

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 115

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

AN ACT

RELATING TO CITIZEN SUBSTITUTE CARE REVIEW BOARDS; PROVIDING
FOR THE ADMINISTRATIVE OFFICE OF THE COURTS TO ADMINISTER THE
SUBSTITUTE CARE REVIEW BOARD SYSTEM; REVISING THE STATE
ADVISORY COMMITTEE COMPOSITION.

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

SECTION 1. Section 32A-8-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 205) is amended to read:

"32A-8-3. ADMINISTRATION--IMPLEMENTATION OF ACT.--The
~~[department of finance and administration shall maintain and
fund]~~ administrative office of the courts shall administer the
substitute care review board system using the office's staff or
through a contract with a nonprofit organization ~~[having]~~ that
has a demonstrated knowledge of the problem of children in
substitute care and the issues in permanency planning to

.199101.5

underscored material = new
[bracketed material] = delete

1 operate a statewide system of [~~local~~] substitute care review
2 boards."

3 SECTION 2. Section 32A-8-4 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 206) is amended to read:

5 "32A-8-4. STATE ADVISORY COMMITTEE--MEMBERS--
6 COMPENSATION--RESPONSIBILITIES.--

7 A. A state advisory committee shall be composed of
8 [~~three persons with expertise in the area of substitute care,~~
9 ~~appointed by the secretary of finance and administration and~~
10 ~~also one representative of each local substitute care review~~
11 ~~board. Each local board shall select its representative to the~~
12 ~~state advisory committee in accordance with procedures~~
13 ~~established by that committee. No person employed by the~~
14 ~~department or a district court may serve on the state advisory~~
15 ~~committee]~~ eleven persons, including:

16 (1) the secretary of children, youth and
17 families;

18 (2) the director of the protective services
19 division of the department;

20 (3) the attorney general; and

21 (4) the following members, whom the chief
22 justice shall appoint:

23 (a) a justice of the supreme court;

24 (b) three children's court judges;

25 (c) two individuals who are between

1 seventeen and thirty years of age and who formerly received
2 foster care in the state; and

3 (d) two public members with expertise in
4 the area of substitute care.

5 ~~[B. Terms of office of local substitute care review~~
6 ~~board members of the state advisory committee shall be~~
7 ~~coterminous with their terms as members of the local boards.~~
8 ~~Terms of office of members who are appointed by the secretary~~
9 ~~of finance and administration shall be for three years;~~
10 ~~provided, however, that appointment of the first]~~

11 B. On July 1, 2015, the chief justice of the
12 supreme court shall appoint those state advisory committee
13 members ~~[shall be to staggered terms so that one member shall~~
14 ~~serve for a term of three years, one member shall serve for a~~
15 ~~term of two years and one member shall serve for a term of one~~
16 ~~year. The term of each member shall expire on June 30, of the~~
17 ~~appropriate year]~~ specified in Paragraph (4) of Subsection A of
18 this section, who shall serve terms of three years and who may
19 be reappointed. In the event that a vacancy occurs among ~~[the~~
20 ~~members of]~~ appointed members of the state advisory committee,
21 ~~[appointed by the secretary of finance and administration]~~ the
22 ~~[secretary]~~ chief justice of the supreme court shall appoint
23 another person to serve the unexpired portion of the term.

24 C. The ~~[state advisory committee]~~ chief justice of
25 the supreme court shall select a chairperson, a vice

1 chairperson [~~an executive committee~~] and other officers as [~~it~~]
2 the chief justice deems necessary.

3 D. The state advisory committee shall meet no less
4 than twice annually and more frequently upon the call of the
5 chairperson. [~~or as the executive committee may determine.~~
6 ~~The state advisory committee is authorized to adopt reasonable~~
7 ~~rules relating to the functions and procedures of the local~~
8 ~~substitute care review boards and the state advisory committee~~
9 ~~in accordance with the duties of the boards as provided in the~~
10 ~~Citizen Substitute Care Review Act. These rules shall include~~
11 ~~guidelines for the determination of the appropriate type of~~
12 ~~review and the information needed for all cases to be monitored~~
13 ~~by the local substitute care review boards.] The state advisory~~
14 committee shall review and [~~coordinate the activities of the~~
15 ~~local~~] study the purpose, structure, functions and oversight of
16 the substitute care review boards. [~~and~~] The state advisory
17 committee is authorized to adopt rules relating to the
18 functions and procedures of the substitute care review boards
19 and the state advisory committee in accordance with the duties
20 of the boards as provided in the Citizen Substitute Care Review
21 Act. The state advisory committee shall make a report with its
22 recommendations to the department, the courts and the
23 [~~legislature~~] appropriate interim legislative committees, on or
24 before [~~January~~] November 1 of each year, regarding statutes,
25 policies and procedures relating to substitute care. This

1 report shall include recommendations regarding any changes to
 2 the local substitute care review boards.

3 E. The administrative office of the courts shall
 4 report to the legislative health and human services committee
 5 in 2018 and every four years thereafter as to the effectiveness
 6 and functions of the Citizen Substitute Care Review Act.

7 ~~[E.]~~ F. State advisory committee members shall
 8 receive per diem and mileage as provided for nonsalaried public
 9 officers in the Per Diem and Mileage Act ~~[and]~~, unless a
 10 different provision of that act applies to a specific member,
 11 in which case that member shall be paid pursuant to the
 12 applicable provision. Members shall receive no other
 13 compensation, perquisite or allowance."

14 **SECTION 3.** Section 32A-8-5 NMSA 1978 (being Laws 1993,
 15 Chapter 77, Section 207) is amended to read:

16 "32A-8-5. ~~[LOCAL BOARDS]~~ APPOINTMENTS--EXCLUSION--TERMS--
 17 TRAINING--COMPENSATION--MEETINGS.--

18 A. The state advisory committee shall establish no
 19 fewer than three substitute care review boards. The
 20 administrative office of the courts or a contractor that is
 21 selected by the ~~[department of finance and administration]~~
 22 administrative office of the courts pursuant to the provisions
 23 of Section ~~[32-8-3]~~ 32A-8-3 NMSA 1978 shall ~~[establish and~~
 24 ~~maintain local]~~ administer substitute care review boards ~~[to~~
 25 review] as provided in the Citizen Substitute Care Review Act

.199101.5

1 ~~[the disposition of children in the custody of the department~~
2 ~~prior to judicial review]~~. The composition of each board
3 shall, to the maximum extent feasible, represent the various
4 socioeconomic, racial and ethnic groups of the community that
5 ~~[they serve]~~ each board serves.

6 B. Criteria for membership and tenure on ~~[local]~~
7 substitute care review boards shall be determined by the state
8 advisory committee ~~[after consultation with the department of~~
9 ~~finance and administration and the contractor]~~. No person
10 employed by the ~~[department of finance and administration]~~
11 administrative office of the courts, the department or a
12 district court may serve on a ~~[local]~~ substitute care review
13 board.

14 C. ~~[Each local substitute care review board shall~~
15 ~~elect a chairperson, a vice chairperson and other officers as~~
16 ~~it deems necessary.]~~ The state advisory committee shall
17 determine the structure for each substitute care review board.
18 In consultation with local children's court judges, the chief
19 justice of the supreme court shall appoint the members and
20 officers of each substitute care review board.

21 D. ~~[Local]~~ Substitute care review board members may
22 receive per diem and mileage as provided for nonsalaried public
23 officers in the Per Diem and Mileage Act and shall receive no
24 other compensation, perquisite or allowance."

25 SECTION 4. Section 32A-8-6 NMSA 1978 (being Laws 1993,

.199101.5

underscored material = new
[bracketed material] = delete

1 Chapter 77, Section 208) is repealed and a new Section 32A-8-6
2 NMSA 1978 is enacted to read:

3 "32A-8-6. [NEW MATERIAL] SUBSTITUTE CARE REVIEW BOARDS.--

4 A. The state advisory committee shall establish
5 substitute care review boards that provide opportunities for
6 citizens to play an integral role in furthering the purposes of
7 the Citizen Substitute Care Review Act. The state advisory
8 committee shall identify focus areas and case selection
9 criteria for the substitute care review boards.

10 B. Upon request of the state advisory committee, a
11 substitute care review board shall prepare a report that
12 summarizes the activities of that board and provides
13 recommendations to the state advisory committee."

14 SECTION 5. Section 32A-8-7 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 209) is amended to read:

16 "32A-8-7. [~~TEMPORARY PROVISIONS~~] CITIZEN SUBSTITUTE CARE
17 REVIEW--TRANSFER--FUNDS--CONTRACTS.--

18 A. On [~~the effective date of the Children's Code~~]
19 July 1, 2015, all records [~~personnel~~], money, property,
20 equipment and supplies of the department of finance and
21 administration relating to the Citizen Substitute Care Review
22 Act shall be transferred to the [~~department of finance and~~
23 ~~administration~~] administrative office of the courts.

24 B. On [~~the effective date of the Children's Code~~]
25 July 1, 2015, all appropriations, contract funds and funds for

.199101.5

1 contract administration and staff, the cost of advisory
2 committee per diem and travel, training and all other costs
3 relating to the Citizen Substitute Care Review Act shall be
4 transferred from the department of finance and administration
5 to the [~~department of finance and administration~~]
6 administrative office of the courts.

7 C. On [~~the effective date of the Children's Code~~]
8 July 1, 2015, all existing rules and regulations and contracts
9 [~~and agreements~~] in effect as of January 1, 2015 with the
10 department of finance and administration for providing a
11 statewide system of [~~local~~] substitute care review boards shall
12 be binding and effective on the [~~department of finance and~~
13 ~~administration~~] administrative office of the courts."

14 SECTION 6. Section 32A-1-7 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 16, as amended) is amended to read:

16 "32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

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

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

24 C. Any party may petition the court for an order to
25 remove a guardian ad litem on the grounds that the guardian ad

1 litem has a conflict of interest or is unwilling or unable to
2 zealously represent the child's best interests.

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

6 E. Unless a child's circumstances render the
7 following duties and responsibilities unreasonable, a guardian
8 ad litem shall:

9 (1) meet with and interview the child prior to
10 custody hearings, adjudicatory hearings, dispositional
11 hearings, judicial reviews and any other hearings scheduled in
12 accordance with the provisions of the Children's Code;

13 (2) communicate with health care, mental
14 health care and other professionals involved with the child's
15 case;

16 (3) review medical and psychological reports
17 relating to the child and the respondents;

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

20 (5) contact the child after changes in the
21 child's placement;

22 [~~(6) attend local substitute care review board~~
23 ~~hearings concerning the child and if unable to attend the~~
24 ~~hearings, forward to the board a letter setting forth the~~
25 ~~child's status during the period since the last local~~

.199101.5

1 ~~substitute care review board review and include an assessment~~
2 ~~of the department's permanency and treatment plans;~~

3 ~~(7)]~~ (6) report to the court on the child's
4 adjustment to placement, the department's and respondent's
5 compliance with prior court orders and treatment plans and the
6 child's degree of participation during visitations; and

7 [~~(8)]~~ (7) represent and protect the cultural
8 needs of the child.

9 F. A guardian ad litem may retain separate counsel
10 to represent the child in a tort action on a contingency fee
11 basis or any other cause of action in proceedings that are
12 outside the jurisdiction of the children's court. When a
13 guardian ad litem retains separate counsel to represent the
14 child, the guardian ad litem shall provide the court with
15 written notice within ten days of retaining the separate
16 counsel. A guardian ad litem shall not retain or subsequently
17 obtain any pecuniary interest in an action filed on behalf of
18 the child outside of the jurisdiction of the children's court.

19 G. In the event of a change of venue, the
20 originating guardian ad litem shall remain on the case until a
21 new guardian ad litem is appointed by the court in the new
22 venue and the new guardian ad litem has communicated with and
23 received all pertinent information from the former guardian ad
24 litem.

25 H. A guardian ad litem shall receive notices,

1 pleadings or other documents required to be provided to or
2 served upon a party. A guardian ad litem may file motions and
3 other pleadings and take other actions consistent with the
4 guardian ad litem's powers and duties.

5 I. A guardian ad litem shall not serve concurrently
6 as both the child's delinquency attorney and guardian ad
7 litem."

8 SECTION 7. Section 32A-3B-22 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 94, as amended) is amended to read:

10 "32A-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

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

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

- 21 (1) court personnel;
22 (2) court appointed special advocates;
23 (3) the child's guardian ad litem or attorney;
24 (4) the child's attorney representing the
25 child in an abuse or neglect action, a delinquency action or

.199101.5

1 any other action, including a public defender;

2 (5) department personnel;

3 (6) any [~~local~~] substitute care review board
4 or any agency contracted to implement [~~local~~] substitute care
5 review boards;

6 (7) law enforcement officials;

7 (8) district attorneys;

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

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

14 (11) tribal juvenile justice system and social
15 service representatives;

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

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

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

underscoring material = new
~~[bracketed material] = delete~~

1 family members;

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

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

9 C. Whoever intentionally and unlawfully releases
10 any information or records that are closed to the public
11 pursuant to the provisions of the Children's Code or releases
12 or makes other unlawful use of records in violation of that
13 code is guilty of a petty misdemeanor.

14 D. The department shall promulgate rules for
15 implementing disclosure of records pursuant to this section and
16 in compliance with state and federal law and the Children's
17 Court Rules."

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

20 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

21 A. The initial judicial review shall be held within
22 sixty days of the disposition. At the initial review, the
23 parties shall demonstrate to the court efforts made to
24 implement the treatment plan approved by the court in its
25 dispositional order. The court shall determine the extent to

.199101.5

1 which the treatment plan has been implemented and make
2 supplemental orders as necessary to ensure compliance with the
3 treatment plan and the safety of the child. [~~Prior to the
4 initial judicial review, the department shall submit a copy of
5 the adjudicatory order, the dispositional order and notice of
6 the initial judicial review to the local substitute care review
7 board for that judicial district created under the Citizen
8 Substitute Care Review Act. A representative of the local
9 substitute care review board shall be permitted to attend and
10 comment to the court.~~]

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

- 25 (1) a judicial review hearing conducted by the

1 court; or

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

5 C. The children's court attorney shall give notice
6 to all parties, including the child by and through the child's
7 guardian ad litem or attorney, the child's CASA [~~a contractor~~
8 ~~administering the local substitute care review board~~] and the
9 child's foster parent or substitute care provider of the time,
10 place and purpose of any judicial review hearing held pursuant
11 to Subsection A or B of this 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 or attorney and all parties given notice
15 pursuant to Subsection C of this section shall have the
16 opportunity to present evidence and to cross-examine witnesses.
17 At the 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

.199101.5

1 determine the extent of compliance with the treatment plan and
2 whether progress is being made toward establishing a stable and
3 permanent placement for the child.

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

9 F. At the conclusion of any hearing held pursuant
10 to this section, the court shall make findings of fact and
11 conclusions of law.

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

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

23 (1) dismiss the action and return the child to
24 the child's parent without supervision if the court finds that
25 conditions in the home that led to abuse have been corrected

1 and it is now safe for the return of the abused child;

2 (2) permit the child to remain with the
3 child's parent, guardian or custodian subject to those
4 conditions and limitations the court may prescribe, including
5 protective supervision of the child by the department;

6 (3) return the child to the child's parent and
7 place the child under the protective supervision of the
8 department;

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

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

13 (b) a relative or other individual who,
14 after study by the department or other agency designated by the
15 court, is found by the court to be qualified to receive and
16 care for the child and is appointed as a permanent guardian of
17 the child; or

18 (c) the department, subject to the
19 provisions of Paragraph (6) of this subsection;

20 (5) continue the child in the legal custody of
21 the department with or without any required parental
22 involvement in a treatment plan. Reasonable efforts shall be
23 made to preserve and reunify the family, with the paramount
24 concern being the child's health and safety unless the court
25 finds that such efforts are not required. The court may

.199101.5

1 determine that reasonable efforts are not required to be made
2 when the court finds that:

- 3 (a) the efforts would be futile; or
- 4 (b) the parent, guardian or custodian
5 has subjected the child to aggravated circumstances;

6 (6) make additional orders regarding the
7 treatment plan or placement of the child to protect the child's
8 best interests if the court determines the department has
9 failed in implementing any material provision of the treatment
10 plan or abused its discretion in the placement or proposed
11 placement of the child; or

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

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

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

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

25 [~~J. The report of the local substitute care review~~

1 ~~board submitted to the court pursuant to Subsection B of this~~
 2 ~~section shall become a part of the child's permanent court~~
 3 ~~record.~~

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

13 **SECTION 9.** Section 32A-4-25.1 NMSA 1978 (being Laws 1997,
 14 Chapter 34, Section 8, as amended) is amended to read:

15 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
 16 HEARINGS.--

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

.199101.5

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

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

12 (1) reunification;

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

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

18 (4) placement in the legal custody of the
19 department with the child placed in the home of a fit and
20 willing relative; or

21 (5) placement in the legal custody of the
22 department under a planned permanent living arrangement,
23 provided that there is substantial evidence that none of the
24 above plans is appropriate for the child.

25 C. If the court adopts a permanency plan of

1 reunification, the court shall adopt a plan for transitioning
2 the child home and schedule a permanency review hearing within
3 three months. If the child is reunified, the subsequent
4 hearing may be vacated.

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

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

24 (1) change the plan from reunification to one
25 of the alternative plans provided in Subsection B of this

.199101.5

1 section;

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

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

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

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

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

.199101.5

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

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

11 I. The Rules of Evidence shall not apply to
12 permanency hearings. The court may admit testimony by any
13 person given notice of the permanency hearing who has
14 information about the status of the child or the status of the
15 treatment plan. All testimony shall be subject to cross-
16 examination."

17 **SECTION 10.** Section 32A-4-33 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 127, as amended) is amended to read:

19 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

20 A. All records or information concerning a party to
21 a neglect or abuse proceeding, including social records,
22 diagnostic evaluations, psychiatric or psychological reports,
23 videotapes, transcripts and audio recordings of a child's
24 statement of abuse or medical reports incident to or obtained
25 as a result of a neglect or abuse proceeding or that were

.199101.5

1 produced or obtained during an investigation in anticipation of
2 or incident to a neglect or abuse proceeding shall be
3 confidential and closed to the public.

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

- 6 (1) court personnel;
- 7 (2) court-appointed special advocates;
- 8 (3) the child's guardian ad litem;
- 9 (4) the attorney representing the child in an
10 abuse or neglect action, a delinquency action or any other
11 action under the Children's Code;
- 12 (5) department personnel;
- 13 (6) any [~~local~~] substitute care review board
14 or any agency contracted to implement [~~local~~] substitute care
15 review boards;
- 16 (7) law enforcement officials, except when use
17 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 18 (8) district attorneys, except when use
19 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 20 (9) any state government social services
21 agency in any state or when, in the opinion of the department
22 it is in the best interest of the child, a governmental social
23 services agency of another country;
- 24 (10) those persons or entities of an Indian
25 tribe specifically authorized to inspect the records pursuant

1 to the federal Indian Child Welfare Act of 1978 or any
2 regulations promulgated thereunder;

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

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

10 (13) health care or mental health
11 professionals involved in the evaluation or treatment of the
12 child or of the child's parents, guardian, custodian or other
13 family members;

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

18 (15) children's safehouse organizations
19 conducting investigatory interviews of children on behalf of a
20 law enforcement agency or the department; and

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

24 C. A parent, guardian or legal custodian whose
25 child has been the subject of an investigation of abuse or

.199101.5

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

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

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

23 SECTION 11. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2015.