

HOUSE BILL 376

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

INTRODUCED BY

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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,
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

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1 regard to any action to be taken. The name and information
2 regarding the person making the report shall not be disclosed
3 absent the consent of the informant or a court order.

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

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

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

25 [~~D-~~] E. When a child is taken into custody, the

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

4 SECTION 2. A new section of the Children's Code, Section
5 32A-4-4.1 NMSA 1978, is enacted to read:

6 "32A-4-4.1. [NEW MATERIAL] MULTILEVEL RESPONSE SYSTEM.--

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

- 16 (1) alleging sexual abuse of a child or
17 serious or imminent harm to a child;
18 (2) indicating a child fatality;
19 (3) requiring law enforcement involvement, as
20 identified pursuant to rules promulgated by the department; or
21 (4) requiring a specialized assessment or a
22 traditional investigative approach, as determined pursuant to
23 rules promulgated by the department.

24 B. The department may remove a case from the
25 multilevel response system and conduct an investigation if

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1 imminent danger of serious harm to the child becomes evident.
2 The department may reassign a case from investigation to the
3 multilevel response system at the discretion of the department.

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

19 D. The department shall employ licensed social
20 workers to provide services to families, relatives, caretakers
21 or guardians participating in the multilevel response system.

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

24 F. The department may limit implementation of the
25 multilevel response system to areas of the state where

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1 appropriate services are available and operate the system
2 within available state and federal resources.

3 G. The department shall:

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

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

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

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

16 (5) no later than July 1, 2021, if the
17 department pilots or otherwise geographically limits the
18 multilevel response system, submit a plan to the legislative
19 finance committee and the department of finance and
20 administration setting forth how the system could be expanded
21 statewide, including a plan to address service availability,
22 and identifying costs that would be incurred by the department.

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

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

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

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

12 **SECTION 3.** Section 32A-4-18 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 112, as amended) is amended to 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 the
20 petition is filed to determine if the child should remain in or
21 be placed in the department's custody pending adjudication.
22 Upon written request of the respondent, the hearing may be held
23 earlier, but in no event shall the hearing be held sooner than
24 two days after the date the petition was filed.

25 B. The parent, guardian or custodian of the child

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1 alleged to be abused or neglected shall be given reasonable
2 notice of the time and place of the custody hearing.

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

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

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

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

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

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

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

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

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1 participation in programs or services aimed at addressing the
2 underlying causative factors that jeopardize the safety or
3 well-being of the child; or

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

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

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

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

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

25 (3) order that the child's parent, guardian or

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1 custodian allow the child necessary contact with the child's
2 guardian ad litem or attorney.

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

16 H. The Rules of Evidence shall not apply to custody
17 hearings.

18 I. Notwithstanding any other provision of law, a
19 party aggrieved by an order entered pursuant to this section
20 shall be permitted to file an immediate appeal as a matter of
21 right. If the order appealed from grants the legal custody of
22 the child to or withholds it from one or more of the parties to
23 the appeal, the appeal shall be expedited and shall be heard at
24 the earliest practicable time. While an appeal pursuant to
25 this section is pending, the court shall have jurisdiction to

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1 take further action in the case pursuant to Subsection B of
2 Section 32A-1-17 NMSA 1978.

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

6 SECTION 4. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2019.

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