

HOUSE BILL 376

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Gail Chasey

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CHILDREN; AMENDING THE ABUSE AND NEGLECT ACT TO PROVIDE FOR THE ESTABLISHMENT OF A MULTILEVEL RESPONSE SYSTEM; PROVIDING THAT THE MULTILEVEL RESPONSE SYSTEM MAY BE USED AS AN ALTERNATIVE TO INVESTIGATION FOR CERTAIN REPORTS ALLEGING CHILD ABUSE OR NEGLECT; CLARIFYING THAT THE COURT MAY ORDER PARTICIPATION IN PROGRAMS OR SERVICES PENDING THE OUTCOME OF A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.

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

SECTION 1. Section 32A-4-4 NMSA 1978 (being Laws 1993,

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Chapter 77, Section 98, as amended) is amended to read:

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

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

B. If a report alleging neglect or abuse meets the criteria established pursuant to Section 32A-4-4.1 NMSA 1978, the department may assign the case to the multilevel response system.

[B-] C. During the investigation of a report alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. A representative of the department shall, at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was

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made.

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

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

SECTION 2. A new section of the Children's Code, Section 32A-4-4.1 NMSA 1978, is enacted to read:

"32A-4-4.1. [NEW MATERIAL] MULTILEVEL RESPONSE SYSTEM.--

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

- (1) alleging sexual abuse of a child or serious or imminent harm to a child;
- (2) indicating a child fatality;
- (3) requiring law enforcement involvement, as

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identified pursuant to rules promulgated by the department; or

(4) requiring a specialized assessment or a traditional investigative approach, as determined pursuant to rules promulgated by the department.

B. The department may remove a case from the multilevel response system and conduct an investigation if imminent danger of serious harm to the child becomes evident. The department may reassign a case from investigation to the multilevel response system at the discretion of the department.

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

D. The department shall employ licensed social

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workers to provide services to families, relatives, caretakers or guardians participating in the multilevel response system HJC→to the extent that licenced social workers are available for employment←HJC.

E. The department may pilot the multilevel response system prior to statewide implementation.

F. The department may limit implementation of the multilevel response system to areas of the state where appropriate services are available and operate the system within available state and federal resources.

G. The department shall:

(1) provide an annual report of system implementation and outcomes to the legislative finance committee and the department of finance and administration as part of the department's budget submission;

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

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

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

(5) no later than July 1, HJC→2021 2022←HJC, if the department pilots or otherwise geographically limits the

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multilevel response system, submit a plan to the legislative finance committee and the department of finance and administration setting forth how the system could be expanded statewide, including a plan to address service availability, and identifying costs that would be incurred by the department.

H. The department shall promulgate rules to implement the provisions of this section.

I. As used in this section, "family assessment" means a comprehensive, evidence-based assessment tool used by the department to determine the needs of a child and the child's family, relatives, caretakers or guardians at the time the department receives a report of child abuse and neglect, including an assessment of the likelihood of:

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

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

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

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the

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department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the 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 the child's parent, guardian or custodian unless probable cause exists to believe that:

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

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

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

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

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

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the child.

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

(1) return legal custody of the child to the child's parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision HJC→**or maintenance at home**←HJC by the department or participation in programs or services aimed at addressing the underlying causative factors that HJC→**jeopardize impact**←HJC the safety or well-being of the child; or

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

E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. When the department determines that the home of an adult relative of the child meets all relevant child protection and licensing standards and placement in the home would be in the best interest of the child, the department shall give a preference to placement of the child in that home. The department shall make reasonable efforts to conduct home studies on appropriate relatives who express an interest in providing placement for the child.

F. At the conclusion of the custody hearing, if the

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court determines that probable cause does not exist pursuant to Subsection C of this section, the court shall:

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

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

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

G. 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. If the court determines that probable cause does not exist, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. 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.

H. The Rules of Evidence shall not apply to custody

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hearings.

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

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

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, HJC→2019 2020←HJC.