

HOUSE BILL 582

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO THE CHILDREN'S CODE; AMENDING THE ABUSE AND NEGLECT ACT; ADDING DEFINITIONS; PROVIDING NOTICE TO GRANDPARENTS AND OTHER RELATIVES; CHANGING PROCEDURES FOR PERMANENCY HEARINGS; MODIFYING AND EXPANDING CONFIDENTIALITY PROVISIONS.

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

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

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

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

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

(2) left the child with others, including the

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1 other parent or an agency, without provision for support and  
2 without communication for a period of:

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

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

8 B. "abused child" means a child:

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

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

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

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

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

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

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

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

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

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

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

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

20 [~~E-~~] F. "neglected child" means a child:

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

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

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1 faults or habits of the child's parent, guardian or custodian  
2 or the failure or refusal of the parent, guardian or custodian,  
3 when able to do so, to provide them;

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

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

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

22 [~~F-~~] G. "physical abuse" includes but is not  
23 limited to any case in which the child exhibits evidence of  
24 skin bruising, bleeding, malnutrition, failure to thrive,  
25 burns, fracture of any bone, subdural hematoma, soft tissue

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1 swelling or death and:

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

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

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

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

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

13 [~~G.~~] I. "sexual abuse" includes but is not limited  
14 to criminal sexual contact, incest or criminal sexual  
15 penetration, as those acts are defined by state law;

16 [~~H.~~] J. "sexual exploitation" includes but is not  
17 limited to:

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

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

22 (3) filming or depicting a child for obscene  
23 or pornographic commercial purposes, as those acts are defined  
24 by state law; [~~and~~]

25 K. "sibling" means a brother or sister having one

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1 or both parents in common by birth or adoption; and

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

9           **SECTION 2.** A new section of the Abuse and Neglect Act,  
10 Section 32A-4-17.1 NMSA 1978, is enacted to read:

11           "32A-4-17.1. [NEW MATERIAL] NOTICE TO GRANDPARENTS AND  
12 RELATIVES.--Within thirty days after a child is taken into  
13 custody by law enforcement, or when the department files a  
14 petition seeking legal custody of the child, whichever occurs  
15 first, the department shall exercise due diligence and make  
16 reasonable efforts to identify and provide notice to all  
17 grandparents; all parents of a sibling of the child, when the  
18 parent has legal custody of the sibling; and other adult  
19 relatives of the child, including adult relatives suggested by  
20 the parents, unless such notice would be contrary to the best  
21 interests of the child due to family or domestic violence. The  
22 notice shall:

23           A. specify that the child has been or is being  
24 removed from the custody of the parent or parents of the child;

25           B. explain the options the relative has under

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1 federal, state or other law to participate in the care and  
2 placement of the child, including any options that may be lost  
3 by failing to respond to the notice;

4 C. describe the requirements for becoming a foster  
5 family home and the additional services and support that are  
6 available for children placed in such a home; and

7 D. set out the dates of any currently scheduled  
8 court hearings that involve the child."

9 SECTION 3. Section 32A-4-18 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 112, as amended) is amended to read:

11 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--  
12 PROBABLE CAUSE.--

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

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

25 C. At the custody hearing, the court shall return

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1 legal custody of the child to the child's parent, guardian or  
2 custodian unless probable cause exists to believe that:

3 (1) the child is suffering from an illness or  
4 injury, and the parent, guardian or custodian is not providing  
5 adequate care for the child;

6 (2) the child is in immediate danger from the  
7 child's surroundings, and removal from those surroundings is  
8 necessary for the child's safety or well-being;

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

11 (4) there has been an abandonment of the child  
12 by the child's parent, guardian or custodian; or

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

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

19 (1) return legal custody of the child to the  
20 child's parent, guardian or custodian upon such conditions as  
21 will reasonably ensure the safety and well-being of the child,  
22 including protective supervision by the department; or

23 (2) award legal custody of the child to the  
24 department.

25 E. Reasonable efforts shall be made to preserve and



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1 reunify the family, with the paramount concern being the  
2 child's health and safety. When the department determines that  
3 the home of an adult relative of the child meets all relevant  
4 child protection and licensing standards and placement in the  
5 home would be in the best interest of the child, the department  
6 shall give preference to the placement of the child in that  
7 home. The department shall make reasonable efforts to conduct  
8 home studies on appropriate relatives who express an interest  
9 in providing placement for the child.

10 F. At the conclusion of the custody hearing, if the  
11 court determines that probable cause does not exist pursuant to  
12 Subsection C of this section, the court shall:

13 (1) retain jurisdiction and, unless the court  
14 permits otherwise, order that the respondent and child remain  
15 in the jurisdiction of the court pending the adjudication;

16 (2) return legal custody of the child to the  
17 child's parent, guardian or custodian with conditions to  
18 provide for the safety and well-being of the child; and

19 (3) order that the child's parent, guardian or  
20 custodian allow the child necessary contact with the child's  
21 guardian ad litem or attorney.

22 G. At the conclusion of the custody hearing, the  
23 court may order the respondent or the child alleged to be  
24 neglected or abused, or both, to undergo appropriate diagnostic  
25 examinations or evaluations. If the court determines that

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1 probable cause does not exist, the court may order the  
2 respondent or the child alleged to be neglected or abused, or  
3 both, to undergo appropriate diagnostic examinations or  
4 evaluations as necessary to protect the child's best interests,  
5 based upon the allegations in the petition and the evidence  
6 presented at the custody hearing. Copies of any diagnostic or  
7 evaluation reports ordered by the court shall be provided to  
8 the parties at least five days before the adjudicatory hearing  
9 is scheduled. The reports shall not be sent to the court.

10 H. The Rules of Evidence shall not apply to custody  
11 hearings.

12 I. Notwithstanding any other provision of law, a  
13 party aggrieved by an order entered pursuant to this section  
14 shall be permitted to file an immediate appeal as a matter of  
15 right. If the order appealed from grants the legal custody of  
16 the child to or withholds it from one or more of the parties to  
17 the appeal, the appeal shall be expedited and shall be heard at  
18 the earliest practicable time. While an appeal pursuant to  
19 this section is pending, the court shall have jurisdiction to  
20 take further action in the case pursuant to Subsection B of  
21 Section 32A-1-17 NMSA 1978.

22 J. Nothing in this section shall be construed to  
23 abridge the rights of Indian children pursuant to the federal  
24 Indian Child Welfare Act of 1978."

25 SECTION 4. Section 32A-4-21 NMSA 1978 (being Laws 1993,  
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1 Chapter 77, Section 115, as amended) is amended to read:

2 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,  
3 REPORTS AND EXAMINATIONS.--

4 A. Prior to holding a dispositional hearing, the  
5 court shall direct that a predisposition study and report be  
6 submitted in writing to the court by the department.

7 B. The predisposition study required pursuant to  
8 Subsection A of this section shall contain the following  
9 information:

10 (1) a statement of the specific reasons for  
11 intervention by the department or for placing the child in the  
12 department's custody and a statement of the parent's ability to  
13 care for the child in the parent's home without causing harm to  
14 the child;

15 (2) a statement of how an intervention plan is  
16 designed to achieve placement of the child in the least  
17 restrictive setting available, consistent with the best  
18 interests and special needs of the child, including a statement  
19 of the likely harm the child may suffer as a result of being  
20 removed from the parent's home, including emotional harm that  
21 may result due to separation from the child's parents, and a  
22 statement of how the intervention plan is designed to place the  
23 child in close proximity to the parent's home without causing  
24 harm to the child due to separation from parents, siblings or  
25 any other person who may significantly affect the child's best

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1 interest;

2 (3) the wishes of the child as to the child's  
3 custodian;

4 (4) a statement of the efforts that the  
5 department has made to identify and locate all grandparents and  
6 other relatives and to conduct home studies on any appropriate  
7 relative who expresses an interest in providing care for the  
8 child, and a statement as to whether the child has a family  
9 member who, subsequent to study by the department, is  
10 determined to be qualified to care for the child;

11 (5) a description of services offered to the  
12 child, the child's family and the child's foster care family  
13 and a summary of reasonable efforts made to prevent removal of  
14 the child from the child's family or reasonable efforts made to  
15 reunite the child with the child's family;

16 (6) a description of the home or facility in  
17 which the child is placed and the appropriateness of the  
18 child's placement;

19 (7) the results of any diagnostic examination  
20 or evaluation ordered at the custody hearing;

21 (8) a statement of the child's medical and  
22 educational background;

23 (9) if the child is an Indian child, whether  
24 the placement preferences set forth in the federal Indian Child  
25 Welfare Act of 1978 or the placement preferences of the child's

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1 Indian tribe were followed and whether the child's [~~treatment~~]  
2 case plan provides for maintaining the child's cultural ties;

3 (10) a [~~treatment~~] case plan that sets forth  
4 steps to ensure that the child's physical, medical,  
5 psychological and educational needs are met and that sets forth  
6 services to be provided to the child and the child's parents to  
7 facilitate permanent placement of the child in the parent's  
8 home;

9 (11) for children sixteen years of age and  
10 older, a plan for developing the specific skills the child  
11 requires for successful transition into independent living as  
12 an adult, regardless of whether the child is returned to the  
13 child's parent's home; [~~and~~]

14 (12) a [~~treatment~~] case plan that sets forth  
15 steps to ensure that the child's educational needs are met and,  
16 for a child fourteen years of age or older, a [~~treatment~~] case  
17 plan that specifically sets forth the child's educational and  
18 post-secondary goals; and

19 (13) a description of the child's foster care  
20 placement and whether it is appropriate in terms of the  
21 educational setting and proximity to the school the child was  
22 enrolled in at the time of the placement, including plans for  
23 travel for the child to remain in the school in which the child  
24 was enrolled at the time of placement, if reasonable and in the  
25 child's best interest.

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1 C. A copy of the predisposition report shall be  
2 provided by the department to counsel for all parties five days  
3 before the dispositional hearing.

4 D. If the child is an adjudicated abused child, any  
5 temporary custody orders shall remain in effect until the court  
6 has received and considered the predispositional study at the  
7 dispositional hearing."

8 SECTION 5. Section 32A-4-22 NMSA 1978 (being Laws 1993,  
9 Chapter 77, Section 116, as amended) is amended to read:

10 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED  
11 CHILD.--

12 A. If not held in conjunction with the adjudicatory  
13 hearing, the dispositional hearing shall be commenced within  
14 thirty days after the conclusion of the adjudicatory hearing.  
15 At the conclusion of the dispositional hearing, the court shall  
16 make and include in the dispositional judgment its findings on  
17 the following:

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

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

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

25 (4) the wishes of the child as to the child's

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1 placement;

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

4 (6) whether reasonable efforts have been made  
5 by the department to identify, locate and give notice to all  
6 grandparents and other relatives and to conduct home studies on  
7 any appropriate relative who expresses an interest in providing  
8 care for the child. If the court finds that reasonable efforts  
9 in these areas have not been made, the court may make  
10 supplemental orders as necessary and may reconsider the matter  
11 at the initial judicial review and subsequent periodic review  
12 hearings;

13 (7) whether consideration has been given to  
14 the child's familial identity and connections;

15 [~~(6)~~] (8) whether there exists a relative of  
16 the child or other individual who, after study by the  
17 department, is found to be qualified to receive and care for  
18 the child;

19 [~~(7)~~] (9) the availability of services  
20 recommended in the [~~treatment~~] case plan prepared as a part of  
21 the predisposition study in accordance with the provisions of  
22 Section 32A-4-21 NMSA 1978;

23 [~~(8)~~] (10) the ability of the parent to care  
24 for the child in the home so that no harm will result to the  
25 child;

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1                    [~~(9)~~] (11) whether reasonable efforts were  
2     ~~[used]~~ made by the department to prevent removal of the child  
3     from the home prior to placement in substitute care and whether  
4     reasonable efforts were ~~[used]~~ made to attempt reunification of  
5     the child with the natural parent;

6                    [~~(10)~~] (12) whether reasonable efforts were  
7     made by the department to place siblings in custody together,  
8     unless such joint placement would be contrary to the safety or  
9     well-being of any of the siblings in custody, and whether any  
10    siblings not jointly placed have been provided reasonable  
11    visitation or other ongoing interaction, unless visitation or  
12    other ongoing interaction would be contrary to the safety or  
13    well-being of any of the siblings; and

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

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

25                    (1) permit the child to remain with the



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1 child's parent, guardian or custodian, subject to those  
2 conditions and limitations the court may prescribe;

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

5 (3) transfer legal custody of the child to  
6 [~~any~~] one of the following:

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

9 [~~(b) an agency responsible for the care  
10 of neglected or abused children; or~~

11 [~~(c) a child placement agency willing and  
12 able to assume responsibility for the education, care and  
13 maintenance of the child and licensed or otherwise authorized  
14 by law to receive and provide care for the child]~~

15 (b) the department.

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

25 (1) the efforts would be futile; or

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

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

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

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

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

23 H. Prior to a child being placed in the custody or  
24 protective supervision of the department, the department shall  
25 be provided with reasonable oral or written notification and an

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1 opportunity to be heard. At any hearing held pursuant to this  
2 subsection, the department may appear as a party.

3 I. When a child is placed in the custody of the  
4 department, the department shall investigate whether the child  
5 is eligible for enrollment as a member of an Indian tribe and,  
6 if so, the department shall pursue the enrollment on the  
7 child's behalf.

8 J. When the court determines pursuant to Subsection  
9 C of this section that no reasonable efforts at reunification  
10 are required, the court shall conduct, within thirty days, a  
11 permanency hearing as described in Section 32A-4-25.1 NMSA  
12 1978. Reasonable efforts shall be made to implement and  
13 finalize the permanency plan in a timely manner."

14 SECTION 6. Section 32A-4-25.1 NMSA 1978 (being Laws 1997,  
15 Chapter 34, Section 8, as amended) is amended to read:

16 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW  
17 HEARINGS.--

18 A. A permanency hearing shall be commenced within  
19 six months of the initial judicial review of a child's  
20 dispositional order or within twelve months of a child entering  
21 foster care pursuant to Subsection D of this section, whichever  
22 occurs first. Prior to the initial permanency hearing, all  
23 parties to the hearing shall attend a mandatory meeting and  
24 attempt to settle issues attendant to the permanency hearing  
25 and develop a proposed [~~treatment~~] case plan that serves the

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1 child's best interest. Prior to the initial permanency  
2 hearing, the department shall submit a progress report  
3 regarding the child to the local substitute care review board  
4 for that judicial district. The local substitute care review  
5 board may review the child's dispositional order, any  
6 continuation of that order and the department's progress report  
7 and report its findings and recommendations to the court.

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

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

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1           C. If the court adopts a permanency plan of  
2 reunification, the court shall adopt a plan for transitioning  
3 the child home within a reasonable period depending on the  
4 facts and circumstances of the case, but not to exceed six  
5 months, and schedule a permanency review hearing within three  
6 months. If the child is reunified, the subsequent hearing may  
7 be vacated.

8           ~~[D. If the court adopts a permanency plan other~~  
9 ~~than reunification, the court shall determine whether the~~  
10 ~~department has made reasonable efforts to identify and locate~~  
11 ~~all grandparents and other relatives. The court shall also~~  
12 ~~determine whether the department has made reasonable efforts to~~  
13 ~~conduct home studies on any appropriate relative expressing an~~  
14 ~~interest in providing permanency for the child. The court must~~  
15 ~~ensure the consideration has been given to the child's familial~~  
16 ~~identity and connections. If the court finds that reasonable~~  
17 ~~efforts have not been made to identify or locate grandparents~~  
18 ~~and other relatives or to conduct home studies on appropriate~~  
19 ~~and willing relatives, the court shall schedule a permanency~~  
20 ~~review within sixty days to determine whether an appropriate~~  
21 ~~relative placement has been made. If a relative placement is~~  
22 ~~made, the subsequent hearing may be vacated.~~

23           E.] D. At the permanency review hearing, all  
24 parties and the child's guardian ad litem or attorney shall  
25 have the opportunity to present evidence and cross-examine

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1 witnesses. Based on the evidence, the court shall:

2 (1) change the plan from reunification to one  
3 of the alternative plans provided in Subsection B of this  
4 section;

5 (2) dismiss the case and return custody of the  
6 child to the child's parent, guardian or custodian; or

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

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

25 (1) the date of the first judicial finding

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1 that the child has been abused or neglected; or

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

4 [~~G.~~] F. The court shall hold permanency hearings  
5 every twelve months when a child is in the legal custody of the  
6 department.

7 [~~H.~~] G. The children's court attorney shall give  
8 notice to all parties, including the child by and through the  
9 child's guardian ad litem or attorney, the child's CASA, a  
10 contractor administering the local substitute care review board  
11 and the child's foster parent or substitute care provider of  
12 the time, place and purpose of any permanency hearing or  
13 permanency review hearing held pursuant to this section.

14 [~~I.~~] H. The rules of evidence shall not apply to  
15 permanency hearings. The court may admit testimony by any  
16 person given notice of the permanency hearing who has  
17 information about the status of the child or the status of the  
18 [~~treatment~~] case plan. All testimony shall be subject to  
19 cross-examination."

20 **SECTION 7.** Section 32A-4-33 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 127, as amended) is amended to read:

22 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

23 A. All records or information concerning a party to  
24 a neglect or abuse proceeding, including social records,  
25 diagnostic evaluations, psychiatric or psychological reports,

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1 videotapes, transcripts and audio recordings of a child's  
2 statement of abuse or medical reports incident to or obtained  
3 as a result of a neglect or abuse proceeding or that were  
4 produced or obtained during an investigation in anticipation of  
5 or incident to a neglect or abuse proceeding shall be  
6 confidential and closed to the public.

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

9 (1) court personnel and persons or entities  
10 authorized by contract with the court to review, inspect or  
11 otherwise have access to records or information in the court's  
12 possession;

13 (2) court-appointed special advocates;

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

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

18 (5) department personnel and persons or  
19 entities authorized by contract with the department to review,  
20 inspect or otherwise have access to records or information in  
21 the department's possession;

22 (6) any local substitute care review board or  
23 any agency contracted to implement local substitute care review  
24 boards;

25 (7) law enforcement officials, except when use

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1 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

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

4 (9) any state government social services  
5 agency in any state or when, in the opinion of the department,  
6 it is in the best interest of the child, a governmental social  
7 services agency of another country;

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

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

19 (13) a grandparent, parent of a sibling,  
20 relative or fictive kin, if the records or information pertain  
21 to a child being considered for placement with that  
22 grandparent, parent of a sibling, relative or fictive kin, and  
23 the records or information concern the social, medical,  
24 psychological or educational needs of the child;

25 [~~13~~] (14) health care or mental health

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1 professionals involved in the evaluation or treatment of the  
2 child, the child's parents, guardian, custodian or other family  
3 members;

4 [~~(14)~~] (15) protection and advocacy  
5 representatives pursuant to the federal Developmental  
6 Disabilities Assistance and Bill of Rights Act and the federal  
7 Protection and Advocacy for Mentally Ill Individuals Amendments  
8 Act of 1991;

9 [~~(15)~~] (16) children's safehouse organizations  
10 conducting investigatory interviews of children on behalf of a  
11 law enforcement agency or the department; [~~and~~]

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

17 (18) any person or entity attending a meeting  
18 arranged by the department to discuss the safety, well-being  
19 and permanency of a child, when the parent or child, or parent  
20 or legal custodian on behalf of a child younger than fourteen  
21 years of age, has consented to the disclosure; and

22 [~~(16)~~] (19) any other person or entity, by  
23 order of the court, having a legitimate interest in the case or  
24 the work of the court.

25 C. A parent, guardian or legal custodian whose

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1 child has been the subject of an investigation of abuse or  
2 neglect where no petition has been filed shall have the right  
3 to inspect any medical report, psychological evaluation, law  
4 enforcement reports or other investigative or diagnostic  
5 evaluation; provided that any identifying information related  
6 to the reporting party or any other party providing information  
7 shall be deleted. The parent, guardian or legal custodian  
8 shall also have the right to the results of the investigation  
9 and the right to petition the court for full access to all  
10 department records and information except those records and  
11 information the department finds would be likely to endanger  
12 the life or safety of any person providing information to the  
13 department.

14 D. Whoever intentionally and unlawfully releases  
15 any information or records closed to the public pursuant to the  
16 Abuse and Neglect Act or releases or makes other unlawful use  
17 of records in violation of that act is guilty of a petty  
18 misdemeanor and shall be sentenced pursuant to the provisions  
19 of Section 31-19-1 NMSA 1978.

20 E. The department shall promulgate rules for  
21 implementing disclosure of records pursuant to this section and  
22 in compliance with state and federal law and the Children's  
23 Court Rules."

24 **SECTION 8. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2015.

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