 officers or juvenile probation authorities. Nothing
16 contained in this definition limits or replaces the
17 provisions of Subsections A and B of Section 32A-2-27 NMSA
18 1978;

19 H. "serious youthful offender" means an individual
20 fifteen to eighteen years of age who is charged with and
21 indicted or bound over for trial for first degree murder. A
22 "serious youthful offender" is not a delinquent child as
23 defined pursuant to the provisions of this section; and

24 I. "youthful offender" means a delinquent child
25 subject to adult or juvenile sanctions who is:

(1) fourteen to eighteen years of age at the
time of the offense and who is adjudicated for at least one
of the following offenses:

(a) second degree murder, as provided
in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a
violent felony, as provided in Section 30-3-3 NMSA 1978;

1 (c) kidnapping, as provided in
2 Section 30-4-1 NMSA 1978;
3 (d) aggravated battery, as provided in
4 Subsection C of Section 30-3-5 NMSA 1978;
5 (e) aggravated battery against a
6 household member, as provided in Subsection C of Section
7 30-3-16 NMSA 1978;
8 (f) aggravated battery upon a peace
9 officer, as provided in Subsection C of Section 30-22-25 NMSA
10 1978;
11 (g) shooting at a dwelling or occupied
12 building or shooting at or from a motor vehicle, as provided
13 in Section 30-3-8 NMSA 1978;
14 (h) dangerous use of explosives, as
15 provided in Section 30-7-5 NMSA 1978;
16 (i) criminal sexual penetration, as
17 provided in Section 30-9-11 NMSA 1978;
18 (j) robbery, as provided in Section
19 30-16-2 NMSA 1978;
20 (k) aggravated burglary, as provided in
21 Section 30-16-4 NMSA 1978;
22 (l) aggravated arson, as provided in
23 Section 30-17-6 NMSA 1978; or
24 (m) abuse of a child that results in
25 great bodily harm or death to the child, as provided in
Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same

1 transaction or occurrence or series of events related in time
2 and location. Successful completion of consent decrees are
3 not considered a prior adjudication for the purposes of this
4 paragraph; or

5 (3) fourteen years of age and adjudicated
6 for first degree murder, as provided in Section 30-2-1 NMSA
7 1978."

8 Section 12. Section 32A-2-7 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 36) is amended to read:

10 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
11 NOTICE--TIME WAIVER.--

12 A. Complaints alleging delinquency shall be
13 referred to probation services, which shall conduct a
14 preliminary inquiry to determine the best interests of the
15 child and of the public with regard to any action to be
16 taken.

17 B. During the preliminary inquiry on a delinquency
18 complaint, the matter may be referred to another appropriate
19 agency and conferences may be conducted for the purpose of
20 effecting adjustments or agreements that will obviate the
21 necessity for filing a petition. At the commencement of the
22 preliminary inquiry, the parties shall be advised of their
23 basic rights pursuant to Section 32A-2-14 NMSA 1978, and no
24 party may be compelled to appear at any conference, to
25 produce any papers or to visit any place. The child shall be
informed of the child's right to remain silent. The
preliminary inquiry shall be completed within the time limits
set forth in the Children's Court Rules.

C. Prior to a preliminary inquiry being conducted
with a child who is detained, the child's parent, guardian or
custodian or the child's attorney shall be given reasonable
notice by the juvenile probation and parole officer and an

1 opportunity to be present at the preliminary inquiry. If a
2 child is not detained, the preliminary inquiry shall be
3 conducted within thirty days of receipt of the referral from
4 law enforcement. The thirty-day time period may be extended
5 upon a determination by the department that an extension is
6 necessary to conduct a thorough preliminary inquiry and that
7 the extension is not prejudicial to the best interests of the
8 child.

9 D. When a child is in detention or custody and the
10 children's court attorney does not file a petition within the
11 time limits authorized by the Children's Court Rules, the
12 child shall be released immediately. If a child is not
13 detained and a determination is made to file a petition, the
14 petition shall be filed within sixty days of completion of
15 the preliminary inquiry, unless a motion is granted to extend
16 the time limit for good cause shown. If a child is not in
17 custody or detention, a petition shall not be dismissed for
18 failure to comply with the time limit set forth in this
19 subsection unless there is a showing of prejudice to the
20 child.

21 E. After completion of the preliminary inquiry on
22 a delinquency complaint involving a misdemeanor, probation
23 services may notify the children's court attorney and
24 recommend an appropriate disposition for the case. If the
25 child has been referred for three or more prior misdemeanors
within two years of the instant offense, probation services
shall notify the children's court attorney and recommend an
appropriate disposition for the case.

F. Probation services shall notify the children's
court attorney of the receipt of any complaint involving an
act that constitutes a felony under the applicable criminal
law. Probation services shall also recommend a disposition

1 to the children's court attorney.

2 G. The child, through counsel, and the children's
3 court attorney may agree, without judicial approval, to a
4 waiver of time limitations imposed after a petition is filed.
5 A time waiver defers adjudication of the charges. The
6 children's court attorney may place restrictions on a child's
7 behavior as a condition of a time waiver. If the child
8 completes the agreed upon conditions and no new charges are
9 filed against the child, the pending petition shall be
10 dismissed. If the children's court attorney files a new
11 petition against the child, the children's court attorney may
12 proceed on both the original petition and the new charges.
13 The department shall become a party if probation services are
14 requested as a condition of the time waiver."

15 Section 13. Section 32A-2-10 NMSA 1978 (being Laws
16 1993, Chapter 77, Section 39, as amended) is amended to read:

17 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

18 A. A person taking a child into custody shall,
19 with all reasonable speed:

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

23 (2) release the child to the child's parent,
24 guardian or custodian upon their written promise to bring the
25 child before the court when requested by the court. If the
parent, guardian or custodian fails, when requested, to bring
the child before the court as promised, the court may order
the child taken into custody and brought before the court;

(3) deliver the child to a place of
detention as provided in Section 32A-2-12 NMSA 1978;

(4) deliver the child to a medical facility,
if available, if the child is believed to be suffering from a

1 serious illness that requires prompt treatment or prompt
2 diagnosis; or

3 (5) deliver the child to an evaluation
4 facility, if available, if the person taking the child into
5 custody has reasonable grounds to believe the child presents
6 a likelihood of serious harm to himself or others or is
7 suffering from some other serious mental condition or illness
8 that requires prompt treatment or prompt diagnosis.

9 B. When an alleged delinquent child is delivered
10 to a place of detention as provided in Section 32A-2-12 NMSA
11 1978, only a department employee or a trained county
12 detention professional designated by the department may place
13 the child in detention, in accordance with the criteria for
14 detention set forth in Section 32A-2-11 NMSA 1978. If the
15 criteria for detention of an alleged delinquent child are not
16 met, the child shall be released from custody.

17 C. A child under the age of eleven shall not be
18 held in detention. If a child under the age of eleven poses
19 a substantial risk of harm to himself or others, a peace
20 officer may detain and transport that child for emergency
21 mental health evaluation and care in accordance with Section
22 32A-6-11 NMSA 1978.

23 D. If a child is taken into custody and is not
24 released to the child's parent, guardian or custodian, the
25 person taking the child into custody shall give written
notice thereof as soon as possible, and in no case later than
twenty-four hours, to the child's parent, guardian or
custodian and to the court, together with a statement of the
reason for taking the child into custody.

E. In all cases when a child is taken into
custody, the child shall be released to the child's parent,
guardian or custodian in accordance with the conditions and

1 time limits set forth in the Children's Court Rules."

2 Section 14. Section 32A-2-12 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 41, as amended) is amended to read:

4 "32A-2-12. PLACEMENT OR DETENTION.--

5 A. A child alleged to be a delinquent child may be
6 placed or detained, pending a court hearing, in any of the
7 following places:

8 (1) a licensed foster home or a home
9 otherwise authorized under the law to provide foster or group
10 care;

11 (2) a facility operated by a licensed child
12 welfare services agency;

13 (3) a shelter-care facility provided for in
14 the Children's Shelter Care Act or a detention facility
15 certified by the department for children alleged to be
16 delinquent children;

17 (4) any other suitable place, other than a
18 facility for the long-term care and rehabilitation of
19 delinquent children to which children adjudicated as
20 delinquent may be confined pursuant to Section 32A-2-19 NMSA
21 1978, designated by the court and which meets the standards
22 for detention facilities pursuant to the Children's Code and
23 federal law; or

24 (5) the child's home or place of residence,
25 under conditions and restrictions approved by the court.

B. A child alleged to be a youthful offender may
be detained, pending a court hearing, in any of the following
places:

(1) a detention facility, licensed by the
department, for children alleged to be delinquent children;
or

(2) any other suitable place, other than a

1 facility for the long-term care and rehabilitation of
2 delinquent children to which children adjudicated as
3 delinquent children may be confined pursuant to Section
4 32A-2-19 NMSA 1978, designated by the court and that meets
5 the standards for detention facilities pursuant to the
6 Children's Code and federal law.

7 C. A child adjudicated as a youthful offender who
8 is violent toward staff or other residents in a detention
9 facility may be transferred and detained, pending a court
10 hearing, in a county jail. In the event that a child is
11 detained in a jail, the director of the jail shall presume
12 that the child is vulnerable to victimization by inmates
13 within the adult population because of his age, and shall
14 take measures to provide protection to the child. However,
15 provision of protective measures shall not result in
16 diminishing a child's civil rights to less than those
17 existing for an incarcerated adult.

18 D. A child who has previously been incarcerated as
19 an adult or a person eighteen years of age or older shall not
20 be detained in a juvenile detention facility or a facility
21 for the long-term care and rehabilitation of delinquent
22 children, but may be detained in a county jail. In the event
23 that a child is detained in a jail, the director of the jail
24 shall presume that the child is vulnerable to victimization
25 by inmates within the adult population because of his age,
and shall take measures to provide protection to the child.
However, provision of protective measures shall not result in
diminishing a child's civil rights to less than those
existing for an incarcerated adult.

E. A child alleged to be a serious youthful
offender may be detained pending a court hearing in any of
the following places, prior to arraignment in metropolitan,

1 magistrate or district court:

2 (1) a detention facility, licensed by the
3 department, for children alleged to be delinquent children;

4 (2) any other suitable place, other than a
5 facility for the long-term care and rehabilitation of
6 delinquent children to which children adjudicated as
7 delinquent children may be confined pursuant to Section
8 32A-2-19 NMSA 1978, designated by the court which meets the
9 standards for detention facilities pursuant to the Children's
10 Code and federal law; or

11 (3) a county jail, if a facility in
12 Paragraph (1) or (2) of this subsection is not appropriate.
13 In the event that a child is detained in a jail, the director
14 of the jail shall presume that the child is vulnerable to
15 victimization by inmates within the adult population because
16 of his age and shall take measures to provide protection to
17 the child. However, provision of protective measures shall
18 not result in diminishing a child's civil rights to less than
19 those existing for an incarcerated adult.

20 F. When a person who is eighteen years of age or
21 older is taken into custody and transported to an adult
22 facility on a juvenile warrant or an adult warrant or other
23 adult charges and an outstanding juvenile warrant exists,
24 notice shall be given to the children's court attorney and
25 the juvenile probation and parole office in the jurisdiction
where the juvenile warrant was issued within one day of the
person being taken into custody. The juvenile probation and
parole office shall give notice that the person has been
taken into custody to the children's court judge and the
attorney who represented the person in the juvenile
proceeding."

1 1993, Chapter 77, Section 46, as amended) is amended to read:

2 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
3 EXAMINATIONS.--

4 A. After a petition has been filed and either a
5 finding with respect to the allegations of the petition has
6 been made or a notice of intent to admit the allegations of
7 the petition has been filed, the court may direct that a
8 predisposition study and report to the court be made in
9 writing by the department or an appropriate agency designated
10 by the court concerning the child, the family of the child,
11 the environment of the child and any other matters relevant
12 to the need for treatment or to appropriate disposition of
13 the case. The following predisposition reports shall be
14 provided to the parties and the court five days before actual
15 disposition or sentencing:

16 (1) the adult probation and parole division
17 of the corrections department shall prepare a predisposition
18 report for a serious youthful offender;

19 (2) the department shall prepare a
20 predisposition report for a serious youthful offender who is
21 convicted of an offense other than first degree murder;

22 (3) the department shall prepare a
23 predisposition report for a youthful offender concerning the
24 youthful offender's amenability to treatment and if:

25 (a) the court determines that a
juvenile disposition is appropriate, the department shall
prepare a subsequent predisposition report; or

(b) the court makes the findings
necessary to impose an adult sentence pursuant to Section
32A-2-20 NMSA 1978, the adult probation and parole division
of the corrections department shall prepare a subsequent
predisposition report; and

1 (4) the department shall prepare a
2 predisposition report for a delinquent offender, upon the
3 court's request.

4 B. Where there are indications that the child may
5 have a mental disorder or developmental disability, the
6 court, on motion by the children's court attorney or that of
7 counsel for the child, may order the child to be examined at
8 a suitable place by a physician, a licensed psychologist or a
9 licensed independent social worker prior to a hearing on the
10 merits of the petition. An examination made prior to the
11 hearing or as a part of the predisposition study and report
12 shall be conducted on an outpatient basis, unless the court
13 finds that placement in a hospital or other appropriate
14 facility is necessary.

15 C. The court, after a hearing, may order
16 examination by a physician, a licensed psychologist or a
17 licensed independent social worker of a parent or custodian
18 whose ability to care for or supervise a child is an issue
19 before the court.

20 D. The court may order that a child adjudicated as
21 a delinquent child be transferred to the facility designated
22 by the secretary of the department for a period of not more
23 than fifteen days within a three hundred sixty-five day time
24 period for purposes of diagnosis, with direction that the
25 court be given a report indicating what disposition appears
most suitable when the interests of the child and the public
are considered.

E. Once the child is committed, the department
shall determine when the child is released. The release
shall be any time after commitment, but not more than fifteen
days after commitment. Upon petition by the department to
the court, the judge may extend the commitment for an

1 additional fifteen days upon good cause shown."

2 Section 16. Section 32A-2-19 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 48, as amended by Laws 2003,
4 Chapter 225, Section 10 and by Laws 2003, Chapter 239,
5 Section 5) is amended to read:

6 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
7 OFFENDER.--

8 A. At the conclusion of the dispositional hearing,
9 the court may make and include in the dispositional judgment
10 its findings on the following:

11 (1) the interaction and interrelationship of
12 the child with the child's parents, siblings and any other
13 person who may significantly affect the child's best
14 interests;

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

17 (3) the mental and physical health of all
18 individuals involved;

19 (4) the wishes of the child as to his
20 custodian;

21 (5) the wishes of the child's parents as to
22 the child's custody;

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

(7) the availability of services recommended
in the predisposition report; and

(8) the ability of the parents to care for
the child in the home.

B. If a child is found to be delinquent, the court
may impose a fine not to exceed the fine that could be
imposed if the child were an adult and may enter its judgment

1 making any of the following dispositions for the supervision,
2 care and rehabilitation of the child:

3 (1) transfer legal custody to the
4 department, an agency responsible for the care and
5 rehabilitation of delinquent children, which shall receive
6 the child at a facility designated by the secretary of the
7 department as a juvenile reception facility. The department
8 shall thereafter determine the appropriate placement,
9 supervision and rehabilitation program for the child. The
10 judge may include recommendations for placement of the child.
11 Commitments are subject to limitations and modifications set
12 forth in Section 32A-2-23 NMSA 1978. The types of
13 commitments include:

14 (a) a short-term commitment of one year
15 in a facility for the care and rehabilitation of adjudicated
16 delinquent children. No more than nine months shall be
17 served at the facility and no less than ninety days shall be
18 served on parole, unless: 1) a petition to extend the
19 commitment has been filed prior to the commencement of
20 parole; 2) the commitment has been extended pursuant to
21 Section 32A-2-23 NMSA 1978; or 3) parole is revoked pursuant
22 to Section 32A-2-25 NMSA 1978;

23 (b) a long-term commitment for no more
24 than two years in a facility for the care and rehabilitation
25 of adjudicated delinquent children. No more than twenty-one
months shall be served at the facility and no less than
ninety days shall be served on parole, unless: 1) parole is
revoked pursuant to Section 32A-2-25 NMSA 1978; or 2) the
commitment is extended pursuant to Section 32A-2-23 NMSA
1978;

(c) if the child is a delinquent
offender who committed one of the criminal offenses set forth

1 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
2 age twenty-one, unless sooner discharged; or

3 (d) if the child is a youthful
4 offender, a commitment to age twenty-one, unless sooner
5 discharged;

6 (2) place the child on probation under those
7 conditions and limitations as the court may prescribe;

8 (3) place the child in a local detention
9 facility that has been certified in accordance with the
10 provisions of Section 32A-2-4 NMSA 1978 for a period not to
11 exceed fifteen days within a three hundred sixty-five day
12 time period; or if a child is found to be delinquent solely
13 on the basis of Paragraph (3) of Subsection A of Section
14 32A-2-3 NMSA 1978, the court shall only enter a judgment
15 placing the child on probation or ordering restitution or
16 imposing a fine not to exceed the fine that could be imposed
17 if the child were an adult or any combination of these
18 dispositions; or

19 (4) if a child is found to be delinquent
20 solely on the basis of Paragraph (2), (3) or (4) of
21 Subsection A of Section 32A-2-3 NMSA 1978, the court may make
22 any disposition provided by this section and may enter its
23 judgment placing the child on probation and, as a condition
24 of probation, transfer custody of the child to the department
25 for a period not to exceed six months without further order
of the court; provided that this transfer shall not be made
unless the court first determines that the department is able
to provide or contract for adequate and appropriate treatment
for the child and that the treatment is likely to be
beneficial.

C. When the child is an Indian child, the Indian
child's cultural needs shall be considered in the

1 dispositional judgment and reasonable access to cultural
2 practices and traditional treatment shall be provided.

3 D. A child found to be delinquent shall not be
4 committed or transferred to a penal institution or other
5 facility used for the execution of sentences of persons
6 convicted of crimes.

7 E. Whenever the court vests legal custody in an
8 agency, institution or department, it shall transmit with the
9 dispositional judgment copies of the clinical reports,
10 predisposition study and report and other information it has
11 pertinent to the care and treatment of the child.

12 F. Prior to any child being placed in the custody
13 of the department, the department shall be provided with
14 reasonable oral or written notification and an opportunity to
15 be heard.

16 G. In addition to any other disposition pursuant
17 to Subsection B of this section, the court may make an abuse
18 or neglect report for investigation and proceedings as
19 provided for in the Abuse and Neglect Act. The report may be
20 made to a local law enforcement agency, the department or a
21 tribal law enforcement or social service agency for an Indian
22 child residing in Indian country.

23 H. In addition to any other disposition pursuant
24 to this section or any other penalty provided by law, if a
25 child fifteen years of age or older is adjudicated delinquent
on the basis of Paragraph (2), (3) or (4) of Subsection A of
Section 32A-2-3 NMSA 1978, the child's driving privileges may
be denied or the child's driver's license may be revoked for
a period of ninety days. For a second or a subsequent
adjudication, the child's driving privileges may be denied or
the child's driver's license revoked for a period of one
year. Within twenty-four hours of the dispositional

1 judgment, the court may send to the motor vehicle division of
2 the taxation and revenue department the order adjudicating
3 delinquency. Upon receipt of an order from the court
4 adjudicating delinquency, the director of the motor vehicle
5 division of the taxation and revenue department may revoke or
6 deny the delinquent's driver's license or driving privileges.
7 Nothing in this section may prohibit the delinquent from
8 applying for a limited driving privilege pursuant to Section
9 66-5-35 NMSA 1978 or an ignition interlock license pursuant
10 to the Ignition Interlock Licensing Act, and nothing in this
11 section precludes the delinquent's participation in an
12 appropriate educational, counseling or rehabilitation
13 program.

14 I. In addition to any other disposition pursuant
15 to this section or any other penalty provided by law, when a
16 child is adjudicated delinquent on the basis of Paragraph (6)
17 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall
18 perform the mandatory community service set forth in Section
19 30-15-1.1 NMSA 1978. When a child fails to completely
20 perform the mandatory community service, the name and address
21 of the child's parent or legal guardian shall be published in
22 a newspaper of general circulation, accompanied by a notice
23 that he is the parent or legal guardian of a child
24 adjudicated delinquent for committing graffiti."

25 Section 17. Section 32A-2-20 NMSA 1978 (being Laws
1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either
an adult sentence or juvenile sanctions on a youthful
offender. The children's court attorney shall file a notice
of intent to invoke an adult sentence within ten working days
of the filing of the petition, provided that the court may

1 extend the time for filing of the notice of intent to invoke
2 an adult sentence, for good cause shown, prior to the
3 adjudicatory hearing. A preliminary hearing by the court or
4 a hearing before a grand jury shall be held, within ten days
5 after the filing of the intent to invoke an adult sentence,
6 to determine whether probable cause exists to support the
7 allegations contained in the petition.

8 B. If the children's court attorney has filed a
9 notice of intent to invoke an adult sentence and the child is
10 adjudicated as a youthful offender, the court shall make the
11 following findings in order to invoke an adult sentence:

12 (1) the child is not amenable to treatment
13 or rehabilitation as a child in available facilities; and

14 (2) the child is not eligible for commitment
15 to an institution for children with developmental
16 disabilities or mental disorders.

17 C. In making the findings set forth in Subsection
18 B of this section, the judge shall consider the following
19 factors:

20 (1) the seriousness of the alleged offense;

21 (2) whether the alleged offense was
22 committed in an aggressive, violent, premeditated or willful
23 manner;

24 (3) whether a firearm was used to commit the
25 alleged offense;

(4) whether the alleged offense was against
persons or against property, greater weight being given to
offenses against persons, especially if personal injury
resulted;

(5) the sophistication and maturity of the
child as determined by consideration of the child's home,
environmental situation, emotional attitude and pattern of

1 living;

2 (6) the record and previous history of the
3 child;

4 (7) the prospects for adequate protection of
5 the public and the likelihood of reasonable rehabilitation of
6 the child by the use of procedures, services and facilities
7 currently available; and

8 (8) any other relevant factor, provided that
9 factor is stated on the record.

10 D. If a child has previously been sentenced as an
11 adult pursuant to the provisions of this section, there shall
12 be a rebuttable presumption that the child is not amenable to
13 treatment or rehabilitation as a child in available
14 facilities.

15 E. If the court invokes an adult sentence, the
16 court may sentence the child to less than, but shall not
17 exceed, the mandatory adult sentence. A youthful offender
18 given an adult sentence shall be treated as an adult offender
19 and shall be transferred to the legal custody of an agency
20 responsible for incarceration of persons sentenced to adult
21 sentences. This transfer terminates the jurisdiction of the
22 court over the child with respect to the delinquent acts
23 alleged in the petition.

24 F. If a juvenile disposition is appropriate, the
25 court shall follow the provisions set forth in Section
32A-2-19 NMSA 1978. A youthful offender may be subject to
extended commitment in the care of the department until the
age of twenty-one, pursuant to the provisions of Section
32A-2-23 NMSA 1978.

G. A child fourteen years of age or older, charged
with first degree murder, but not convicted of first degree
murder and found to have committed a youthful offender

1 offense as set forth in Subsection I of Section 32A-2-3 NMSA
2 1978, is subject to the dispositions set forth in this
3 section.

4 H. A child fourteen years of age or older charged
5 with first degree murder, but found to have committed a
6 delinquent act that is neither first degree murder nor a
7 youthful offender offense as set forth in Subsection I of
8 Section 32A-2-3 NMSA 1978, shall be adjudicated as a
9 delinquent subject to the dispositions set forth in Section
10 32A-2-19 NMSA 1978."

11 Section 18. Section 32A-2-21 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 50, as amended) is amended to read:

13 "32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL
14 DISORDER OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY
15 PROCEEDING.--

16 A. If in a hearing at any stage of a proceeding on
17 a delinquency petition the evidence indicates that the child
18 has or may have a mental disorder or developmental
19 disability, the court may:

20 (1) order the child detained if appropriate
21 under the criteria established pursuant to the provisions of
22 the Delinquency Act; and

23 (2) initiate proceedings for the involuntary
24 placement of the child as a minor with a mental disorder or
25 developmental disability pursuant to the provisions of the
Children's Mental Health and Developmental Disabilities Act.

B. If the child is placed for residential
treatment or habilitation pursuant to the Children's Mental
Health and Developmental Disabilities Act, the department
shall retain legal custody during the period of involuntary
placement or until further order of the court.

C. If a child is committed to a psychiatric

1 hospital for treatment or habilitation and in the event that
2 the department should be required to pay more than four
3 hundred dollars (\$400) per day because of the individualized
4 treatment plan, the annual costs over four hundred dollars
5 (\$400) per child per day will be reported annually by the
6 department to the legislative finance committee.

7 D. The child may remain in the residential
8 treatment or habilitation facility pending the disposition of
9 the delinquency petition.

10 E. When a child in departmental custody needs
11 involuntary placement for residential mental health or
12 developmental disability services as a result of a mental
13 disorder or developmental disability, the department shall
14 request the children's court attorney to petition for that
15 child's placement pursuant to the provisions of the
16 Children's Mental Health and Developmental Disabilities Act.

17 F. A child subject to the provisions of the
18 Delinquency Act who receives treatment in a residential
19 treatment or habilitation program shall enjoy all the
20 substantive and procedural rights set forth in the Children's
21 Mental Health and Developmental Disabilities Act.

22 G. A child's competency to stand trial or
23 participate in his own defense may be raised by a party at
24 any time during a proceeding. If the child has been accused
25 of an act that would be considered a misdemeanor if the child
were an adult and the child is found to be incompetent to
stand trial, the court shall dismiss the petition with
prejudice and may recommend that the children's court
attorney initiate proceedings pursuant to the provisions of
the Children's Mental Health and Developmental Disabilities
Act. In all other cases, the court shall stay the
proceedings until the child is competent to stand trial;

1 provided that a petition shall not be stayed for more than
2 one year. The court may order treatment to enable the child
3 to attain competency to stand trial and may amend the
4 conditions of release pursuant to Sections 32A-2-11 and
5 32A-2-13 NMSA 1978. The child's competency to stand trial
6 shall be reviewed every ninety days for up to one year. The
7 court shall dismiss the petition without prejudice if, at any
8 time during the year, the court finds that a child cannot be
9 treated to competency or if, after one year, the court
10 determines that a child is incompetent to stand trial or
11 participate in his own defense. Upon dismissal, the court
12 may recommend that the children's court attorney initiate
13 proceedings pursuant to the provisions of the Children's
14 Mental Health and Developmental Disabilities Act.

15 H. Involuntary residential treatment shall only
16 occur pursuant to the provisions of the Children's Mental
17 Health and Developmental Disabilities Act."

18 Section 19. Section 32A-2-22 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 51, as amended) is amended to read:

20 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT
21 JUDGMENT--CONSENT DECREE--DISPOSITION.--

22 A. At any time after the filing of a delinquency
23 petition and before the entry of a judgment, the court may,
24 on motion of the children's court attorney or that of counsel
25 for the child, suspend the proceedings and continue the child
under supervision in the child's own home under terms and
conditions negotiated with probation services and agreed to
by all the parties affected. The court's order continuing
the child under supervision under this section shall be known
as a "consent decree". An admission of some or all of the
allegations stated in the delinquency petition shall not be
required for a consent decree order.

1 B. If the child objects to a consent decree, the
2 court shall proceed to findings, adjudication and disposition
3 of the case. If the child does not object but an objection
4 is made by the children's court attorney after consultation
5 with probation services, the court shall, after considering
6 the objections and the reasons given, proceed to determine
7 whether it is appropriate to enter a consent decree and may,
8 in its discretion, enter the consent decree.

9 C. A consent decree shall remain in force for six
10 months unless the child is discharged sooner by probation
11 services. Prior to the expiration of the six-month period
12 and upon the application of probation services or any other
13 agency supervising the child under a consent decree, the
14 court may extend the decree for an additional six months in
15 the absence of objection to extension by the child. If the
16 child objects to the extension, the court shall hold a
17 hearing and make a determination on the issue of extension.

18 D. If either prior to discharge by probation
19 services or expiration of the consent decree the child
20 allegedly fails to fulfill the terms of the decree, the
21 children's court attorney may file a petition to revoke the
22 consent decree. Proceedings on the petition shall be
23 conducted in the same manner as proceedings on petitions to
24 revoke probation. If the child is found to have violated the
25 terms of the consent decree, the court may:

(1) extend the period of the consent decree;

or

(2) make any other disposition that would
have been appropriate in the original proceeding.

E. A child who is discharged by probation services
or who completes a period under supervision without
reinstatement of the original delinquency petition shall not

1 again be proceeded against in any court for the same offense
2 alleged in the petition or an offense based upon the same
3 conduct and the original petition shall be dismissed with
4 prejudice. Nothing in this subsection precludes a civil suit
5 against the child for damages arising from the child's
6 conduct.

7 F. A judge who pursuant to this section elicits or
8 examines information or material about a child that would be
9 inadmissible in a hearing on the allegations of the petition
10 shall not, over the objection of the child, participate in
11 any subsequent proceedings on the delinquency if:

12 (1) a consent decree is denied and the
13 allegations in the petition remain to be decided in a hearing
14 where the child denies the allegations; or

15 (2) a consent decree is granted but the
16 delinquency petition is subsequently reinstated.

17 G. If a consent decree has been entered pursuant
18 to the filing of a delinquency petition based on Paragraph
19 (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978
20 for a child who is fifteen years of age or older, a condition
21 of the consent decree agreement may be the denial of the
22 child's driving privileges or the revocation of the child's
23 driver's license for a period of ninety days. For the second
24 or subsequent adjudication, the child's driving privileges
25 may be denied or the child's driver's license revoked for a
period of one year. Within twenty-four hours of the entry by
the court of a decree consenting to the revocation or denial
of the child's driver's license or driving privileges, the
court shall send the decree to the motor vehicle division of
the taxation and revenue department. Upon receipt of the
decree from the court consenting to the denial or revocation
of the child's driving privileges or driver's license, the

1 director of the motor vehicle division of the taxation and
2 revenue department shall revoke or deny the delinquent
3 child's driver's license or driving privileges. Nothing in
4 this section shall prohibit the delinquent child from
5 applying for a limited driving privilege pursuant to Section
6 66-5-35 NMSA 1978 or an ignition interlock license pursuant
7 to the Ignition Interlock Licensing Act, and nothing in this
8 section precludes the delinquent child's participation in an
9 appropriate educational, counseling or rehabilitation
10 program."

11 Section 20. Section 32A-2-23 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 52, as amended) is amended to read:

13 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
14 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

15 A. A judgment transferring legal custody of an
16 adjudicated delinquent child to an agency responsible for the
17 care and rehabilitation of delinquent children divests the
18 court of jurisdiction at the time of transfer of custody,
19 unless the transfer of legal custody is for a commitment not
20 exceeding fifteen days pursuant to the provisions of
21 Section 32A-2-19 NMSA 1978, in which case the court retains
22 jurisdiction, and:

23 (1) the juvenile parole board pursuant to
24 the Juvenile Parole Board Act has the exclusive power to
25 parole or release the child, subject to the provisions of
Section 32A-7-8 NMSA 1978;

(2) the supervision of a child after release
under Paragraph (1) of this subsection shall be conducted by
the department; and

(3) the period of time a child absconds from
parole or probation supervision shall toll all time limits
for the requirement of filing a petition to revoke probation

1 or parole and shall toll the computation of the period of
2 probation or parole supervision pursuant to the provisions of
3 the Delinquency Act.

4 B. A judgment of probation or protective
5 supervision shall remain in force for an indeterminate period
6 not to exceed the term of commitment from the date entered.

7 C. A child shall be released by an agency and
8 probation or supervision shall be terminated by juvenile
9 probation and parole services or the agency providing
10 supervision when it appears that the purpose of the order has
11 been achieved before the expiration of the period of the
12 judgment. A release or termination and the reasons therefor
13 shall be reported promptly to the court in writing by the
14 releasing authority.

15 D. Prior to the expiration of a short-term
16 commitment of one year, as provided for in Section 32A-2-19
17 NMSA 1978, the court may extend the judgment for up to one
18 six-month period if the court finds that the extension is
19 necessary to safeguard the welfare of the child or the public
20 safety. If a short-term commitment is extended, the
21 mandatory ninety-day parole, as required by Section 32A-2-19
22 NMSA 1978, shall be included in the extension. Notice and
23 hearing are required for any extension of a juvenile's
24 commitment.

25 E. Prior to the expiration of a long-term
commitment, as provided for in Section 32A-2-19 NMSA 1978,
the court may extend the judgment for additional periods of
one year until the child reaches the age of twenty-one if the
court finds that the extension is necessary to safeguard the
welfare of the child or the public safety. If a long-term
commitment is extended, the mandatory ninety-day parole, as
required by Section 32A-2-19 NMSA 1978, shall be included in

1 the extension. Notice and hearing are required for any
2 extension of a juvenile's commitment.

3 F. Prior to the expiration of a judgment of
4 probation, the court may extend the judgment for an
5 additional period of one year until the child reaches the age
6 of twenty-one if the court finds that the extension is
7 necessary to protect the community or to safeguard the
8 welfare of the child.

9 G. The court may dismiss a motion if it finds
10 after preliminary investigation that the motion is without
11 substance. If the court is of the opinion that the matter
12 should be reviewed, it may, upon notice to all necessary
13 parties, proceed to a hearing in the manner provided for
14 hearings on petitions alleging delinquency. The court may
15 terminate a judgment if it finds that the child is no longer
16 in need of care, supervision or rehabilitation or it may
17 enter a judgment extending or modifying the original judgment
18 if it finds that action necessary to safeguard the child or
19 the public interest.

20 H. A child may make a motion to modify a
21 children's court or adult disposition within thirty days of
22 the judge's decision. If the court is of the opinion that
23 the matter should be reviewed, it may, upon notice to all
24 necessary parties, proceed to a hearing in the manner
25 provided for hearings on petitions alleging delinquency."

Section 21. Section 32A-2-25 NMSA 1978 (being Laws
1993, Chapter 77, Section 54) is amended to read:

"32A-2-25. PAROLE REVOCATION--PROCEDURES.--

A. A child on parole from an agency that has legal
custody who violates a term of parole may be proceeded
against in a parole revocation proceeding conducted by the
department or the supervising agency or by a hearing officer

1 contracted by the department who is neutral to the child and
2 the agency in accordance with procedures established by the
3 department in cooperation with the juvenile parole board. A
4 juvenile probation and parole officer may detain a child on
5 parole status who is alleged to have violated a term or
6 condition of parole until the completion and review of a
7 preliminary parole revocation hearing. A child may waive the
8 right to a preliminary parole revocation hearing after
9 consultation with the child's attorney, parent, guardian or
10 custodian.

11 B. If a retake warrant is issued by the department
12 upon the completion of the preliminary parole revocation
13 hearing, the juvenile institution to which the warrant is
14 issued shall promptly transport the child to that institution
15 at the expense of the department. If a child absconds from
16 parole supervision and is apprehended in another state after
17 the issuance of a retake warrant by the department, the
18 juvenile justice division of the department shall cause the
19 return of the child to this state at the expense of the
20 department."

21 Section 22. Section 32A-2-27 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 56) is amended to read:

23 "32A-2-27. INJURY TO PERSON OR DESTRUCTION OF
24 PROPERTY--LIABILITY--COSTS AND ATTORNEY FEES--RESTITUTION.--

25 A. Any person may recover damages not to exceed
four thousand dollars (\$4,000) in a civil action in a court
or tribunal of competent jurisdiction from the parent or
guardian having custody and control of a child when the child
has maliciously or willfully injured a person or damaged,
destroyed or deprived use of property, real or personal,
belonging to the person bringing the action.

B. Recovery of damages under this section is

1 limited to the actual damages proved in the action, not to
2 exceed four thousand dollars (\$4,000) taxable court costs
3 and, in the discretion of the court, reasonable attorney fees
4 to be fixed by the court or tribunal.

5 C. Nothing contained in this section limits the
6 discretion of the court to issue an order requiring damages
7 or restitution to be paid by the child when the child has
8 been found to be within the provisions of the Delinquency
9 Act.

10 D. Nothing contained in this section shall be
11 construed so as to impute liability to any foster parent."

12 Section 23. Section 32A-2-30 NMSA 1978 (being Laws
13 1993, Chapter 77, Section 59) is amended to read:

14 "32A-2-30. INDIGENCY STANDARD--FEE SCHEDULE--
15 REIMBURSEMENT.--

16 A. The court shall use a standard adopted and
17 information provided by the public defender department to
18 determine indigency of children in proceedings on petitions
19 alleging delinquency.

20 B. The court shall use a fee schedule adopted by
21 the public defender department when appointing attorneys to
22 represent children in proceedings on petitions alleging
23 delinquency.

24 C. The court shall order reimbursement from the
25 parents or guardians of a child who has received or desires
to receive legal representation or another benefit under the
Public Defender Act after a determination is made that the
child was not indigent according to the standard for
indigency of children adopted by the public defender
department.

D. Any amounts recovered pursuant to this section
shall be paid to the state treasurer for credit to the

1 general fund."

2 Section 24. Section 32A-2-32 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 61, as amended) is amended to read:

4 "32A-2-32. CONFIDENTIALITY--RECORDS.--

5 A. All social records pertaining to the child,
6 including all related diagnostic evaluations, psychiatric
7 reports, medical reports, social studies reports, records
8 from local detention facilities, client-identifying records
9 from facilities for the care and rehabilitation of delinquent
10 children, pre-parole reports and supervision histories
11 obtained by the juvenile probation office, parole officers
12 and parole board or in possession of the department, are
13 confidential and shall not be disclosed directly or
14 indirectly to the public.

15 B. The records described in Subsection A of this
16 section shall be disclosed only to:

- 17 (1) court personnel;
- 18 (2) court appointed special advocates;
- 19 (3) the child's attorney or guardian ad
20 litem;
- 21 (4) department personnel;
- 22 (5) any local substitute care review board
23 or any agency contracted to implement local substitute care
24 review boards;
- 25 (6) corrections department personnel;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) any state government social services
agency in any state;
- (10) those persons or entities of a child's
Indian tribe specifically authorized to inspect such records
pursuant to the federal Indian Child Welfare Act of 1978 or

1 any regulations promulgated thereunder;

2 (11) tribal juvenile justice system and
3 social service representatives;

4 (12) a foster parent, if the records are
5 those of a child currently placed with that foster parent or
6 of a child being considered for placement with that foster
7 parent when the disclosure of the information is necessary
8 for the child's treatment or care and shall include only that
9 information necessary to provide for treatment and care of
10 the child;

11 (13) school personnel involved with the
12 child if the records concern the child's educational needs as
13 necessary for the child's educational planning and shall
14 include only that information necessary to provide for the
15 child's educational needs;

16 (14) health care or mental health
17 professionals involved in the evaluation or treatment of the
18 child, the child's parents, guardians or custodian or other
19 family members;

20 (15) representatives of the protection and
21 advocacy system;

22 (16) the child's parent, guardian or legal
23 custodian when the disclosure of the information is necessary
24 for the child's treatment or care and shall include only that
25 information necessary to provide for the treatment or care of
the child; and

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

C. Whoever intentionally and unlawfully releases
any information or records closed to the public pursuant to
this section or releases or makes other unlawful use of

1 records in violation of this section is guilty of a petty
2 misdemeanor.

3 D. The department shall promulgate rules for
4 implementing disclosure of records pursuant to this section
5 and in compliance with state and federal law and the
6 Children's Court Rules."

7 Section 25. Section 32A-3A-1 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 63) is amended to read:

9 "32A-3A-1. SHORT TITLE--PURPOSE.--

10 A. Chapter 32A, Article 3A NMSA 1978 may be cited
11 as the "Family Services Act".

12 B. The Family Services Act shall be interpreted
13 and construed to effectuate the following expressed
14 legislative purposes:

15 (1) to recognize that many instances of a
16 child's behavior are symptomatic of a family in need of
17 family services; and

18 (2) to provide prevention, diversion and
19 intervention services for a child or family."

20 Section 26. Section 32A-3A-2 NMSA 1978 (being Laws
21 1993, Chapter 77, Section 64) is amended to read:

22 "32A-3A-2. DEFINITIONS.--As used in the Family Services
23 Act:

24 A. "child or family in need of family services"
25 means:

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

(2) a family whose child is absent from the
child's place of residence for twenty-four hours or more
without the consent of the parent, guardian or custodian;

(3) a family in which the parent, guardian

1 or custodian of a child refuses to permit the child to live
2 with the parent, guardian or custodian; or

3 (4) a family in which the child refuses to
4 live with his parent, guardian or custodian; and

5 B. "family services" means services that address
6 specific needs of the child or family."

7 Section 27. Section 32A-3A-3 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 65) is amended to read:

9 "32A-3A-3. REQUEST FOR FAMILY SERVICES--WITHDRAWAL OF
10 REQUEST--PRESUMPTION OF GOOD FAITH.--

11 A. Any child or family member who has a reasonable
12 belief that the child or family is in need of family services
13 may request family services from the department.

14 B. Any person who has a reasonable belief that a
15 child or family is in need of family services may submit a
16 referral to the department.

17 C. A family that requests or accepts family
18 services may withdraw its request for or acceptance of family
19 services at any time.

20 D. A person who refers a child or family for
21 family services is presumed to be acting in good faith and
22 shall be immune from civil or criminal liability, unless the
23 person acted in bad faith or with malicious purpose."

24 Section 28. Section 32A-3A-4 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 66, as amended) is amended to read:

"32A-3A-4. REFERRAL PROCESS.--

A. The department shall, subject to the
availability of resources, design and implement a referral
process to assist a child or family in accessing appropriate
services.

B. When the child involved in the referral process
is an Indian child, the assessment and referral process shall

1 include contact with the Indian child's tribe for the purpose
2 of consulting and exchanging information."

3 Section 29. Section 32A-3B-1 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 73) is amended to read:

5 "32A-3B-1. SHORT TITLE--PURPOSE.--

6 A. Chapter 32A, Article 3B NMSA 1978 may be cited
7 as the "Family in Need of Court-Ordered Services Act".

8 B. The Family in Need of Court-Ordered Services
9 Act shall be interpreted and construed to effectuate the
10 following expressed legislative purposes:

11 (1) through court intervention, to provide
12 services for a family in need of services when voluntary
13 services have been exhausted; and

14 (2) to recognize that many instances of
15 truancy and running away by a child are symptomatic of a
16 family in need of services and that in some family situations
17 the child and parent are unable to share a residence."

18 Section 30. Section 32A-3B-4 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 76) is amended to read:

20 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
21 LIMITATIONS.--

22 A. A law enforcement officer who takes a child
23 into protective custody shall, with all reasonable speed:

24 (1) inform the child of the reasons for the
25 protective custody; and

(2) contact the department.

B. When the department is contacted by a law
enforcement officer who has taken a child into protective
custody, the department may:

(1) accept custody of the child and
designate an appropriate facility in which to place the
child; or

1 (2) return the child to the child's parent,
2 guardian or custodian if the child's safety is assured.

3 C. A child taken into protective custody shall not
4 be placed in or transported in a law enforcement vehicle or
5 any other vehicle that contains an adult placed under arrest,
6 unless circumstances exist in which any delay in transporting
7 the child to an appropriate facility would be likely to
8 result in substantial danger to the child's physical safety.
9 When such circumstances exist, the circumstances shall be
10 described in writing by the driver of the vehicle and
11 submitted to the driver's supervisor within two days after
12 the driver transported the child.

13 D. A child taken into protective custody shall not
14 be held involuntarily for more than two days, unless a
15 petition to extend the custody is filed pursuant to the
16 provisions of the Family in Need of Court-Ordered Services
17 Act or the Abuse and Neglect Act.

18 E. When a petition is filed or any time
19 thereafter, the children's court or district court may issue
20 an ex-parte custody order based upon a sworn written
21 statement of facts showing that probable cause exists to
22 believe that protective custody of the child is necessary.

23 F. The protective custody order shall be served on
24 the respondent by a person authorized to serve arrest
25 warrants and shall direct the law enforcement officer to take
custody of the child and deliver the child to a place
designated by the court.

G. The Rules of Evidence do not apply to the
issuance of an ex-parte custody order."

Section 31. Section 32A-3B-5 NMSA 1978 (being Laws
1993, Chapter 77, Section 77) is amended to read:

"32A-3B-5. NOTIFICATION TO FAMILY--RELEASE FROM

1 PROTECTIVE CUSTODY.--

2 A. When the department takes a child into
3 protective custody and the child is not released to the
4 child's parent, guardian or custodian, the department shall
5 provide written notice as soon as possible, and in no case
6 later than twenty-four hours, to the child's parent, guardian
7 or custodian, with a statement of the reasons for taking the
8 child into protective custody.

9 B. When the department releases a child placed in
10 protective custody to the family, the department shall refer
11 the family for voluntary family services.

12 C. When the department releases a child from
13 protective custody and the child's parent, guardian or
14 custodian refuses to allow the child to return home, the
15 department shall file a petition pursuant to the provisions
16 of the Abuse and Neglect Act.

17 D. If the department is not releasing the child to
18 the parent, guardian or custodian within two days, the
19 department shall notify the tribe if the child is an Indian
20 child."

21 Section 32. Section 32A-3B-8 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 80) is amended to read:

23 "32A-3B-8. BASIC RIGHTS.--

24 A. A child subject to the provisions of the
25 Children's Code is entitled to the same basic rights as an
adult, except as otherwise provided in the Children's Code.

B. In proceedings on a petition alleging a family
in need of court-ordered services, the court may appoint
counsel if appointment of counsel would serve the interests
of justice.

C. In proceedings on a petition alleging a family
in need of court-ordered services, the court shall appoint a

1 guardian ad litem for a child under the age of fourteen and
2 an attorney for a child fourteen years of age or older at the
3 inception of the proceedings. An officer or employee of an
4 agency vested with legal custody of the child shall not be
5 appointed as a guardian ad litem or attorney for the child.

6 D. Whenever it is reasonable and appropriate, the
7 court shall appoint a guardian ad litem or attorney who is
8 knowledgeable about the child's cultural background.

9 E. A person afforded rights pursuant to the
10 provisions of the Children's Code shall be advised of those
11 rights at that person's first appearance before the court on
12 a petition filed under the Children's Code.

13 F. A child of an alleged or adjudicated family in
14 need of court-ordered services shall not be fingerprinted or
15 photographed for identification purposes, unless pursuant to
16 a court order."

17 Section 33. Section 32A-3B-9 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 81) is amended to read:

19 "32A-3B-9. CHANGE IN PLACEMENT.--

20 A. When a child's placement is changed, including
21 a return to the child's home, written notice of the placement
22 change shall be given to the parties and to the child's tribe
23 if the child is an Indian child ten days prior to the
24 placement change, unless an emergency situation requires
25 moving the child prior to sending notice.

B. When a child's guardian ad litem or attorney
requests a court hearing to contest the proposed placement
change, the department shall not change the child's placement
pending the result of the court hearing, unless an emergency
requires changing the child's placement prior to the hearing.

C. When a child's placement is changed and notice
pursuant to the provisions of Subsection A of this section is

1 not provided, written notice shall be sent to the parties and
2 to the child's tribe if the child is an Indian child within
3 three days after the placement change.

4 D. Notice pursuant to the provisions of this
5 section is not required for removal of the child from
6 temporary emergency care, emergency foster care or respite
7 care."

8 Section 34. Section 32A-3B-13 NMSA 1978 (being Laws
9 1993, Chapter 77, Section 85) is amended to read:

10 "32A-3B-13. CONDUCT OF HEARINGS--PENALTY.--

11 A. All hearings shall be recorded by stenographic
12 notes or by electronic, mechanical or other appropriate
13 means.

14 B. All hearings regarding a family in need of
15 court-ordered services shall be closed to the general public,
16 subject to the following exceptions:

17 (1) the parties, the parties' counsel,
18 witnesses and other persons approved by the court may be
19 present at the hearings. Those other persons the court finds
20 to have a proper interest in the case or in the work of the
21 court may be admitted by the court to closed hearings on the
22 condition that they refrain from divulging any information
23 that would identify the child or family involved in the
24 proceedings; and

25 (2) accredited representatives of the news
media shall be allowed to be present at the hearings, subject
to the condition that they refrain from divulging information
that would identify any child involved in the proceedings or
the parent, guardian or custodian of that child and further
subject to enabling regulations the court finds necessary for
the maintenance of order and decorum and for the furtherance
of the purposes of the Children's Code.

1 C. If the court finds that it is in the best
2 interest of a child under fourteen years of age, the child
3 may be excluded from a hearing under the Family in Need of
4 Court-Ordered Services Act. A child fourteen years of age or
5 older may be excluded from a hearing only if the court makes
6 a finding that there is a compelling reason to exclude the
7 child and states the factual basis for the finding.

8 D. A person or party granted admission to a closed
9 hearing who intentionally divulges information concerning the
10 hearing in violation of the provisions of this section is
11 guilty of a petty misdemeanor and shall be sentenced pursuant
12 to the provisions of Section 31-19-1 NMSA 1978."

13 Section 35. Section 32A-3B-17 NMSA 1978 (being Laws
14 1993, Chapter 77, Section 89, as amended) is amended to read:

15 "32A-3B-17. DISPOSITION OF A CHILD WITH A DEVELOPMENTAL
16 DISABILITY OR MENTAL DISORDER--PROCEEDINGS.--

17 A. If during any stage of a proceeding regarding a
18 family in need of court-ordered services petition the
19 evidence indicates that the child has or may have a
20 developmental disability or a mental disorder, the court may
21 order the department to:

- 22 (1) secure an assessment of the child;
23 (2) prepare appropriate referrals for
24 services for the child; and
25 (3) if necessary, initiate proceedings for
the involuntary placement of the child pursuant to the
provisions of the Children's Mental Health and Developmental
Disabilities Act.

B. When a child in department custody needs
involuntary placement for residential mental health or
developmental disability services, the department shall file
a motion for that child's placement pursuant to the

1 provisions of the Children's Mental Health and Developmental
2 Disabilities Act.

3 C. A court hearing for consideration of an
4 involuntary placement of a child for residential treatment or
5 habilitation, when the child is subject to the provisions of
6 the Family in Need of Court-Ordered Services Act, may be
7 heard by the court as a part of the family in need of
8 court-ordered services proceedings or may be heard in a
9 separate proceeding. All parties to the family in need of
10 court-ordered services proceedings shall be provided with
11 notice of the involuntary placement hearing.

12 D. A guardian ad litem appointed pursuant to the
13 Family in Need of Court-Ordered Services Act shall serve as
14 the guardian ad litem for a child for the purposes of the
15 Children's Mental Health and Developmental Disabilities Act.
16 When a child is fourteen years of age or older, the child
17 shall be represented by an attorney unless, after
18 consultation between the child and the child's attorney, the
19 child elects to be represented by counsel appointed by the
20 court in the proceedings under the Children's Mental Health
21 and Developmental Disabilities Act.

22 E. When a child is subject to the provisions of
23 the Family in Need of Court-Ordered Services Act and is
24 receiving residential treatment or habilitation services, any
25 documentation required pursuant to the Children's Mental
Health and Developmental Disabilities Act shall be filed with
the court as part of the family in need of court-ordered
services proceeding. A review of the child's placement in a
residential treatment or habilitation program shall occur in
the same manner and within the same time requirements as
provided in the Children's Mental Health and Developmental
Disabilities Act.

1 F. The clerk of the court shall maintain a
2 separate section within a child's family in need of
3 court-ordered services file for documents pertaining to
4 actions taken under the Children's Mental Health and
5 Developmental Disabilities Act.

6 G. A child subject to the provisions of the Family
7 in Need of Court-Ordered Services Act who receives treatment
8 in a residential treatment or habilitation program shall
9 enjoy all the substantive and procedural rights set forth in
10 the Children's Mental Health and Developmental Disabilities
11 Act."

12 Section 36. Section 32A-3B-22 NMSA 1978 (being Laws
13 1993, Chapter 77, Section 94) is amended to read:

14 "32A-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

15 A. All records or information concerning a family
16 in need of court-ordered services, including social records,
17 diagnostic evaluation, psychiatric or psychological reports,
18 videotapes, transcripts and audio recordings of a child's
19 statement of abuse or medical reports, obtained as a result
20 of an investigation in anticipation of or incident to a
21 family in need of court-ordered services proceeding shall be
22 confidential and closed to the public.

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

- 25 (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem or
attorney;
- (4) the child's attorney representing the
child in an abuse or neglect action, a delinquency action or
any other action, including a public defender;
- (5) department personnel;

1 (6) any local substitute care review board
2 or any agency contracted to implement local substitute care
3 review boards;

4 (7) law enforcement officials;

5 (8) district attorneys;

6 (9) a state or tribal government social
7 services agency of any state;

8 (10) those persons or entities of an Indian
9 tribe specifically authorized to inspect the records pursuant
10 to the federal Indian Child Welfare Act of 1978 or any
11 regulations promulgated thereunder;

12 (11) tribal juvenile justice system and
13 social service representatives;

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

19 (13) school personnel involved with the
20 child, if the records concern the child's social or
21 educational needs;

22 (14) health care or mental health
23 professionals involved in the evaluation or treatment of the
24 child, the child's parents, guardian or custodian or other
25 family members;

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

(16) any other person or entity, by order of
the court, having a legitimate interest in the case or the

1 work of the court.

2 C. Whoever intentionally and unlawfully releases
3 any information or records that are closed to the public
4 pursuant to the provisions of the Children's Code or releases
5 or makes other unlawful use of records in violation of that
6 code is guilty of a petty misdemeanor.

7 D. The department shall promulgate rules for
8 implementing disclosure of records pursuant to this section
9 and in compliance with state and federal law and the
10 Children's Court Rules."

11 Section 37. A new section of the Family in Need of
12 Court-Ordered Services Act is enacted to read:

13 "INDIAN CHILD PLACEMENT--PREFERENCES.--

14 A. An Indian child accepted in department custody
15 shall be placed in the least restrictive setting that most
16 closely approximates a family in which the child's special
17 needs, if any, may be met. The Indian child shall be placed
18 within reasonable proximity to the child's home, taking into
19 account any special needs of the child. Preference shall be
20 given to placement with:

21 (1) a member of the Indian child's extended
22 family;

23 (2) a foster care home licensed, approved
24 and specified by the Indian child's tribe;

25 (3) an Indian foster care home licensed or
approved by an authorized non-Indian licensing authority; or

(4) an institution for children approved by
the Indian child's tribe or operated by an Indian
organization that has a program suitable to meet the Indian
child's needs.

B. When the placement preferences set forth in
Subsection A of this section are not followed or if the

1 Indian child is placed in an institution, a plan shall be
2 developed to ensure that the Indian child's cultural ties are
3 protected and fostered."

4 Section 38. Section 32A-4-3 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 97, as amended) is amended to read:

6 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD
7 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR
8 NEGLECT--PENALTY.--

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

- 18 (1) a local law enforcement agency;
19 (2) the department; or
20 (3) a tribal law enforcement or social
21 services agency for any Indian child residing in Indian
22 country.

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

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

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

20 D. If the child alleged to be abused or neglected
21 is in the care or control of or in a facility
22 administratively connected to the department, the report
23 shall be investigated by a local law enforcement officer
24 trained in the investigation of child abuse and neglect. The
25 investigation shall ensure that immediate steps are taken to
protect the health or welfare of the alleged abused or
neglected child, as well as that of any other child under the
same care who may be in danger of abuse or neglect.

E. A law enforcement agency or the department
shall have access to any of the records pertaining to a child
abuse or neglect case maintained by any of the persons
enumerated in Subsection A of this section, except as

1 otherwise provided in the Abuse and Neglect Act.

2 F. A person who violates the provisions of
3 Subsection A of this section is guilty of a misdemeanor and
4 shall be sentenced pursuant to the provisions of Section
5 31-19-1 NMSA 1978."

6 Section 39. Section 32A-4-4 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 98) is amended to read:

8 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

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

16 B. During the investigation of a report alleging
17 neglect or abuse, the matter may be referred to another
18 appropriate agency and conferences may be conducted for the
19 purpose of effecting adjustments or agreements that will
20 obviate the necessity for filing a petition. A
21 representative of the department shall, at the initial time
22 of contact with the party subject to the investigation,
23 advise the party of the reports or allegations made, in a
24 manner that is consistent with laws protecting the rights of
25 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.

C. 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.

1 D. When a child is taken into custody, the
2 department shall file a petition within two days. If a
3 petition is not filed in a timely manner, the child shall be
4 released to the child's parent, guardian or custodian."

5 Section 40. Section 32A-4-5 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 99, as amended) is amended to read:

7 "32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY
8 OF REPORTING PERSON--INVESTIGATION OF REPORT.--

9 A. In any proceeding alleging neglect or abuse
10 under the Children's Code resulting from a report required by
11 Section 32A-4-3 NMSA 1978 or in any proceeding in which that
12 report or any of its contents are sought to be introduced in
13 evidence, the report or its contents or any other facts
14 related thereto or to the condition of the child who is the
15 subject of the report shall not be excluded on the ground
16 that the matter is or may be the subject of a
17 physician-patient privilege or similar privilege or rule
18 against disclosure.

19 B. Anyone reporting an instance of alleged child
20 neglect or abuse or participating in a judicial proceeding
21 brought as a result of a report required by Section 32A-4-3
22 NMSA 1978 is presumed to be acting in good faith and shall be
23 immune from liability, civil or criminal, that might
24 otherwise be incurred or imposed by the law, unless the
25 person acted in bad faith or with malicious purpose.

 C. After properly verifying the identity of the
public official, any school personnel or other person who has
the duty to report child abuse pursuant to Section 32A-4-3
NMSA 1978 shall permit a member of a law enforcement agency,
including tribal police officers, an employee of the district
attorney's office, an investigative interviewer for a program
described in Subsection E of this section or an employee of

1 the department, to interview a child with respect to a report
2 without the permission of the child's parent or guardian.
3 Any person permitting an interview pursuant to this
4 subsection is presumed to be acting in good faith and shall
5 be immune from liability, civil or criminal, that might
6 otherwise be incurred or imposed by law, unless the person
7 acted in bad faith or with malicious purpose.

8 D. An investigation may be conducted by law
9 enforcement, the district attorney's office, a program
10 described in Subsection E of this section and the department.
11 Interviews shall be conducted in a manner and place that
12 protects the child and family from unnecessary trauma and
13 embarrassment. The investigating entity shall conduct the
14 investigation in a manner that will protect the privacy of
15 the child and the family, with the paramount consideration
16 being the safety of the child.

17 E. If a community has a program for child abuse
18 investigation that includes an investigation interview of the
19 alleged victim, the investigation may be conducted at a site
20 designated by the community program.

21 F. Prior to interviewing a child, the department
22 shall notify the parent or guardian of the child who is being
23 interviewed, unless the department determines that
24 notification would adversely affect the safety of the child
25 about whom the report has been made or compromise the
investigation."

Section 41. Section 32A-4-6 NMSA 1978 (being Laws 1993,
Chapter 77, Section 100) is amended to read:

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

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

(1) by a law enforcement officer when the
officer has reasonable grounds to believe that the child is

1 suffering from illness or injury as a result of alleged abuse
2 or neglect or has been abandoned or is in danger from the
3 child's surroundings and removal from those surroundings is
4 necessary; or

5 (2) by medical personnel when there are
6 reasonable grounds to believe that the child has been injured
7 as a result of abuse or neglect and that the child may be at
8 risk of further injury if returned to the child's parent,
9 guardian or custodian. The medical personnel shall hold the
10 child until a law enforcement officer is available to take
11 custody of the child or until a law enforcement officer has
12 authorized release of the child to the department.

13 B. When a child is taken into custody, the
14 department shall make reasonable efforts to determine whether
15 the child is an Indian child.

16 C. If a child taken into custody is an Indian
17 child and is alleged to be neglected or abused, the
18 department shall give notice to the agent of the Indian
19 child's tribe in accordance with the federal Indian Child
20 Welfare Act of 1978.

21 D. Any person who intentionally interferes with
22 protection of a child, as provided by Subsection A of this
23 section, is guilty of a petty misdemeanor."

24 Section 42. Section 32A-4-7 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 101, as amended) is amended to read:

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

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

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

(2) deliver the child to the department or

1 to an appropriate shelter-care facility or, in the case of a
2 child who is believed to be suffering from a serious physical
3 or mental condition or illness that requires prompt treatment
4 or diagnosis, deliver the child to a medical facility. If a
5 law enforcement officer delivers a child to a shelter-care
6 facility or a medical facility, the officer shall immediately
7 notify the department that the child has been placed in the
8 department's legal custody.

9 B. When an alleged neglected or abused child is
10 delivered to the department, a department caseworker shall
11 review the need for placing the child in custody and shall
12 release the child from custody unless custody is appropriate
13 or has been ordered by the court. When a child is delivered
14 to an appropriate shelter-care facility or medical facility,
15 a department caseworker shall review the need for retention
16 of custody within a reasonable time after delivery of the
17 child to the facility and shall release the child from
18 custody unless custody is appropriate or has been ordered by
19 the court.

20 C. If a child is placed in the legal custody of
21 the department and is not released to the child's parent,
22 guardian or custodian, the department shall give written
23 notice thereof as soon as possible, and in no case later than
24 twenty-four hours, to the child's parent, guardian or
25 custodian together with a statement of the reason for taking
the child into custody.

D. Reasonable efforts shall be made to prevent or
eliminate the need for removing the child from the child's
home, with the paramount concern being the child's health and
safety. In all cases when a child is taken into custody, the
child shall be released to the child's parent, guardian or
custodian, unless the department files a petition within two

1 days from the date that the child was taken into custody."

2 Section 43. Section 32A-4-10 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 104) is amended to read:

4 "32A-4-10. BASIC RIGHTS.--

5 A. A child subject to the provisions of the
6 Children's Code is entitled to the same basic rights as an
7 adult, except as otherwise provided in the Children's Code.

8 B. At the inception of an abuse or neglect
9 proceeding, counsel shall be appointed for the parent,
10 guardian or custodian of the child. The appointed counsel
11 shall represent the parent, guardian or custodian who is
12 named as a party until an indigency determination is made at
13 the custody hearing. Counsel shall also be appointed if, in
14 the court's discretion, appointment of counsel is required in
15 the interest of justice.

16 C. At the inception of an abuse and neglect
17 proceeding, the court shall appoint a guardian ad litem for a
18 child under fourteen years of age. If the child is fourteen
19 years of age or older, the court shall appoint an attorney
20 for the child. No officer or employee of an agency that is
21 vested with the legal custody of the child shall be appointed
22 as guardian ad litem of or attorney for the child. Only an
23 attorney with appropriate experience shall be appointed as
24 guardian ad litem of or attorney for the child.

25 D. When reasonable and appropriate, the court
shall appoint a guardian ad litem or attorney who is
knowledgeable about the child's particular cultural
background.

E. When a child reaches fourteen years of age, the
child's guardian ad litem shall continue as the child's
attorney; provided that the court shall appoint a different
attorney for the child if:

- 1 (1) the child requests a different attorney;
2 (2) the guardian ad litem requests to be
3 removed; or
4 (3) the court determines that the
5 appointment of a different attorney is appropriate.

6 F. The court shall assure that the child's
7 guardian ad litem zealously represents the child's best
8 interest and that the child's attorney zealously represents
9 the child.

10 G. A person afforded rights under the Children's
11 Code shall be advised of those rights at that person's first
12 appearance before the court on a petition under the
13 Children's Code."

14 Section 44. Section 32A-4-14 NMSA 1978 (being Laws
15 1993, Chapter 77, Section 108) is amended to read:

16 "32A-4-14. CHANGE IN PLACEMENT.--

17 A. When the child's placement is changed,
18 including a return to the child's home, written notice shall
19 be sent to the child's guardian ad litem, all parties, the
20 child's CASA, the child's foster parents and the court ten
21 days prior to the placement change, unless an emergency
22 situation requires moving the child prior to sending notice.

23 B. When the child's guardian ad litem requests a
24 court hearing to contest the proposed change, the department
25 shall not change the child's placement pending the results of
the court hearing, unless an emergency requires changing the
child's placement prior to the hearing.

C. When a child's placement is changed without
prior notice as provided for in Subsection A of this section,
written notice shall be sent to the child's guardian ad
litem, all parties, the child's CASA, the child's foster
parents and the court within three days after the placement

1 change.

2 D. Written notice is not required for removal of a
3 child from temporary emergency care, emergency foster care or
4 respite care. The department shall provide oral notification
5 of the removal to the child's guardian ad litem.

6 E. Notice need not be given to the parties, other
7 than the child, or to the court when placement is changed at
8 the request of the child's foster parents or substitute care
9 provider. Notice shall be given to the child's guardian ad
10 litem or attorney."

11 Section 45. Section 32A-4-18 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 112, as amended) is amended to
13 read:

14 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
15 PROBABLE CAUSE.--

16 A. When a child alleged to be neglected or abused
17 has been placed in the legal custody of the department or the
18 department has petitioned the court for temporary custody, a
19 custody hearing shall be held within ten days from the date
20 the petition is filed to determine if the child should remain
21 in or be placed in the department's custody pending
22 adjudication. Upon written request of the respondent, the
23 hearing may be held earlier, but in no event shall the
24 hearing be held sooner than two days after the date the
25 petition was filed.

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

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

(1) the child is suffering from an illness

1 or injury, and the parent, guardian or custodian is not
2 providing adequate care for the child;

3 (2) the child is in immediate danger from
4 his surroundings, and removal from those surroundings is
5 necessary for the child's safety or well-being;

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

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

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

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

16 (1) return legal custody of the child to his
17 parent, guardian or custodian upon such conditions as will
18 reasonably ensure the safety and well-being of the child,
19 including protective supervision by the department; or

20 (2) award legal custody of the child to the
21 department.

22 Reasonable efforts shall be made to preserve and reunify
23 the family, with the paramount concern being the child's
24 health and safety.

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

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

3 Section 46. Section 32A-4-20 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 114, as amended) is amended to
5 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
15 closed hearing. The foster parent, preadoptive parent or
16 relative providing care for the child shall be given notice
17 and an opportunity to be heard at the dispositional phase.
18 Those other persons the court finds to have a proper interest
19 in the case or in the work of the court may be admitted by
20 the court to closed hearings on the condition that they
21 refrain from divulging any information that would identify
22 the child or 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
that would identify any child involved in the proceedings or
the parent, guardian or custodian of that child and subject
to enabling regulations as the court finds necessary for the
maintenance of order and decorum and for the furtherance of
the purposes of the Children's Code.

E. If the court finds that it is in the best
interest of a child under fourteen years of age, the child

1 may be excluded from a hearing under the Abuse and Neglect
2 Act. A child fourteen years of age or older may be excluded
3 from a hearing only if the court makes a finding that there
4 is a compelling reason to exclude the child and states the
5 factual basis for the finding.

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

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

20 H. If the court finds on the basis of a valid
21 admission of the allegations of the petition or on the basis
22 of clear and convincing evidence, competent, material and
23 relevant in nature, that the child is neglected or abused,
24 the court may proceed immediately or at a postponed hearing
25 to make disposition of the case. If the court does not find
that the child is neglected or abused, the court shall
dismiss the petition and may refer the family to the
department for appropriate services.

I. In that part of the hearings held under the
Children's Code on dispositional issues, all relevant and
material evidence helpful in determining the questions
presented, including oral and written reports, may be

1 received by the court and may be relied upon to the extent of
2 its probative value even though not competent had it been
3 offered during the part of the hearings on adjudicatory
4 issues.

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

14 Section 47. Section 32A-4-22 NMSA 1978 (being Laws
15 1993, Chapter 77, Section 116, as amended) is amended to
16 read:

17 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR
18 NEGLECTED CHILD.--

19 A. If not held in conjunction with the
20 adjudicatory hearing, the dispositional hearing shall be
21 commenced within thirty days after the conclusion of the
22 adjudicatory hearing. At the conclusion of the dispositional
23 hearing, the court shall make and include in the
24 dispositional judgment its findings on the following:

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

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

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

(4) the wishes of the child as to the

1 child's placement;

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

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

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

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

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

19 (10) if the child is an Indian child,
20 whether the placement preferences set forth in the federal
21 Indian Child Welfare Act of 1978 or the placement preferences
22 of the child's Indian tribe have been followed and whether
23 the Indian child's treatment plan provides for maintaining
24 the Indian child's cultural ties. When placement preferences
25 have not been followed, good cause for noncompliance shall be
clearly stated and supported.

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

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

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

3 (3) transfer legal custody of the child to
4 any of the following:

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

7 (b) an agency responsible for the care
8 of neglected or abused children; or

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

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

22 (1) the efforts would be futile; or

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

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

E. The court may order reasonable visitation
between a child placed in the custody of the department and

1 the child's siblings or any other person who may
2 significantly affect the child's best interest, if the court
3 finds the visitation to be in the child's best interest.

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

8 G. When the court vests legal custody in an
9 agency, institution or department, the court shall transmit
10 with the dispositional judgment copies of the clinical
11 reports, the predisposition study and report and any other
12 information it has pertinent to the care and treatment of the
13 child.

14 H. Prior to a child being placed in the custody or
15 protective supervision of the department, the department
16 shall be provided with reasonable oral or written
17 notification and an opportunity to be heard. At any hearing
18 held pursuant to this subsection, the department may appear
19 as a party.

20 I. When a child is placed in the custody of the
21 department, the department shall investigate whether the
22 child is eligible for enrollment as a member of an Indian
23 tribe and, if so, the department shall pursue the enrollment
24 on the child's behalf.

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

1 1993, Chapter 77, Section 117, as amended) is amended to
2 read:

3 "32A-4-23. DISPOSITION OF A CHILD WITH A MENTAL
4 DISORDER OR A DEVELOPMENTAL DISABILITY IN A PROCEEDING UNDER
5 THE ABUSE AND NEGLECT ACT.--

6 A. If in a hearing, at any stage of a proceeding
7 on a neglect or abuse petition, the evidence indicates that a
8 child has a mental disorder or a developmental disability,
9 the court shall adjudicate the issue of neglect or abuse
10 under the provisions of the Children's Code.

11 B. When a child in department custody needs
12 involuntary placement for residential mental health or
13 developmental disability services as a result of a mental
14 disorder or developmental disability, the department shall
15 petition for that child's placement pursuant to the
16 provisions of the Children's Mental Health and Developmental
17 Disabilities Act.

18 C. Any child in department custody who is placed
19 for residential treatment or habilitation pursuant to the
20 provisions of the Children's Mental Health and Developmental
21 Disabilities Act shall remain in the legal custody of the
22 department while in residential treatment or habilitation or
23 until further order of the court.

24 D. A court hearing for consideration of an
25 involuntary placement of a child for residential treatment or
habilitation, when the child is subject to the provisions of
the Abuse and Neglect Act, may be heard by the court as part
of the abuse or neglect proceedings or may be heard in a
separate proceeding. All parties to the abuse or neglect
proceedings shall be provided with notice of the involuntary
placement hearing.

E. A guardian ad litem appointed pursuant to the

1 Abuse and Neglect Act shall serve as a guardian ad litem for
2 a child for the purposes of the Children's Mental Health and
3 Developmental Disabilities Act. When a child is fourteen
4 years of age or older, the child shall be represented by an
5 attorney unless, after consultation between the child and the
6 child's attorney, the child elects to be represented by
7 counsel appointed in the proceedings under the Children's
8 Mental Health and Developmental Disabilities Act.

9 F. When a child is subject to the provisions of
10 the Abuse and Neglect Act and is receiving residential
11 treatment or habilitation services, any documentation
12 required pursuant to the Children's Mental Health and
13 Developmental Disabilities Act shall be filed with the court
14 as part of the abuse or neglect proceeding. A review of the
15 child's placement in a residential treatment or habilitation
16 program shall occur in the same manner and within the same
17 time requirements as provided in the Children's Mental Health
18 and Developmental Disabilities Act.

19 G. The clerk of the court shall maintain a
20 separate section within an abuse or neglect file for
21 documents pertaining to actions taken under the Children's
22 Mental Health and Developmental Disabilities Act.

23 H. A child subject to the provisions of the Abuse
24 and Neglect Act who receives treatment in a residential
25 treatment or habilitation program shall enjoy all the
substantive and procedural rights set forth in the Children's
Mental Health and Developmental Disabilities Act."

Section 49. Section 32A-4-25 NMSA 1978 (being Laws
1993, Chapter 77, Section 119, as amended) is amended to
read:

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

1 A. The initial judicial review shall be held
2 within sixty days of the disposition. At the initial review,
3 the parties shall demonstrate to the court efforts made to
4 implement the treatment plan approved by the court in its
5 dispositional order. The court shall determine the extent to
6 which the treatment plan has been implemented and make
7 supplemental orders as necessary to ensure compliance with
8 the treatment plan and the safety of the child. Prior to the
9 initial judicial review, the department shall submit a copy
10 of the adjudicatory order, the dispositional order and notice
11 of the initial judicial review to the local substitute care
12 review board for that judicial district created under the
13 Citizen Substitute Care Review Act. A representative of the
14 local substitute care review board shall be permitted to
15 attend and comment to the court.

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

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

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

5 C. The children's court attorney shall give notice
6 to all parties, the child's guardian ad litem, the child's
7 CASA, a contractor administering the local substitute care
8 review board and the child's foster parent or substitute care
9 provider of the time, place and purpose of any judicial
10 review hearing held pursuant to Subsection A or B of this
11 section.

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

 E. The Rules of Evidence shall not apply to
hearings held pursuant to this section. The court may admit
testimony by any person given notice of the hearing who has
information about the status of the child or the status of

1 the treatment plan.

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

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

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

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

(b) a relative or other individual who,
after study by the department or other agency designated by

1 the court, is found by the court to be qualified to receive
2 and care for the child and is appointed as a permanent
3 guardian of the child; or

4 (c) the department, subject to the
5 provisions of Paragraph (6) of this subsection;

6 (5) continue the child in the legal custody
7 of the department with or without any required parental
8 involvement in a treatment plan. Reasonable efforts shall be
9 made to preserve and reunify the family, with the paramount
10 concern being the child's health and safety unless the court
11 finds that such efforts are not required. The court may
12 determine that reasonable efforts are not required to be made
13 when the court finds that:

14 (a) the efforts would be futile; or

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

17 (6) make additional orders regarding the
18 treatment plan or placement of the child to protect the
19 child's best interests if the court determines the department
20 has failed in implementing any material provision of the
21 treatment plan or abused its discretion in the placement or
22 proposed placement of the child; or

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

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

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

I. Dispositional orders entered pursuant to this

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

4 J. The report of the local substitute care review
5 board submitted to the court pursuant to Subsection B of this
6 section shall become a part of the child's permanent court
7 record.

8 K. When the court determines, pursuant to
9 Paragraph (5) of Subsection H of this section, that no
10 reasonable efforts at reunification are required, the court
11 shall conduct, within thirty days, a permanency hearing as
12 described in Section 32A-4-25.1 NMSA 1978. Reasonable
13 efforts shall be made to place the child in a timely manner
14 in accordance with the permanency plan and to complete
15 whatever steps are necessary to finalize the permanent
16 placement of the child."

17 Section 50. Section 32A-4-25.1 NMSA 1978 (being Laws
18 1997, Chapter 34, Section 8) is amended to read:

19 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
20 HEARINGS.--

21 A. A permanency hearing shall be commenced within
22 six months of the initial judicial review of a child's
23 dispositional order or within twelve months of a child
24 entering foster care pursuant to Subsection E of this
25 section, whichever occurs first. Prior to the initial
permanency hearing, all parties to the hearing shall attend a
mandatory meeting and attempt to settle issues attendant to
the permanency hearing and develop a proposed treatment plan
that serves the child's best interest. Prior to the initial
permanency hearing, the department shall submit a progress
report regarding the child to the local substitute care
review board for that judicial district. The local

1 substitute care review board may review the child's
2 dispositional order, any continuation of that order and the
3 department's progress report and report its findings and
4 recommendations to the court.

5 B. At the permanency hearing, all parties shall
6 have the opportunity to present evidence and to cross-examine
7 witnesses. At the conclusion of the permanency hearing, the
8 court shall order one of the following permanency plans for
9 the child:

- 10 (1) reunification;
- 11 (2) placement for adoption after the
12 parents' rights have been relinquished or terminated or after
13 a motion has been filed to terminate parental rights;
- 14 (3) placement with a person who will be the
15 child's permanent guardian;
- 16 (4) placement in the legal custody of the
17 department with the child placed in the home of a fit and
18 willing relative; or
- 19 (5) placement in the legal custody of the
20 department under a planned permanent living arrangement,
21 provided that there is substantial evidence that none of the
22 above plans is appropriate for the child.

23 C. If the court adopts a permanency plan of
24 reunification, the court shall adopt a plan for transitioning
25 the child home and schedule a permanency review hearing
within three months. If the child is reunified, the
subsequent hearing may be vacated.

D. At the permanency review hearing, all parties
and the child's guardian ad litem or attorney shall have the
opportunity to present evidence and cross-examine witnesses.
Based on the evidence, the court shall:

- (1) change the plan from reunification to

1 one of the alternative plans provided in Subsection B of this
2 section;

3 (2) dismiss the case and return custody of
4 the child to his parent, guardian or custodian; or

5 (3) return the child to the custody of his
6 parent, guardian or custodian, subject to any conditions or
7 limitations as the court may prescribe, including protective
8 supervision of the child by the department and continuation
9 of the treatment plan for not more than six months, after
10 which the case shall be dismissed. The department may seek
11 removal of a child from the home by obtaining an order in the
12 pending case or by seeking emergency removal under Section
13 32A-4-6 NMSA 1978 during the period of protective supervision
14 if the child's best interest requires such action. When a
15 child is removed in this situation, a permanency hearing
16 shall be scheduled within thirty days of the child coming
17 back into the department's legal custody.

18 E. The court shall hold a permanency hearing and
19 adopt a permanency plan for a child within twelve months of
20 the child entering foster care. For purposes of this
21 section, a child shall be considered to have entered foster
22 care on the earlier of:

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

25 (2) sixty days after the date on which the
child was removed from the home.

F. The court shall hold permanency hearings every
twelve months when a child is in the legal custody of the
department.

G. The children's court attorney shall give notice
to all parties, the child's guardian ad litem, the child's
CASA, a contractor administering the local substitute care

1 review board and the child's foster parent or substitute care
2 provider of the time, place and purpose of any permanency
3 hearing or permanency review hearing held pursuant to this
4 section.

5 H. The rules of evidence shall not apply to
6 permanency hearings. The court may admit testimony by any
7 person given notice of the permanency hearing who has
8 information about the status of the child or the status of
9 the treatment plan. All testimony shall be subject to
10 cross-examination."

11 Section 51. Section 32A-4-28 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 122, as amended) is amended to
13 read:

14 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
15 DECREE.--

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

21 B. The court shall terminate parental rights with
22 respect to a child when:

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

25 (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

1 or another agency are unnecessary, when:

2 (a) there is a clear showing that the
3 efforts would be futile; or

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

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

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

11 (b) the parent-child relationship has
12 disintegrated;

13 (c) a psychological parent-child
14 relationship has developed between the substitute family and
15 the child;

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

19 (e) the substitute family desires to
20 adopt the child; and

21 (f) a presumption of abandonment
22 created by the conditions described in Subparagraphs (a)
23 through (e) of this paragraph has not been rebutted.

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

D. The department shall not file a motion, and
shall not join a motion filed by another party, to terminate
parental rights when the sole factual basis for the motion is
that a child's parent is incarcerated.

E. The termination of parental rights involving a

1 child subject to the federal Indian Child Welfare Act of 1978
2 shall comply with the requirements of that act.

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

Section 52. Section 32A-4-29 NMSA 1978 (being Laws
1993, Chapter 77, Section 123, as amended) is amended to
read:

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

A. A motion to terminate parental rights may be
filed at any stage of the abuse or neglect proceeding by a
party to the proceeding.

1 B. The motion for termination of parental rights
2 shall set forth:

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

5 (2) the grounds for termination and the
6 facts and circumstances supporting the grounds for
7 termination;

8 (3) the names and addresses of the persons
9 or authorized agency or agency officer to whom legal custody
10 might be transferred;

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

13 (5) whether the motion is in contemplation
14 of adoption;

15 (6) the relationship or legitimate interest
16 of the moving party to the child; and

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

19 (a) the tribal affiliations of the
20 child's parents;

21 (b) the specific actions taken by the
22 moving party to notify the parents' tribes and the results of
23 the contacts, including the names, addresses, titles and
24 telephone numbers of the persons contacted. Copies of any
25 correspondence with the tribes shall be attached as exhibits
to the petition; and

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

 C. Notice of the filing of the motion, accompanied
by a copy of the motion, shall be served by the moving party

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

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

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

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

1 of parental rights be found premature and denied.

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

4 G. When a child has been in foster care for not
5 less than fifteen of the previous twenty-two months, the
6 department shall file a motion to terminate parental rights,
7 unless:

8 (1) a parent has made substantial progress
9 toward eliminating the problem that caused the child's
10 placement in foster care; it is likely that the child will be
11 able to safely return to the parent's home within three
12 months; and the child's return to the parent's home will be
13 in the child's best interests;

14 (2) the child has a close and positive
15 relationship with a parent and a permanent plan that does not
16 include termination of parental rights will provide the most
17 secure and appropriate placement for the child;

18 (3) the child is fourteen years of age or
19 older, is firmly opposed to termination of parental rights
20 and is likely to disrupt an attempt to place him with an
21 adoptive family;

22 (4) a parent is terminally ill, but in
23 remission, and does not want his parental rights to be
24 terminated; provided that the parent has designated a
25 guardian for his child;

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

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

1 (7) the child is an unaccompanied, refugee
2 minor and the situation regarding the child involves
3 international legal issues or compelling foreign policy
4 issues; or

5 (8) adoption is not an appropriate plan for
6 the child.

7 H. For purposes of this section, a child shall be
8 considered to have entered foster care on the earlier of:

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

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

13 I. The grounds for any attempted termination
14 shall be proved by clear and convincing evidence. In any
15 proceeding involving a child subject to the federal Indian
16 Child Welfare Act of 1978, the grounds for any attempted
17 termination shall be proved beyond a reasonable doubt and
18 shall meet the requirements set forth in
19 25 U.S.C. Section 1912(f).

20 J. When the court terminates parental rights, it
21 shall appoint a custodian for the child and fix
22 responsibility for the child's support.

23 K. In any termination proceeding involving a child
24 subject to the federal Indian Child Welfare Act of 1978, the
25 court shall in any termination order make specific findings
that the requirements of that act have been met.

L. A judgment of the court terminating parental
rights divests the parent of all legal rights and privileges
and dispenses with both the necessity for the consent to or
receipt of notice of any subsequent adoption proceeding
concerning the child. A judgment of the court terminating
parental rights shall not affect the child's rights of

1 inheritance from and through the child's biological
2 parents."

3 Section 53. Section 32A-4-30 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 124) is amended to read:

5 "32A-4-30. ATTORNEY FEES.--The court may order the
6 department to pay attorney fees for the child's guardian ad
7 litem or attorney if:

8 A. the child is in the legal custody of the
9 department;

10 B. the child's guardian ad litem or the child,
11 through the child's attorney:

12 (1) requests in writing that the department
13 move for the termination of parental rights;

14 (2) gives the department written notice that
15 if the department does not move for termination of parental
16 rights, the guardian ad litem or the child, through the
17 child's attorney, intends to move for the termination of
18 parental rights and seek an award of attorney fees;

19 (3) successfully moves for the termination
20 of parental rights; and

21 (4) applies to the court for an award of
22 attorney fees; and

23 C. the department refuses to litigate the motion
24 for the termination of parental rights or fails to act in a
25 timely manner."

Section 54. Section 32A-4-31 NMSA 1978 (being Laws
1993, Chapter 77, Section 125) is amended to read:

"32A-4-31. PERMANENT GUARDIANSHIP OF A CHILD.--

A. In proceedings for permanent guardianship, the
court shall give primary consideration to the physical,
mental and emotional welfare and needs of the child.

Permanent guardianship vests in the guardian all rights and

1 responsibilities of a parent, other than those rights and
2 responsibilities of the natural or adoptive parent, if any,
3 set forth in the decree of permanent guardianship.

4 B. Any adult, including a relative or foster
5 parent, may be considered as a permanent guardian, provided
6 that the department grants consent to the guardianship if the
7 child is in the legal custody of the department. An agency
8 or institution may not be a permanent guardian. The court
9 shall appoint a person nominated by the child, if the minor
10 is fourteen years of age or older, unless the court finds the
11 appointment contrary to the best interests of the child.

12 C. The court may establish a permanent
13 guardianship between a child and the guardian when the
14 prospective guardianship is in the child's best interest and
15 when:

16 (1) the child has been adjudicated as an
17 abused or neglected child;

18 (2) the department has made reasonable
19 efforts to reunite the parent and child and further efforts
20 by the department would be unproductive;

21 (3) reunification of the parent and child is
22 not in the child's best interests because the parent
23 continues to be unwilling or unable to properly care for the
24 child; and

25 (4) the likelihood of the child being
adopted is remote or it is established that termination of
parental rights is not in the child's best interest."

Section 55. Section 32A-4-32 NMSA 1978 (being Laws
1993, Chapter 77, Section 126, as amended) is amended to
read:

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

A. A motion for permanent guardianship may be

1 filed by any party.

2 B. A motion for permanent guardianship shall set
3 forth:

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

6 (2) the facts and circumstances supporting
7 the grounds for permanent guardianship;

8 (3) the name and address of the prospective
9 guardian and a statement that the person agrees to accept the
10 duties and responsibilities of guardianship;

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

12 (5) the relationship of the child to the
13 petitioner and the prospective guardian; and

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

16 (a) the tribal affiliations of the
17 child's parents;

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

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

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

D. Notice of the filing of the motion, accompanied
by a copy of the motion, shall be served by the moving party

1 on any parent who has not previously been made a party to the
2 proceeding, the parents of the child, foster parents with
3 whom the child is residing, the foster parent, preadoptive
4 parent or relative providing care for the child with whom the
5 child has resided for six months, the child's custodian, the
6 department, any person appointed to represent any party,
7 including the child's guardian ad litem, and any other person
8 the court orders provided with notice. Service shall be in
9 accordance with the Children's Court Rules for the service of
10 motions. In a case involving a child subject to the federal
11 Indian Child Welfare Act of 1978, notice shall also be sent
12 by certified mail to the Indian tribes of the child's parents
13 and to any "Indian custodian" as that term is defined in
14 25 U.S.C. Section 1903(6). Further notice shall not be
15 required to a parent who has been provided notice previously
16 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
17 an appearance.

18 E. The grounds for permanent guardianship shall be
19 proved by clear and convincing evidence. The grounds for
20 permanent guardianship shall be proved beyond a reasonable
21 doubt and meet the requirements of 25 U.S.C. Section 1912(f)
22 in any proceeding involving a child subject to the federal
23 Indian Child Welfare Act of 1978.

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

G. Upon a finding that grounds exist for a
permanent guardianship, the court may incorporate into the

1 final order provisions for visitation with the natural
2 parents, siblings or other relatives of the child and any
3 other provision necessary to rehabilitate the child or
4 provide for the child's continuing safety and well-being.

5 H. The court shall retain jurisdiction to enforce
6 its judgment of permanent guardianship.

7 I. Any party may make a motion for revocation of
8 the order granting guardianship when there is a significant
9 change of circumstances, including:

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

12 (2) the child's guardian is unable to
13 properly care for the child.

14 J. The court shall appoint a guardian ad litem for
15 the child in all proceedings for the revocation of permanent
16 guardianship.

17 K. The court may revoke the order granting
18 guardianship when a significant change of circumstances has
19 been proven by clear and convincing evidence and it is in the
20 child's best interests to revoke the order granting
21 guardianship."

22 Section 56. Section 32A-4-33 NMSA 1978 (being Laws
23 1993, Chapter 77, Section 127) is amended to read:

24 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

25 A. All records or information concerning a party
to a neglect or abuse proceeding, including social records,
diagnostic evaluations, psychiatric or psychological reports,
videotapes, transcripts and audio recordings of a child's
statement of abuse or medical reports incident to or obtained
as a result of a neglect or abuse proceeding or that were
produced or obtained during an investigation in anticipation
of or incident to a neglect or abuse proceeding shall be

1 confidential and closed to the public.

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

4 (1) court personnel;

5 (2) court appointed special advocates;

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

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

10 (5) department personnel;

11 (6) any local substitute care review board
12 or any agency contracted to implement local substitute care
13 review boards;

14 (7) law enforcement officials, except when
15 use immunity is granted pursuant to Section 32A-4-11 NMSA
16 1978;

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

19 (9) any state government social services
20 agency in any state;

21 (10) those persons or entities of an Indian
22 tribe specifically authorized to inspect the records pursuant
23 to the federal Indian Child Welfare Act of 1978 or any
24 regulations promulgated thereunder;

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

(12) school personnel involved with the
child if the records concern the child's social or
educational needs;

1 (13) health care or mental health
2 professionals involved in the evaluation or treatment of the
3 child, the child's parents, guardian, custodian or other
4 family members;

5 (14) protection and advocacy representatives
6 pursuant to the federal Developmental Disabilities Assistance
7 and Bill of Rights Act and the federal Protection and
8 Advocacy for Mentally Ill Individuals Amendments Act of 1991;

9 (15) children's safehouse organizations
10 conducting investigatory interviews of children on behalf of
11 a law enforcement agency or the department; and

12 (16) any other person or entity, by order of
13 the court, having a legitimate interest in the case or the
14 work of the court.

15 C. A parent, guardian or legal custodian whose
16 child has been the subject of an investigation of abuse or
17 neglect where no petition has been filed shall have the right
18 to inspect any medical report, psychological evaluation, law
19 enforcement reports or other investigative or diagnostic
20 evaluation; provided that any identifying information related
21 to the reporting party or any other party providing
22 information shall be deleted. The parent, guardian or legal
23 custodian shall also have the right to the results of the
24 investigation and the right to petition the court for full
25 access to all department records and information except those
records and information the department finds would be likely
to endanger the life or safety of any person providing
information to the department.

D. Whoever intentionally and unlawfully releases
any information or records closed to the public pursuant to
the Abuse and Neglect Act or releases or makes other unlawful
use of records in violation of that act is guilty of a petty

1 misdemeanor and shall be sentenced pursuant to the provisions
2 of Section 31-19-1 NMSA 1978.

3 E. When a child's death is allegedly caused by
4 abuse or neglect, the department may release information
5 about the case after consultation with and the consent of the
6 district attorney.

7 F. The department shall promulgate rules for
8 implementing disclosure of records pursuant to this section
9 and in compliance with state and federal law and the
10 Children's Court Rules."

11 Section 57. A new section of the Abuse and Neglect Act
12 is enacted to read:

13 "DUTIES OF EMPLOYEES.--All employees of the department
14 shall be trained in their legal duties to protect the
15 constitutional and statutory rights of children and families
16 from the initial time of contact, during the investigation and
17 throughout any treatment."

18 Section 58. Section 32A-5-3 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 130, as amended by Laws 2003, Chapter 294,
20 Section 2 and by Laws 2003, Chapter 321, Section 2) is amended
21 to read:

22 "32A-5-3. DEFINITIONS.--As used in the Adoption Act:

23 A. "accrediting entity" means an entity that has
24 entered into an agreement with the United States secretary of
25 state pursuant to the federal Intercountry Adoption Act of
2000 and regulations adopted by the United States secretary of
state pursuant to that act, to accredit agencies and approve
persons who provide adoption services related to convention
adoptions;

B. "adoptee" means a person who is the subject of
an adoption petition;

C. "adoption service" means:

- 1 (1) identifying a child for adoption and
2 arranging the adoption of the child;
- 3 (2) securing termination of parental rights
4 to a child or consent to adoption of the child;
- 5 (3) performing a background study on a child
6 and reporting on the study;
- 7 (4) performing a home study on a prospective
8 adoptive parent and reporting on the study;
- 9 (5) making determinations regarding the best
10 interests of a child and the appropriateness of an adoptive
11 placement for the child;
- 12 (6) performing post-placement monitoring of
13 a child until an adoption is final; and
- 14 (7) when there is a disruption before an
15 adoption of a child is final, assuming custody of the child
16 and providing or facilitating the provision of child care or
17 other social services for the child pending an alternative
18 placement of the child;

19 D. "agency" means a person certified, licensed or
20 otherwise specially empowered by law to place a child in a
21 home in this or any other state for the purpose of adoption;

22 E. "agency adoption" means an adoption when the
23 adoptee is in the custody of an agency prior to placement;

24 F. "acknowledged father" means a father who:
25 (1) acknowledges paternity of the adoptee
pursuant to the putative father registry, as provided for in
Section 32A-5-20 NMSA 1978;
(2) is named, with his consent, as the
adoptee's father on the adoptee's birth certificate;
(3) is obligated to support the adoptee
under a written voluntary promise or pursuant to a court
order; or

1 (4) has openly held out the adoptee as his
2 own child by establishing a custodial, personal or financial
3 relationship with the adoptee as follows:

4 (a) for an adoptee under six months old
5 at the time of placement: 1) has initiated an action to
6 establish paternity; 2) is living with the adoptee at the time
7 the adoption petition is filed; 3) has lived with the mother a
8 minimum of ninety days during the
9 two-hundred-eighty-day-period prior to the birth or placement
10 of the adoptee; 4) has lived with the adoptee within the
11 ninety days immediately preceding the adoptive placement; 5)
12 has provided reasonable and fair financial support to the
13 mother during the pregnancy and in connection with the
14 adoptee's birth in accordance with his means and when not
15 prevented from doing so by the person or authorized agency
16 having lawful custody of the adoptee or the adoptee's mother;
17 6) has continuously paid child support to the mother since the
18 adoptee's birth in an amount at least equal to the amount
19 provided in Section 40-4-11.1 NMSA 1978, or has brought
20 current any delinquent child support payments; or 7) any other
21 factor the court deems necessary to establish a custodial,
22 personal or financial relationship with the adoptee; or

23 (b) for an adoptee over six months old
24 at the time of placement: 1) has initiated an action to
25 establish paternity; 2) has lived with the adoptee within the
ninety days immediately preceding the adoptive placement; 3)
has continuously paid child support to the mother since the
adoptee's birth in an amount at least equal to the amount
provided in Section 40-4-11.1 NMSA 1978, or is making
reasonable efforts to bring delinquent child support payments
current; 4) has contact with the adoptee on a monthly basis
when physically and financially able and when not prevented by

1 the person or authorized agency having lawful custody of the
2 adoptee; or 5) has regular communication with the adoptee, or
3 with the person or agency having the care or custody of the
4 adoptee, when physically and financially unable to visit the
5 adoptee and when not prevented from doing so by the person or
6 authorized agency having lawful custody of the adoptee;

7 G. "alleged father" means an individual whom the
8 biological mother has identified as the biological father, but
9 the individual has not acknowledged paternity or registered
10 with the putative father registry as provided for in Section
11 32A-5-20 NMSA 1978;

12 H. "consent" means a document:

13 (1) signed by a biological parent whereby
14 the parent grants consent to the adoption of the parent's
15 child by another;

16 (2) whereby the department or an agency
17 grants its consent to the adoption of a child in its custody;
18 or

19 (3) signed by the adoptee if the child is
20 fourteen years of age or older;

21 I. "convention adoption" means:

22 (1) an adoption by a United States resident
23 of a child who is a resident of a foreign country that is a
24 party to the Hague Convention on Protection of Children and
25 Co-operation in Respect of Intercountry Adoption; or

(2) an adoption by a resident of a foreign
country that is a party to the Hague Convention on Protection
of Children and Co-operation in Respect of Intercountry
Adoption of a child who is a resident of the United States;

J. "counselor" means a person certified by the
department to conduct adoption counseling in independent
adoptions;

1 K. "department adoption" means an adoption when
2 the child is in the custody of the department;

3 L. "foreign born child" means any child not born
4 in the United States who is not a citizen of the United
5 States;

6 M. "former parent" means a parent whose parental
7 rights have been terminated or relinquished;

8 N. "full disclosure" means mandatory and
9 continuous disclosure by the investigator, agency, department
10 or petitioner throughout the adoption proceeding and after
11 finalization of the adoption of all known, nonidentifying
12 information regarding the adoptee, including:

- 13 (1) health history;
- 14 (2) psychological history;
- 15 (3) mental history;
- 16 (4) hospital history;
- 17 (5) medication history;
- 18 (6) genetic history;
- 19 (7) physical descriptions;
- 20 (8) social history;
- 21 (9) placement history; and
- 22 (10) education;

23 O. "independent adoption" means an adoption when
24 the child is not in the custody of the department or an
25 agency;

 P. "investigator" means an individual certified by
the department to conduct pre-placement studies and
post-placement reports;

 Q. "office" means a place for the regular
transaction of business or performance of particular services;

 R. "parental rights" means all rights of a parent
with reference to a child, including parental right to

1 control, to withhold consent to an adoption or to receive
2 notice of a hearing on a petition for adoption;

3 S. "placement" means the selection of a family for
4 an adoptee or matching of a family with an adoptee and
5 physical transfer of the adoptee to the family in all adoption
6 proceedings, except in adoptions filed pursuant to Paragraphs
7 (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in
8 which case placement occurs when the parents consent to the
9 adoption, parental rights are terminated or parental consent
10 is implied;

11 T. "post-placement report" means a written
12 evaluation of the adoptive family and the adoptee after the
13 adoptee is placed for adoption;

14 U. "pre-placement study" means a written
15 evaluation of the adoptive family, the adoptee's biological
16 family and the adoptee;

17 V. "presumed father" means:

18 (1) the husband of the biological mother at
19 the time the adoptee was born;

20 (2) an individual who was married to the
21 mother and either the adoptee was born during the term of the
22 marriage or the adoptee was born within three hundred days
23 after the marriage was terminated by death, annulment,
24 declaration of invalidity or divorce; or

25 (3) before the adoptee's birth, an
individual who attempted to marry the adoptee's biological
mother by a marriage solemnized in apparent compliance with
law, although the attempted marriage is or could be declared
invalid and if the attempted marriage:

(a) could be declared invalid only by a
court, the adoptee was born during the attempted marriage or
within three hundred days after its termination by death,

1 annulment, declaration of invalidity or divorce; or

2 (b) is invalid without a court order,
3 the adoptee was born within three hundred days after the
4 termination of cohabitation;

5 W. "record" means any petition, affidavit, consent
6 or relinquishment form, transcript or notes of testimony,
7 deposition, power of attorney, report, decree, order,
8 judgment, correspondence, document, photograph, invoice,
9 receipt, certificate or other printed, written, videotaped or
10 tape-recorded material pertaining to an adoption proceeding;

11 X. "relinquishment" means the document by which a
12 parent relinquishes parental rights to the department or an
13 agency to enable placement of the parent's child for adoption;

14 Y. "resident" means a person who, prior to filing
15 an adoption petition, has lived in the state for at least six
16 months immediately preceding filing of the petition for
17 adoption or a person who has become domiciled in the state by
18 establishing legal residence with the intention of maintaining
19 the residency indefinitely; and

20 Z. "stepparent adoption" means an adoption of the
21 adoptee by the adoptee's stepparent when the adoptee has lived
22 with the stepparent for at least one year following the
23 marriage of the stepparent to the custodial parent."

24 Section 59. Section 32A-5-7 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 134, as amended) is amended to read:

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

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

B. The clerk of the court shall mail a copy of the
request for placement to the department within one working day

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

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

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

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

F. The clerk of the court shall provide a
certificate of adoption with an adoptee's new name.

G. The attorney for the petitioner shall forward
the certificate of adoption provided for in Subsection F of
this section as follows:

- (1) for a person born in the United States,

1 to the appropriate vital statistics office of the place, if
2 known, where the adoptee was born; or

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

5 Section 60. Section 32A-5-8 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 135, as amended) is amended to read:

7 "32A-5-8. CONFIDENTIALITY OF RECORDS.--

8 A. Unless the petitioner agrees to be contacted or
9 agrees to the release of the petitioner's identity to the
10 parent and the parent agrees to be contacted or agrees to the
11 release of the parent's identity to the petitioner, the
12 attorneys, the court, the agency and the department shall
13 maintain confidentiality regarding the names of the parties,
14 unless the information is already otherwise known. After the
15 petition is filed and prior to the entry of the decree, the
16 records in adoption proceedings shall be open to inspection
17 only by the attorney for the petitioner, the department or the
18 agency, any attorney appointed as a guardian ad litem for the
19 adoptee, any attorney retained by the adoptee or other persons
20 upon order of the court for good cause shown.

21 B. All records, whether on file with the court, an
22 agency, the department, an attorney or other provider of
23 professional services in connection with an adoption, are
24 confidential and may be disclosed only pursuant to the
25 provisions of the Adoption Act. All information and
documentation provided for the purpose of full disclosure is
confidential. Documentation provided for the purpose of full
disclosure shall remain the property of the person making full
disclosure when a prospective adoptive parent decides not to
accept a placement. Immediately upon refusal of the
placement, the prospective adoptive parent shall return all
full disclosure documentation to the person providing full

1 disclosure. A prospective adoptive parent shall not disclose
2 any confidential information received during the full
3 disclosure process, except as necessary to make a placement
4 decision or to provide information to a child's guardian ad
5 litem or the court.

6 C. All hearings in adoption proceedings shall be
7 confidential and shall be held in closed court without
8 admittance of any person other than parties and their counsel.

9 D. A person who intentionally and unlawfully
10 releases any information or records closed to the public
11 pursuant to the Adoption Act or releases or makes other
12 unlawful use of records in violation of that act is guilty of
13 a petty misdemeanor and shall be sentenced pursuant to the
14 provisions of Section 31-19-1 NMSA 1978.

15 E. Prior to the entry of the decree of adoption,
16 the parent consenting to the adoption or relinquishing
17 parental rights to an agency or the department shall execute
18 an affidavit stating whether the parent will permit contact or
19 the disclosure of the parent's identity to the adoptee or the
20 adoptee's prospective adoptive parents."

21 Section 61. Section 32A-5-13 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 140, as amended) is amended to read:

23 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR
24 PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

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

B. Only a pre-placement study that has been
prepared or updated within one year immediately prior to the
date of placement, approving the petitioner as an appropriate
adoptive parent, shall be filed with the court prior to

1 issuance of a placement order, except as provided in
2 Subsection C of Section 32A-5-12 NMSA 1978.

3 C. In order for a person to be certified to
4 conduct pre-placement studies, the person shall meet the
5 standards promulgated by the department. If the child is an
6 Indian child, the person shall meet the standards set forth in
7 the federal Indian Child Welfare Act of 1978.

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

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

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

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

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

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

(4) if the adoptee has been born, the

1 address where the adoptee is residing at the time of the
2 request for placement;

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

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

17 (7) that the petitioner desires to establish
18 a parent and child relationship between the petitioner and the
19 adoptee and that the petitioner is a fit and proper person
20 able to care and provide for the adoptee's welfare;

21 (8) the relationship, if any, of the
22 petitioner to the adoptee;

23 (9) whether the adoptee is subject to the
24 federal Indian Child Welfare Act of 1978, and, if so, the
25 petition shall allege the actions taken to comply with the
federal Indian Child Welfare Act of 1978 and all other
allegations required pursuant to that act;

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

(11) the name, address and telephone number

1 of the agency or investigator who has agreed to do the
2 pre-placement study.

3 G. The request for placement shall be served on
4 all parties entitled to receive notice of the filing of a
5 petition for adoption, as provided in Section 32A-5-27 NMSA
6 1978. An order allowing placement may be entered prior to
7 service of the request for placement.

8 H. A hearing and the court decision on the request
9 for placement shall occur within thirty days of the filing of
10 the request.

11 I. As part of any court order authorizing
12 placement under this section, the court shall find whether the
13 pre-placement study complies with Section 32A-5-14 NMSA 1978
14 and that the time requirements concerning placement set forth
15 in this section have been met."

16 Section 62. Section 32A-5-14.1 NMSA 1978 (being Laws
17 2003, Chapter 294, Section 8 and Laws 2003, Chapter 321,
18 Section 8) is amended to read:

19 "32A-5-14.1. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND
20 CHECKS.--

21 A. A nationwide criminal history records check
22 shall be conducted on a person who files a petition to adopt a
23 child, on prospective foster parents and on other adults
24 residing in the prospective adoptive or foster parent's
25 household. A person who files a petition to adopt a child
shall provide the department with a set of fingerprints. The
department is authorized to use the set of fingerprints to
conduct a background check of the person providing the
fingerprints by submitting the fingerprints to the department
of public safety and the federal bureau of investigation.

B. Criminal history records obtained by the
department pursuant to the provisions of this section are

1 confidential. Criminal history records obtained pursuant to
2 the provisions of this section shall not be used for any
3 purpose other than conducting background checks. Criminal
4 history records obtained pursuant to the provisions of this
5 section and the information contained in those records shall
6 not be released or disclosed to any other person or agency,
7 except pursuant to a court order or with the written consent
8 of the person who is the subject of the records.

9 C. A person who releases or discloses criminal
10 history records or information contained in those records in
11 violation of the provisions of this section is guilty of a
12 misdemeanor and shall be sentenced pursuant to the provisions
13 of Section 31-19-1 NMSA 1978."

14 Section 63. Section 32A-5-17 NMSA 1978 (being Laws
15 1993, Chapter 77, Section 144, as amended) is amended to read:

16 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS
17 ARE REQUIRED.--

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

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

24 (2) the adoptee's mother;

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

(4) the presumed father of the adoptee;

(5) the adoptee's acknowledged father;

(6) the department or the agency to whom the
adoptee has been relinquished that has placed the adoptee for
adoption or the department or the agency that has custody of
the adoptee; provided, however, that the court may grant the
adoption without the consent of the department or the agency

1 if the court finds the adoption is in the best interests of
2 the adoptee and that the withholding of consent by the
3 department or the agency is unreasonable; and

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

7 B. In any adoption involving an Indian child,
8 consent to adoption by the petitioner or relinquishment of
9 parental rights shall be obtained from an "Indian custodian",
10 as required pursuant to the provisions of the federal Indian
11 Child Welfare Act of 1978.

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

15 Section 64. Section 32A-5-21 NMSA 1978 (being Laws
16 1993, Chapter 77, Section 148) is amended to read:

17 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

18 A. Except when consent or relinquishment is
19 implied, a consent or relinquishment by a parent shall be in
20 writing, signed by the parent consenting or relinquishing and
21 shall state the following:

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

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

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

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

1 (5) that the person executing the consent or
2 relinquishment has been counseled, as provided in Section
3 32A-5-22 NMSA 1978, by a certified counselor of the person's
4 choice and with this knowledge the person is voluntarily and
5 unequivocally consenting to the adoption of the named adoptee;

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

9 (7) if the adoption is closed, that all
10 parties understand that the court will not enforce any
11 contact, regardless of any informal agreements that have made
12 between the parties;

13 (8) that the consent to or relinquishment
14 for adoption cannot be withdrawn;

15 (9) that the person executing the consent or
16 relinquishment has received or been offered a copy of the
17 consent or relinquishment;

18 (10) that a counseling narrative has been
19 prepared pursuant to department regulations and is attached to
20 the consent or relinquishment;

21 (11) that the person who performed the
22 counseling meets the requirements set forth in the Adoption
23 Act; and

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

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

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

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

- 1 (3) the name of the petitioner;
- 2 (4) that the adoptee has been counseled
- 3 regarding the consent pursuant to department regulation;
- 4 (5) that the adoptee has been advised of the
- 5 legal consequences of the consent;
- 6 (6) that the adoptee is voluntarily and
- 7 unequivocally consenting to the adoption;
- 8 (7) that the consent or relinquishment
- 9 cannot be withdrawn;
- 10 (8) that a counseling narrative has been
- 11 prepared pursuant to department regulation and is attached to
- 12 the consent; and
- 13 (9) that the person who performed the
- 14 counseling meets the requirements set forth in the Adoption
- 15 Act.

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

D. Unconditional consents or relinquishments are preferred and therefore, conditional consents or relinquishments shall be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, all conditions permitted

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

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

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

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

21 G. No consent to adoption or relinquishment of
22 parental rights shall be valid if executed within forty-eight
23 hours after the adoptee's birth. Consent to adoption or
24 relinquishment of parental rights involving an Indian child
25 shall comply with the more stringent requirements of the
federal Indian Child Welfare Act of 1978.

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

I. A consent to or relinquishment for adoption

1 shall not be withdrawn prior to the entry of a decree of
2 adoption unless the court finds, after notice and opportunity
3 to be heard is afforded to the petitioner, to the person
4 seeking the withdrawal and to the agency placing a child for
5 adoption, that the consent or relinquishment was obtained by
6 fraud. In no event shall a consent or relinquishment be
7 withdrawn after the entry of a decree of adoption."

8 Section 65. Section 32A-5-23 NMSA 1978 (being Laws
9 1993, Chapter 77, Section 150, as amended) is amended to read:

10 "32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR
11 RELINQUISHMENTS.--

12 A. A consent to adoption or relinquishment of
13 parental rights shall be signed before and approved on the
14 record by a judge who has jurisdiction over adoption
15 proceedings, within or without this state, and who is in the
16 jurisdiction in which the child is present or in which the
17 parent resides at the time it is signed.

18 B. No parent may relinquish parental rights to the
19 department or an agency without the department's or the
20 agency's consent.

21 C. The consent or relinquishment shall be filed
22 with the court in which the petition for adoption has been
23 filed before adjudication of the petition."

24 Section 66. Section 32A-5-24 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 151) is amended to read:

"32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

A. When a parent elects to relinquish parental
rights to the department, a petition to accept the
relinquishment shall be filed, unless an abuse or neglect
proceeding is pending. If an abuse or neglect proceeding is
pending, the relinquishment shall be heard in the context of
that proceeding.

1 B. In all hearings regarding relinquishment of
2 parental rights to the department, the child shall be
3 represented by a guardian ad litem.

4 C. If a proposed relinquishment of parental rights
5 is not in contemplation of adoption, the court shall not allow
6 the relinquishment of parental rights unless it finds that
7 good cause exists, that the department has made reasonable
8 efforts to preserve the family and that relinquishment of
9 parental rights is in the child's best interest. Whenever a
10 parent relinquishes his parental rights pursuant to this
11 subsection, the parent shall remain financially responsible
12 for the child. The court may order the parent to pay the
13 reasonable costs of support and maintenance of the child. The
14 court may use the child support guidelines set forth in
15 Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

16 D. When a parent relinquishes the parent's rights
17 under this section, the parent shall be notified that no
18 contact will be enforced by the court, regardless of any
19 informal agreement, unless the parties have agreed to an open
20 adoption pursuant to Section 32A-5-35 NMSA 1978. The consent
21 for relinquishment shall be in writing and shall state that
22 the parties understand that any informal agreement allowing
23 contact will not be enforced by the courts."

24 Section 67. Section 32A-5-34 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 161, as amended) is amended to read:

"32A-5-34. FEES AND CHARGES--DAMAGES.--

 A. Prior to the final hearing on the petition, the
petitioner shall file a full accounting of all disbursements
of anything of value made or agreed to be made by or on behalf
of the petitioner in connection with the adoption. The
accounting report shall be signed under penalty of perjury.
The accounting report shall be itemized in detail and shall

1 show the services reasonably relating to the adoption or to
2 the placement of the child for adoption that were received by
3 the parents of the child, by the child or by or on behalf of
4 the petitioner. The report shall also include the dates of
5 each payment and the names and addresses of each attorney,
6 physician, hospital, licensed adoption agency or other person
7 or organization who received any funds or any other thing of
8 value from the petitioner in connection with the adoption or
9 the placement of the child with him or who participated in any
10 way in the handling of the funds, either directly or
11 indirectly.

12 B. A prospective adoptive parent, or another
13 person acting on behalf of a prospective adoptive parent,
14 shall make payments for services relating to the adoption or
15 to the placement of the adoptee for adoption for allowed
16 expenses only to third party vendors, as reasonably practical.
17 These payments shall consist of reasonable and actual fees or
18 charges for:

19 (1) the services of an agency in connection
20 with an adoption;

21 (2) medical, hospital, nursing,
22 pharmaceutical, traveling or other similar expenses incurred
23 by a mother or the adoptee in connection with the birth or any
24 illness of an adoptee;

25 (3) reasonable counseling services relating
to the adoption;

(4) living expenses of a mother and her
dependent children, including the adoptee, for a reasonable
time before the birth or placement of the adoptee and for no
more than six weeks after the birth or placement of the
adoptee;

(5) expenses incurred for the purposes of

1 full disclosure;

2 (6) legal services, court costs and
3 traveling or other administrative expenses connected with an
4 adoption, including any legal service performed for a parent
5 who consents to the adoption of a child or relinquishes the
6 child to an agency;

7 (7) preparation of a pre-placement study and
8 of a post-placement report during the pendency of the adoption
9 proceeding; or

10 (8) any other service or expense the court
11 finds is reasonably necessary for services relating to the
12 adoption or to the placement of the adoptee for adoption.

13 C. Any person who makes payments that are not
14 permitted pursuant to the provisions of this section is in
15 violation of the Adoption Act and subject to the penalties set
16 forth in Section 32A-5-42 NMSA 1978.

17 D. Any person who threatens or coerces a parent to
18 complete the relinquishment of parental rights or to complete
19 the consent to an adoption, by demanding repayment of expenses
20 or by any other threat or coercion, shall be liable to the
21 parent for compensatory and punitive damages.

22 E. The accounting required in Subsection A of this
23 section is not applicable to stepparent adoptions or to
24 adoptions under the provisions of the Abuse and Neglect Act,
25 unless ordered by the court.

F. Nothing in this section shall be construed to
permit payment to a woman for conceiving and carrying a
child."

Section 68. Section 32A-5-35 NMSA 1978 (being Laws
1993, Chapter 77, Section 162, as amended) is amended to read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner

1 may agree to contact between the parents and the petitioner or
2 contact between the adoptee and one or more of the parents or
3 contact between the adoptee and relatives of the parents. An
4 agreement shall, absent a finding to the contrary, be presumed
5 to be in the best interests of the child and shall be included
6 in the decree of adoption. The contact may include exchange
7 of identifying or nonidentifying information or visitation
8 between the parents or the parents' relatives and the
9 petitioner or visitation between the parents or the parents'
10 relatives and the adoptee. An agreement entered into pursuant
11 to this section shall be considered an open adoption.

12 B. The court may appoint a guardian ad litem for
13 the adoptee. The court shall adopt a presumption in favor of
14 appointing a guardian ad litem for the adoptee when visitation
15 between the biological family and the adoptee is included in
16 an agreement; however, this requirement may be waived by the
17 court for good cause shown. When an adoptive placement is
18 made voluntarily through an agency or pursuant to Section
19 32A-5-13 NMSA 1978, the court may, in its discretion, appoint
20 a guardian ad litem. If the child is fourteen years of age or
21 older, the court may appoint an attorney for the child. In
22 all adoptions other than those in which the child is placed by
23 the department, the court may assess the parties for the cost
24 of services rendered by the guardian ad litem or the child's
25 attorney. The duties of the guardian ad litem or child's
attorney end upon the filing of the decree, unless otherwise
ordered by the court.

C. In determining whether the agreement is in the
adoptee's best interests, the court shall consider the
adoptee's wishes, but the wishes of the adoptee shall not
control the court's findings as to the best interests of the
adoptee.

1 D. Every agreement entered into pursuant to
2 provisions of this section shall contain a clause stating that
3 the parties agree to the continuing jurisdiction of the court
4 and to the agreement and understand and intend that any
5 disagreement or litigation regarding the terms of the
6 agreement shall not affect the validity of the relinquishment
7 of parental rights, the adoption or the custody of the
8 adoptee.

9 E. The court shall retain jurisdiction after the
10 decree of adoption is entered, if the decree contains an
11 agreement for contact, for the purpose of hearing motions
12 brought to enforce or modify an agreement entered into
13 pursuant to the provisions of this section. The court shall
14 not grant a request to modify the agreement unless the moving
15 party establishes that there has been a change of
16 circumstances and the agreement is no longer in the adoptee's
17 best interests."

18 Section 69. Section 32A-5-37 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 164) is amended to read:

20 "32A-5-37. STATUS OF ADOPTEE AND PETITIONER UPON ENTRY
21 OF DECREE OF ADOPTION.--

22 A. Once adopted, an adoptee shall take a name
23 designated by the petitioner, except in stepparent adoptions.
24 In stepparent adoptions, the adoptee shall take the new name
25 designated by the petitioner in the petition so long as the
petitioner's spouse and the child, if over the age of fourteen
years, consent to the new name. The name change need not be
requested in the petition.

B. After adoption, the adoptee and the petitioner
shall sustain the legal relation of parent and child as if the
adoptee were the biological child of the petitioner and the
petitioner were the biological parent of the child. The

1 adoptee shall have all rights and be subject to all of the
2 duties of that relation, including the right of inheritance
3 from and through the petitioner, and the petitioner shall have
4 all rights and be subject to all duties of that relation,
5 including right of inheritance from and through the adoptee."

6 Section 70. Section 32A-5-38 NMSA 1978 (being Laws
7 1993, Chapter 77, Section 165) is amended to read:

8 "32A-5-38. BIRTH CERTIFICATES.--

9 A. Within thirty days after an adoption decree
10 becomes final, the petitioner shall prepare an application for
11 a birth certificate in the new name of the adoptee, showing
12 the petitioner as the adoptee's parent, and shall provide the
13 application to the clerk of the court. The petitioner shall
14 forward the application:

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

18 (2) for all other persons, to the state
19 registrar of vital statistics. In the case of the adoption of
20 a person born outside the United States, if requested by the
21 petitioner, the court shall make findings, based on evidence
22 from the petitioner and other reliable state or federal
23 sources, on the date and place of birth of the adoptee. These
24 findings shall be certified by the court and included with the
25 application for a birth certificate.

B. The state registrar of vital statistics shall
prepare a birth record in the new name of the adoptee in
accordance with the vital statistics laws, but subject to the
requirements of the Adoption Act as to the confidentiality of
adoption records."

Section 71. Section 32A-5-39 NMSA 1978 (being Laws
1993, Chapter 77, Section 166, as amended by Laws 2003,

1 Chapter 294, Section 6 and by Laws 2003, Chapter 321, Section
2 6) is amended to read:

3 "32A-5-39. RECOGNITION OF FOREIGN DECREES.--

4 A. Every decree or order of adoption terminating
5 the parent-child relationship or establishing the relationship
6 of parent and child by adoption entered by a court or other
7 entity in another country acting pursuant to that country's
8 law or pursuant to any convention or treaty or intercountry
9 adoption that the United States has ratified shall be
10 recognized in this state, so that the rights and obligations
11 of the parties as to matters within the jurisdiction of this
12 state shall be determined as though the decree or order of
13 adoption were issued by the courts of this state.

14 B. A convention adoption in a foreign country that
15 is certified by the United States secretary of state shall be
16 recognized as a final adoption in this state."

17 Section 72. Section 32A-5-40 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 167, as amended) is amended to read:

19 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

20 A. After the decree of adoption has been entered,
21 all court files containing records of judicial proceedings
22 conducted pursuant to the provisions of the Adoption Act and
23 records submitted to the court in the proceedings shall be
24 kept in separate locked files withheld from public inspection.
25 Upon application to the clerk of the court, the records shall
be open to inspection by a former parent if the adoptee is
eighteen years of age or older, by an adoptee if the adoptee
is eighteen years of age or older at the time application is
made for inspection, by the adoptive parent if the adoptee is
under eighteen years of age at the time application is made
for inspection, by the attorney of any party, by any agency
that has exercised guardianship over or legal custody of a

1 child who was the adoptee in the particular proceeding, by the
2 department or by an adoptee's sibling; provided that the
3 identity of the former parents and of the adoptee shall be
4 kept confidential unless the former parents and the adoptee
5 have consented to the release of identity. In the absence of
6 consent to release identity, the inspection shall be limited
7 to the following nonidentifying information:

8 (1) the health and medical histories of the
9 adoptee's biological parents;

10 (2) the health and medical history of the
11 adoptee;

12 (3) the adoptee's general family background,
13 including ancestral information, without name references or
14 geographical designations;

15 (4) physical descriptions; and

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

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

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

23 (2) a release of the former parent's
24 identity to the adoptee if the adoptee is eighteen years of
25 age or older or to the adoptive parent if the adoptee is under
eighteen years of age; or

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

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

D. The consent or refusal referred to in

1 Subsection B of this section shall be honored by the court,
2 the placing agency or the department unless for good cause the
3 court orders to the contrary.

4 E. At any time, an adoptee who is eighteen years
5 of age or older may file with the court, a placing agency or
6 the department:

7 (1) information regarding the adoptee's
8 location; or

9 (2) a consent or refusal regarding opening
10 of the adoptee's adoption file to the adoptee's former
11 parents.

12 F. If mutual authorizations for release of
13 identifying information by the parties are not available, an
14 adoptee who is eighteen years of age or older, the biological
15 parents if the adoptee is eighteen years of age or older or
16 the adoptive parents if the adoptee is under the age of
17 eighteen years may file a motion with the court to obtain the
18 release of identifying information for good cause shown. When
19 hearing the motion, the court shall give primary consideration
20 to the best interests of the adoptee, but shall also give due
21 consideration to the interests of the members of the adoptee's
22 former and adoptive families. In determining whether good
23 cause exists for the release of identifying information, the
24 court shall consider:

25 (1) the reason the information is sought;
(2) any procedure available for satisfying
the petitioner's request without disclosing the name or
identity of another individual, including appointment of a
confidential intermediary to contact the individual and
request specific information;

(3) whether the individual about whom
identifying information is sought is alive;

1 (4) the preference, to the extent known, of
2 the adoptee, the adoptive parents, the former parents and
3 other members of the adoptee's former and adoptive families
4 and the likely effect of disclosure on those individuals;

5 (5) the age, maturity and expressed needs of
6 the adoptee;

7 (6) the report or recommendation of any
8 individual appointed by the court to assess the request for
9 identifying information; and

10 (7) any other factor relevant to an
11 assessment of whether the benefit to the adoptee of releasing
12 the information sought will be greater than the benefit to any
13 other individual of not releasing the information.

14 G. An adoptee shall have the right, for the
15 purpose of enrolling in the adoptee's tribe of origin, to
16 access information kept by the department. Information needed
17 by an adoptee to enroll in his tribe of origin may be
18 requested from the department by the following persons:

19 (1) the adoptee, after he reaches eighteen
20 years of age;

21 (2) when the adoptee is a child, his
22 adoptive parent or guardian; or

23 (3) an adoptee's descendant or, if the
24 adoptee's descendant is a child, an adult representative for
25 the descendant.

H. When the department receives a request for
information regarding an adoptee's tribe of origin, the
department shall examine its records to determine if the
adoptee is of Indian descent. If the department establishes
that an adoptee is of Indian descent, the department shall:

(1) provide the requester with the tribal
affiliation of the adoptee's biological parents;

1 (2) submit to the tribe information
2 necessary to establish tribal enrollment for the adoptee and
3 to protect any rights flowing from the adoptee's tribal
4 relationship; and

5 (3) provide notice to the requester of the
6 department's submission of information to the adoptee's
7 tribe."

8 Section 73. Section 32A-5-45 NMSA 1978 (being Laws
9 1993, Chapter 77, Section 172) is amended to read:

10 "32A-5-45. ADMINISTRATION OF SUBSIDIZED ADOPTIONS.--

11 A. The department shall promulgate all necessary
12 regulations for the administration of the program of
13 subsidized adoptions or placement with permanent guardians.

14 B. Subsidy payments may include payments to
15 vendors for medical and surgical expenses and payments to the
16 adoptive parents or permanent guardians for maintenance and
17 other costs incidental to the adoption, care, training and
18 education of the child. The payments in any category of
19 assistance shall not exceed the cost of providing the
20 assistance in foster care. Payments shall not be made under
21 this section after the child reaches eighteen years of age,
22 except for a child who is enrolled in the medically fragile
23 waiver program, in which case the payments may extend until
24 the child is twenty-one years of age.

25 C. A written agreement between the adoptive family
or permanent guardians and the department shall precede the
decree of adoption or permanent guardianship. The agreement
shall incorporate the terms and conditions of the subsidy plan
based on the individual needs of the child within the
permanent family. In cases of subsidies that continue for
more than one year, there shall be an annual redetermination
of the need for a subsidy. The department shall develop an

1 appeal procedure whereby a permanent family may contest a
2 division determination to deny, reduce or terminate a
3 subsidy."

4 Section 74. Section 32A-15-1 NMSA 1978 (being Laws
5 1985, Chapter 103, Section 1 and Laws 1985, Chapter 140,
6 Section 1, as amended) is amended to read:

7 "32A-15-1. SHORT TITLE.--Chapter 32A, Article 15 NMSA
8 1978 may be cited as the "New Mexico Children's and Juvenile
9 Facility and Program Criminal Records Screening Act".

10 Section 75. Section 32A-15-2 NMSA 1978 (being Laws
11 1985, Chapter 103, Section 2 and Laws 1985, Chapter 140,
12 Section 2) is amended to read:

13 "32A-15-2. PURPOSE.--The purpose of the New Mexico
14 Children's and Juvenile Facility and Program Criminal Records
15 Screening Act is to comply with the provisions of Public Law
16 98-473 and Public Law 108-36 and to protect the safety and
17 welfare of children."

18 Section 76. Section 32A-15-3 NMSA 1978 (being Laws
19 1985, Chapter 103, Section 3 and Laws 1985, Chapter 140,
20 Section 3, as amended) is amended to read:

21 "32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND
22 CHECKS.--

23 A. Nationwide criminal history record checks shall
24 be conducted on all operators, staff and employees and
25 prospective operators, staff and employees of child care
facilities, including every facility or program that has
primary custody of children for twenty hours or more per week,
and juvenile detention, correction or treatment facilities.
Nationwide criminal history record checks shall also be
conducted on all prospective foster or adoptive parents and
other adult relatives and non-relatives residing in the
prospective foster or adoptive parent's household. The

1 objective of conducting the record checks is to protect the
2 children involved and promote the children's safety and
3 welfare while receiving service from the facilities and
4 programs.

5 B. The department shall fingerprint all operators,
6 staff and employees and prospective operators, staff and
7 employees of child care facilities and all prospective foster
8 or adoptive parents and other adult relatives and
9 non-relatives residing in the prospective foster or adoptive
10 parent's household. The department shall conduct a background
11 check of all operators, staff and employees and prospective
12 operators, staff and employees of child care facilities and
13 all prospective foster or adoptive parents and other adult
14 relatives and non-relatives residing in the prospective foster
15 or adoptive parent's household and shall submit a fingerprint
16 card for those individuals to the department of public safety
17 and the federal bureau of investigation for this purpose.

18 C. Criminal history records obtained by the
19 department pursuant to the provisions of this section are
20 confidential. The department is authorized to use criminal
21 history records obtained from the federal bureau of
22 investigation to conduct background checks on prospective
23 operators, staff and employees of child care facilities and
24 foster parents.

25 D. Criminal history records obtained pursuant to
the provisions of this section shall not be used for any
purpose other than conducting background checks. Criminal
history records obtained pursuant to the provisions of this
section and the information contained in those records shall
not be released or disclosed to any other person or agency,
except pursuant to a court order or with the written consent
of the person who is the subject of the records.

1 E. A person who releases or discloses criminal
2 history records or information contained in those records in
3 violation of the provisions of this section is guilty of a
4 misdemeanor and shall be sentenced pursuant to the provisions
5 of Section 31-19-1 NMSA 1978."

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6 Section 77. REPEAL.--

7 A. Sections 32A-3-1 and 32A-3A-5 NMSA 1978 (being
8 Laws 1993, Chapter 77, Section 62 and Laws 1993, Chapter 77,
9 Section 67) are repealed.

10 B. Laws 2003, Chapter 225, Section 10 is repealed.

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