

SENATE BILL 278

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Benny Shendo, Jr.

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHILDREN; ENACTING THE STATE INDIAN CHILD WELFARE ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE STATE INDIAN CHILD WELFARE ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Children's Code is

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enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 30 of this act may be cited as the "State Indian Child Welfare Act"."

SECTION 2. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the State Indian Child Welfare Act:

A. "active efforts" means efforts that are affirmative, active, thorough, timely and intended to maintain or reunite an Indian child with the Indian child's family and represent a higher standard of conduct than reasonable efforts;

B. "adoptive placement" means a permanent placement of an Indian child for adoption pursuant to the Adoption Act, including an action resulting in a final decree of adoption, but does not include a placement based upon an act that, if committed by an adult, would be deemed a crime or upon award, in a divorce proceeding, of custody to one of the parents;

C. "child custody proceeding" means an action for foster care placement, termination of parental rights, guardianship, preadoptive placement or adoptive placement or an action regarding an alleged family in need of court-ordered services;

D. "cultural compact" means an agreement that documents how an Indian child placed in an adoptive or guardianship home will continue to actively participate in the

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child's cultural learning and activities and that is entered into among:

(1) the adoptive parents or guardians of the Indian child, which parents are either non-Indian or nonmembers of the Indian child's tribe; and

(2) the Indian child's tribe;

E. "extended family member" means a person who is defined to be an extended family member by law or custom of an Indian child's tribe or, in the absence of such a custom, means a person who is eighteen years of age or older and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent;

F. "fictive kin" means a person:

(1) who is not a relative or extended family of an Indian child and who has a significant, family-like relationship with the child or the child's family, which relationship existed prior to the child's entry into foster care;

(2) chosen by an Indian child who is fourteen years of age or older, regardless of when the relationship between the person and the Indian child was established; provided that the department has determined that it is in the child's best interest to include the person as the child's fictive kin; or

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(3) who meets the definition of "fictive kin" as established by an Indian child's tribe's law, custom or tradition;

G. "foster care placement" means:

(1) an action pursuant to the Abuse and Neglect Act removing an Indian child from the child's parent, guardian or Indian custodian for temporary placement in a foster home or institution or the home of a guardian where the parent or Indian custodian cannot have the child returned upon demand, but in which parental rights have not been terminated; or

(2) a voluntary agreement pursuant to the Family Services Act between a parent, guardian or Indian custodian and the department placing the Indian child in foster care;

H. "Indian" means a person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in 43 U.S.C. Section 1606;

I. "Indian child" means an unmarried person who is under age eighteen and who is:

(1) a member of an Indian tribe; SIRC→or←SIRC

(2) eligible for membership in an Indian tribe

SIRC→and is←SIRC SIRC→; or←SIRC

SIRC→(3)←SIRC the biological child of a member of an Indian tribe;

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J. "Indian child's tribe" means:

(1) an Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the child has more significant contacts;

K. "Indian custodian" means an Indian person:

(1) who has legal custody of an Indian child pursuant to tribal law or custom or pursuant to state law; or

(2) to whom temporary physical care, custody and control has been transferred by the parent of the child;

L. "Indian organization" means a group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

M. "Indian tribe" means an Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c). For the purposes of notification to and communication with a tribe as required in the State Indian Child Welfare Act, "Indian tribe" also means those tribal officials responsible for child welfare and social services matters;

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N. "member" or "membership" means a determination by an Indian tribe that a person is a member or of that Indian tribe;

O. "parent" means a biological parent of an Indian child or an Indian person who has lawfully adopted an Indian child pursuant to the Adoption Act or the child's tribal law or tribal custom;

P. "preadoptive placement" means a temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of an adoptive placement;

Q. "relative" means a person related to another person:

(1) by blood within the fifth degree of consanguinity or through marriage by the fifth degree of affinity; or

(2) with respect to an Indian child, as established or defined by the Indian child's tribe's custom or law;

R. "reservation" means "Indian country" as defined in 18 U.S.C. Section 1151 and any lands, not covered by that section, title to which is either held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;

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S. "secretary" means the United States secretary of the interior;

T. "state court" means a court of the state or instrumentality of the state;

U. "termination procedure" means an action pursuant to the Abuse and Neglect Act or the Adoption Act that results in the termination of a parent-child relationship; and

V. "tribal court" means a court with jurisdiction over child custody proceedings and that is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe or any other administrative body of an Indian tribe that is vested with authority over child custody proceedings."

**SECTION 3.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DETERMINATION OF DOMICILE AND RESIDENCE.--

In a child custody proceeding involving an Indian child, the state court shall determine and make an order of the domicile and residence of the Indian child and whether the Indian child is a ward of a tribal court. The department shall communicate with any tribal court as necessary to make a determination pursuant to this section."

**SECTION 4.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INDIAN CHILD'S DOMICILE.--For the purposes

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of the State Indian Child Welfare Act, an Indian child's domicile is, in order of priority, the domicile of the child's:

A. parents, or, if the parents do not have the same domicile, the parent who has physical custody of the Indian child;

B. Indian custodian; or

C. guardian."

**SECTION 5.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DETERMINATION OF WHETHER A CHILD IS AN INDIAN CHILD--TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--

A. If a child is taken into custody by the department, the department shall make active efforts to determine whether the child is an Indian child.

B. When an Indian child or a child who the department has reason to know is an Indian child is placed in the custody of the department, the department shall work with the parent or the Indian tribe to establish membership, at the discretion of the parent or Indian tribe. The Indian tribe shall determine membership and eligibility. The department shall provide records to assist if necessary, at the discretion of the parent or the Indian tribe."

**SECTION 6.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INDIAN CHILD CUSTODY PROCEEDINGS--

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JURISDICTION--TRANSFER--COMMUNICATIONS.--

A. Except as otherwise provided in the State Indian Child Welfare Act, a state court's jurisdiction in a child custody proceeding involving an Indian child is concurrent with the jurisdiction of the Indian child's tribe.

B. A state court has temporary exclusive jurisdiction over an Indian child who is taken into protective custody pursuant to the Children's Code.

C. An Indian tribe has exclusive jurisdiction over a child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the Indian tribe, except when jurisdiction is otherwise vested in the state by federal law or pursuant to a tribal-state agreement. When an Indian child is a ward of the tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

D. In a state court proceeding for the foster care placement, preadoptive placement, guardianship placement, adoptive placement or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the state court, in the absence of good cause to the contrary, shall transfer that proceeding to the jurisdiction of the Indian tribe, absent objection by either parent, upon the motion of either parent or the Indian custodian or the Indian child's tribe; provided that the

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transfer shall be subject to declination by the tribal court of that Indian tribe.

E. If a state court declines to exercise jurisdiction in accordance with this section or a tribal-state agreement, it shall coordinate with the appropriate tribal court to facilitate the tribal court's assumption of jurisdiction.

F. A state court shall:

- (1) hold a hearing on record;
- (2) allow each parent of the Indian child, the Indian child's custodian or the Indian child's tribe to participate in any communications pertaining to jurisdiction with a tribal court or, if that person is unable to participate in a communication, provide the person with an opportunity to represent facts and legal arguments supporting the person's position before the state court makes a decision regarding jurisdiction;
- (3) create and maintain a record of any communications made pursuant to this subsection;
- (4) notify each parent of the Indian child, the Indian child's custodian or the Indian child's tribe in advance of each communication; and
- (5) provide each parent of the Indian child, the Indian child's custodian or the Indian child's tribe with access to the record of the communication."

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SECTION 7. A new section of the Children's Code is

enacted to read:

"[NEW MATERIAL] TRIBAL-STATE AGREEMENTS.--

A. The department shall make a good faith effort to enter into a tribal-state agreement with each Indian tribe within the borders of this state.

B. The department may enter into a tribal-state agreement with any Indian tribe outside of this state if that Indian tribe has a significant number of children residing in this state who are members of or are eligible to become members of that Indian tribe.

C. A tribal-state agreement may include an agreement regarding:

(1) default jurisdiction over cases in which the state court and tribal court have concurrent jurisdiction;

(2) the transfer of cases between a state court and tribal court;

(3) the assessment, removal, placement and custody of Indian children; and

(4) any other child welfare services provided to Indian children.

D. A tribal-state agreement shall:

(1) provide for cooperative delivery of child welfare services to Indian children in this state, including the use, to the extent available, of services provided by the

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Indian tribe; and

(2) if services provided by the Indian tribe are unavailable, provide for the department's use of community services and resources developed specifically for Indian families and that have demonstrated experience and capacity to provide culturally relevant and effective services to children."

**SECTION 8.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] TRANSFER.--Upon granting a transfer motion for a child custody proceeding involving an Indian child pursuant to Subsection D of Section 6 of the State Indian Child Welfare Act, a state court shall expeditiously:

A. notify the tribal court of the pending dismissal of the child custody proceeding;

B. transfer all information regarding the child custody proceeding, including pleadings and court records, to the tribal court;

C. direct the department to:

(1) coordinate with the tribal court and the Indian child's tribe to ensure that the transfer of the child custody proceeding is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and

(2) provide the Indian child's tribe with documentation related to the Indian child's eligibility for

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state and federal assistance and information related to the Indian child's social history, treatment diagnosis and services and other relevant case- and service-related data; and

D. dismiss the proceeding upon confirmation from the tribal court that the tribal court received the transferred information."

**SECTION 9.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] FULL FAITH AND CREDIT--RIGHT TO SERVICES.--

A. Every agency and court of the state or political subdivision of the state shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that agency or court gives full faith and credit to the public acts, records and judicial proceedings of any other entity.

B. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the state district court. The recognition and enforcement by a state district court shall make the tribal court order recognized and enforceable throughout the state by state district court as any state court order.

C. A tribal court order pertaining to an Indian

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child that accesses state resources shall be recognized and enforced. An Indian child residing on or off a reservation, as a resident of this state, shall have the same right to services that are available to other children of this state. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made to other children of the state, utilizing tribal, state and federal funds.

D. Any state services requiring a tribal-state agreement based on a funding source shall be negotiated and entered into based on good faith to meet the provisions of Subsection C of this section."

**SECTION 10.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] IMPROPER REMOVAL OF A CHILD FROM CUSTODY--DECLINATION OF JURISDICTION--RETURN OF A CHILD--DANGER EXCEPTION.--When a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the state court shall decline jurisdiction over that petition and shall return the child to the child's parent or Indian custodian unless returning the child to the child's parent or Indian custodian could subject the child to a substantial and immediate danger or threat of

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that danger."

SECTION 11. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INVESTIGATIONS--PENDING COURT PROCEEDINGS--NOTICE--DOCUMENTATION OF APPLICABILITY AND COMPLIANCE.--

A. Within forty-eight hours of initiating an investigation that involves a child that the department knows or has reason to know is an Indian child, the department shall notify the Indian child's tribe of:

- (1) the investigation;
- (2) the involvement of the Indian child or a child the department has reason to know is an Indian child;
- (3) the department's obligation to collaborate with the Indian child's tribe to identify a qualified expert witness to participate in the proceeding if the investigation results in an adjudicatory proceeding; and
- (4) the department's obligation to identify a qualified expert witness no later than thirty days prior to an adjudicatory or termination proceeding.

SIRC→B. During an investigation that involves a child that the department knows or has reason to know is an Indian child, the department shall:

- (1) coordinate services with the Indian child's tribe to prevent taking the child into custody; and

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(2) provide culturally appropriate remedial services to the parents.

C. The department's active efforts to coordinate services to prevent taking the child into custody shall be documented in any subsequent action resulting in the child coming into the department's custody. ←SIRC

SIRC →B. ←SIRC SIRC →D. ←SIRC At the beginning of every proceeding under the Delinquency Act, Family Services Act, Family in Need of Court-Ordered Services Act, Abuse and Neglect Act and Adoption Act, the court shall make a written determination as to whether the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act apply to the case.

SIRC →G. ←SIRC SIRC →E. ←SIRC Upon initiating a child custody proceeding related to a child that the department knows or has reason to know is an Indian child, the department shall notify the Indian child's tribe of:

- (1) the investigation;
- (2) the involvement of the Indian child;
- (3) active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful;
- (4) the department's obligation to collaborate with the Indian child's tribe to identify a qualified expert

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witness to participate in the proceeding if the investigation results in an adjudication or termination of parental rights proceeding; and

(5) the department's obligation to identify a qualified expert witness no later than thirty days prior to an adjudication or termination proceeding.

SIRC→F. At the conclusion of every proceeding pursuant to the Children's Code, the court shall make a written determination as to whether the department has made active efforts to provide services and support to preserve and reunify the family.←SIRC

SIRC→D.←SIRC SIRC→G.←SIRC With respect to those proceedings to which the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act apply, the record shall include written statements of compliance with those acts regarding notice, evidentiary and other requirements.

SIRC→E.←SIRC SIRC→H.←SIRC In a child custody proceeding or in a proceeding pursuant to the Delinquency Act, when the state court knows or has reason to know that an Indian child is involved, the department shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of:

- (1) the pending proceedings;
- (2) the right of the Indian child's parent, Indian custodian or Indian child's tribe to:

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(a) intervention; and  
(b) petition the state court to transfer the proceeding to the tribal court;

(3) the right of the Indian child's parent or Indian custodian to court-appointed counsel if the state court determines that person is unable to afford counsel; and

(4) the right of the Indian child's tribe, as a party to the child custody proceeding, to participate in the proceeding.

SIRC→F.←SIRC SIRC→I.←SIRC If there is a reason to know that the Indian child's parent or Indian custodian has limited English proficiency and may not understand the contents of the notice pursuant to Subsection SIRC→E←SIRC SIRC→H←SIRC of this section, the state court shall provide language access services as required by Title VI of the federal Civil Rights Act of 1964 and other applicable federal and state laws. If the state court is unable to secure translation or interpretation support, the state court shall contact or direct a party to contact the Indian child's tribe or the local office of the United States department of the interior bureau of Indian affairs for assistance identifying a qualified translator or interpreter.

SIRC→G.←SIRC SIRC→J.←SIRC If the identity or location of the parent or Indian custodian and the Indian tribe cannot be determined, a notice shall be given to the secretary

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in the same manner as provided in Subsection ~~SIRC→E←SIRC~~  
~~SIRC→H←SIRC~~ of this section. The secretary shall have fifteen  
days after receipt of the notice to provide the same notice to  
the parent or Indian custodian and the Indian tribe.

~~SIRC→H.←SIRC~~ ~~SIRC→K.←SIRC~~ A foster care placement  
or termination of parental rights proceeding shall not be held  
until at least ten days after receipt of notice by the parent  
or Indian custodian and the Indian tribe or the secretary  
pursuant to this section; provided that the parent or Indian  
custodian or the Indian tribe shall, upon request, be granted  
up to twenty additional days to prepare for that proceeding.

~~SIRC→I.←SIRC~~ ~~SIRC→L.←SIRC~~ Nothing in this section  
prevents a state court from reviewing a removal of an Indian  
child from the child's parent or Indian custodian at an  
emergency custody proceeding before the expiration of the  
waiting periods provided in Subsections ~~SIRC→G and H←SIRC~~  
~~SIRC→J and K←SIRC~~ of this section to determine the  
appropriateness of the removal and potential return of the  
child."

SECTION 12. A new section of the Children's Code is  
enacted to read:

"[NEW MATERIAL] RIGHT TO INTERVENE.--In a state court  
proceeding for the foster care placement or preadoptive  
placement, guardianship placement, adoptive placement of or  
termination of the parental rights to an Indian child, only the

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Indian child's relative or a member of the Indian child's extended family, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceeding."

SECTION 13. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PETITION--FORM AND CONTENT.--

A. A petition initiating a child custody proceeding shall include a statement as to whether the child who is the subject of the child custody proceeding is an Indian child or a child the department has reason to know is an Indian child.

B. A party that files a petition, motion or other document in a state court that seeks to effect a foster care placement or permanent placement of or termination of parental rights to an Indian child shall include in that petition, motion or document:

- (1) the Indian child's tribe or that the department has reason to know that the child is an Indian child;
- (2) the tribal affiliations of the Indian child's parents;
- (3) the active efforts made to notify the Indian child's tribe pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978;
- (4) a statement of and evidence satisfactory

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to the state court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful SIRC→and the reasons these efforts were unsuccessful, if known←SIRC ;

(5) the active efforts that were made to comply with the notice requirements pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, including results of the contact and the names, addresses, titles and telephone numbers of the persons contacted; and

(6) the active efforts that were made to comply with the placement preferences set forth in the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978.

C. Active efforts pursuant to this section require a higher standard of conduct than reasonable efforts and:

(1) shall:

(a) be documented in detail in writing SIRC→and←SIRC SIRC→demonstrating the quality and quantity of services and assistance provided,←SIRC on the record;

(b) include assisting the Indian child's parent or parents or Indian custodian through the steps of a department case plan and with accessing or developing the resources necessary to satisfy the department case plan;

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(c) include providing assistance in a manner consistent with the prevailing social and cultural standards and way of life of the Indian child's tribe;

(d) be conducted in cooperation with the Indian child and the Indian child's parents, extended family members, Indian custodians and Indian tribe; and

(e) be tailored to the facts and circumstances of the case; and

(2) may include:

(a) conducting a comprehensive assessment of the circumstances of an Indian child's family, with a goal of reunification;

(b) identifying SIRC→and establishing←SIRC appropriate services and assisting the child's parents to overcome barriers to reunification, including actively assisting the parents in obtaining those services;

(c) identifying, notifying and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family;

(d) conducting or causing to be conducted a diligent search for the Indian child's extended family members and contacting and consulting with the Indian child's extended family members and adult relatives to provide family structure and support for the Indian child and the

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Indian child's parents;

(e) offering and employing culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

(f) taking steps to keep the Indian child and the Indian child's siblings together whenever possible;

(g) supporting regular visits with the Indian child's parent or Indian custodian, as well as trial home visits during a period of removal, consistent with the need to ensure the health, safety and welfare of the Indian child;

(h) identifying community resources, including housing, financial assistance, employment training, transportation, mental health, health care, substance abuse prevention and treatment, parent training, transportation and peer support services and actively assisting the Indian child's parents or, when appropriate, the Indian child's extended family members, in using and accessing those resources;

(i) monitoring process and participation of the Indian child's parents, Indian custodian or extended family members if the services as described in Subparagraphs (b), (c), (e) and (h) of this paragraph are not available;

SIRC→and←SIRC

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(j) providing post-reunification services and monitoring for the duration of the state court's jurisdiction SIRC→. "←SIRC SIRC→; and←SIRC

SIRC→(k) any other efforts that are appropriate to the Indian child's circumstances."←SIRC

SECTION 14. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] STATE COURT RECORD OF INDIAN CHILD'S TRIBE.--

A. In a child custody proceeding involving an Indian child, a state court shall make a record that an Indian child is a member of:

(1) an Indian tribe of which the Indian child is a member or eligible for membership, as determined by the Indian child's tribe;

(2) an Indian tribe of which an Indian child is a member if the Indian child is a member of one Indian tribe, but is eligible for membership in one or more other Indian tribes;

(3) the Indian tribe designated by agreement between one or more Indian tribes if the Indian child is not a member of each of those Indian tribes, but is eligible for membership with each of those Indian tribes; or

(4) the Indian tribe recorded by the state court pursuant to Subsection B of this section if the Indian

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child is eligible for membership with each of those Indian tribes and the Indian tribes cannot agree on the designation of the Indian child's tribe.

B. When recording an Indian child's tribe pursuant to Paragraph (4) of Subsection A of this section, a state court shall, after a hearing, record the Indian tribe with which the Indian child has the more significant contacts, taking into consideration:

- (1) the preference of each of the Indian child's parents;
- (2) the duration of the Indian child's current or prior domicile or residence on or near the reservation of each Indian tribe;
- (3) the tribal membership of the Indian child's custodial parent or Indian custodian;
- (4) the interests asserted by each Indian tribe;
- (5) whether the Indian tribe has previously adjudicated a case involving an Indian child; and
- (6) if the court determines that the Indian child is of sufficient age and capacity to meaningfully self-identify the Indian child's tribe, the self-identification of the Indian child.

C. If an Indian child is a member of or is eligible for membership in more than one Indian tribe, the state court

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may permit an Indian tribe, in addition to the Indian child's tribe as determined pursuant to Subsection A of this section, to participate in the child custody proceeding in an advisory capacity or as a party."

SECTION 15. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--RIGHT TO COUNSEL.--

A. At the commencement of any hearing in a child custody proceeding, the state court shall determine whether the child is an Indian child by asking, on the record, each individual present on the matter whether the individual knows or has reason to know that the child is an Indian child. If no individual present at the hearing knows or has reason to know that the child is an Indian child, the state court shall instruct each party to inform the court immediately if the individual later receives information that provides reason to know that the child is an Indian child.

B. A state court has reason to know that a child is an Indian child if:

(1) an individual present in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization or agency informs the court that the child is an Indian child;

(2) an individual present at the hearing,

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officer of the court present at the hearing, Indian tribe or Indian organization or agency informs the court that information has been discovered indicating that the child is an Indian child;

(3) the child indicates to the court that the child is an Indian child;

(4) the court is informed that the domicile or residence of the child, the child's parent or the child's Indian custodian is on a reservation or in an Alaska native village;

(5) the court is informed that the child is or has been a ward of a tribal court;

(6) the court is informed that the child or the child's parent possesses an identification card or other record indicating membership in an Indian tribe;

(7) testimony or documents presented to the court indicate that the child may be an Indian child; or

(8) any other indicia provided to the court or within the court's knowledge, indicating that the child is an Indian child.

C. If a state court has reason to know that a child is an Indian child but does not have sufficient evidence to determine whether the child is an Indian child, the court shall:

(1) treat the child as an Indian child until

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the court determines, on the record, that the child is not an Indian child; and

(2) require the department or another party to submit a report, declaration or testimony on the record that the department or other party used active efforts to identify and work with all of the Indian tribes of which there is reason to know the child may be a member or be eligible for membership to verify whether:

(a) the child is a member of an Indian tribe; or

(b) the child is eligible for membership of an Indian tribe or is the biological child of a member of an Indian tribe.

D. In a case in which a state court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement or termination proceeding. The state court may appoint counsel for the child upon a finding that the appointment is in the best interest of the child. To the extent appropriations from the state are insufficient to provide for the appointment of counsel in the proceeding, the state court shall promptly notify the secretary upon appointment of counsel so that the secretary may pay for reasonable fees and expenses as provided pursuant to 25 U.S.C. Section 1912 upon certification of the presiding judge.

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E. Each party, including the Indian child's tribe, whether or not the Indian child's tribe has intervened, in a foster care placement or termination of parental rights proceeding pursuant to the Abuse and Neglect Act or the Adoption Act involving an Indian child shall have the right to examine all reports or other documents filed with the state court upon which a decision with respect to the action may be based."

SECTION 16. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

A. The court shall receive testimony from a qualified expert witness in all adjudicatory proceedings and all proceedings to terminate parental rights.

B. At least thirty days prior to an adjudicatory proceeding, the department shall name a qualified expert witness to testify at all adjudicatory hearings and all proceedings to terminate parental rights, and the department shall inform the Indian child's tribe of the qualified expert witness who was named to testify.

C. When the department notifies an Indian child's tribe of the pendency of an investigation involving an Indian child from that Indian tribe, the department shall have the burden of collaborating, informing and identifying to the Indian tribe the qualified expert witness to testify in any

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adjudicatory or termination proceeding that results from the investigation. The qualified expert witness shall be a person who is:

(1) familiar with the Indian child's case and has communicated with the Indian child's tribe about the case;

(2) recognized as knowledgeable about the family and child-rearing practices of the Indian child's tribe; and

(3) a member of the Indian child's tribe; or

(4) a person recommended by the Indian child's tribe.

D. Only the Indian child's tribe may object to the qualified expert witness that the department has identified and may stipulate to a qualified expert witness.

E. An Indian child's tribe shall have the opportunity to question a qualified expert witness in all hearings involving an Indian child in which the qualified expert witness testifies, regardless of whether the Indian child's tribe has intervened.

F. If, after active efforts and in no case later than forty-five days after contacting the Indian child's tribe for a recommendation, the department does not receive a recommendation from the Indian tribe, the department shall identify a qualified expert witness who meets the requirements provided in Paragraphs (1) and (2) of Subsection C of this

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section from a list of qualified expert witnesses compiled through cooperation among the Indian tribes in the state and the department.

G. If, sixty days following the initiation of an investigation, the department has not identified a qualified expert witness to testify as required by the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, in considering a motion by the department for a continuance, the court shall consider whether it is in the best interest of the Indian child to remain in the department's custody for additional time. SIRC→"~~SIRC~~

SIRC→H. An employee of the department shall not serve as a qualified expert witness pursuant to this section."~~SIRC~~

SECTION 17. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PARENTAL RIGHTS--VOLUNTARY TERMINATION--CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

A. When a parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, that consent is not valid unless executed in writing and recorded before a judge of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian

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custodian. The state court shall also certify that either the parent or the Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent to a foster care placement or termination of parental rights that is given prior to or within ten days after birth of an Indian child is not valid.

B. A parent or Indian custodian may withdraw consent to a foster care placement of an Indian child pursuant to the Children's Code at any time and, upon that withdrawal, the Indian child shall be returned to the parent or Indian custodian.

C. In a voluntary proceeding for termination of parental rights or adoptive placement of an Indian child pursuant to the Children's Code, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption as the case may be, and the Indian child shall be returned to the parent.

D. After the entry of a final decree of adoption of an Indian child in a state court that is made pursuant to the Adoption Act, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the decree and return the child to the

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parent. An adoption that has been in effect for at least two years shall not be invalidated except as otherwise provided by law."

SECTION 18. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PETITION TO COURT OF COMPETENT JURISDICTION TO INVALIDATE ACTION.--An Indian child who is the subject of an action for foster care placement, preadoptive placement, guardianship, adoptive placement or termination of parental rights pursuant to the Children's Code, a parent or Indian custodian from whose custody the child was removed or the Indian child's tribe may petition any court of competent jurisdiction to invalidate that action upon a showing that the action violated any provision of Section 6, 11 SIRC→~~or 17~~←SIRC SIRC→, 12, 15, 17, 19, 20 or 22←SIRC of the State Indian Child Welfare Act."

SECTION 19. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PLACEMENT PREFERENCES--ADOPTION--PLACEMENT OF INDIAN CHILDREN--REQUIRED TRAINING.--

A. If the child is an Indian child or there is reason to know that a child is an Indian child and that the child is in need of placement or continuation in substitute care, except as provided in Subsection C of this section, the child shall be placed in the least restrictive setting that:

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(1) most closely approximates a family, taking into consideration the Indian child's sibling attachment;

(2) allows the Indian child's special needs, if any, to be met;

(3) is in reasonable geographic proximity to the Indian child's home, extended family or siblings; and

(4) is in accordance with the order of preference established by the Indian child's tribe by any means, or, if that Indian tribe has not established placement preferences, is in accordance with the following order of preference:

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

(b) a foster home licensed, approved or specified by the Indian child's tribe; or

(c) a foster home licensed or approved by a licensing authority in New Mexico and in which one or more of the licensed or approved foster parents is an Indian.

B. A placement shall not depart from the preferences based on:

(1) the socioeconomic status of any placement;  
or

(2) a home environment that does not impact the safety and well-being of the Indian child.

C. If an Indian child is placed in a placement that

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is contrary to the placement preferences provided in this section, the placement shall not be a concurrent placement, and the department shall:

(1) conduct monitoring at least every thirty days to determine whether a placement that comports with the placement preferences provided in this section is available;

(2) undertake active efforts to identify a placement that aligns with the placement preferences as soon as practicable; and

(3) document all active efforts undertaken to identify a placement that aligns with the placement preferences. At minimum, this shall include:

- (a) contacting the Indian tribe;
- (b) conducting a relative search;
- (c) interviewing relatives throughout the case;
- (d) continually assessing and reevaluating relatives;
- (e) providing the Indian tribe with all information in regard to family members;
- (f) offering relative limited license;
- (g) assisting relatives through the licensing process and making the licensing process more accessible;
- (h) continued contact, including

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visitation;

(i) providing culturally appropriate interventions; and

(j) first-line intervention.

D. In the case of a foster care placement, preadoptive placement, adoptive placement or guardianship of an Indian child pursuant to the Children's Code, if the Indian child's tribe establishes a different order of preference, the adoption agency or state court effecting the placement shall follow that order of preference so long as the placement is the least restrictive setting appropriate to the particular needs of the Indian child, as provided in Subsection A of this section. When appropriate, the preference of the Indian child or parent may be considered.

E. If an Indian child is placed in a household that does not include a parent or guardian who is a member of the Indian child's tribe, upon placement and at least annually thereafter, the department shall provide mandatory training to the foster or preadoptive parent that includes information on the Indian child's tribal culture and language, created in conjunction with, and at the discretion of, the Indian tribe, tribal experts and relatives.

F. The administrative office of the courts in collaboration with the department shall develop and deliver annual mandatory training to all children's court judges,

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district court judges and all attorneys, guardians ad litem and youth attorneys who are both court appointed or whose practice involves or represents clients in the areas of child welfare or juvenile justice. The training shall include information on:

- (1) the federal Indian Child Welfare Act of 1978;
- (2) the State Indian Child Welfare Act, including cultural compacts; and
- (3) the Indian tribes geographically located within the state.

G. A judge, attorney, guardian ad litem or youth attorney required to be trained in accordance with Subsection F of this section shall attend the required training at least once every twelve months."

**SECTION 20.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CHANGE IN PLACEMENT--PLACEMENT PREFERENCE--DEPARTMENT DUTIES.--If an Indian child is placed in a foster or substitute care placement that was contrary to the placement preferences provided in Section 19 of the State Indian Child Welfare Act, and regardless of the length of time that the child was in the foster or substitute care placement, the department shall conduct a reassessment of placement preferences for the child, in accordance with Section 19 of that act, before the child's placement may be changed to an

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adoptive or other permanent placement. The reassessment shall include consultation with the Indian child's tribe."

SECTION 21. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PREADOPTIVE, ADOPTIVE AND GUARDIANSHIP PLACEMENTS--MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To ensure that the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act are fully implemented and that all Indian children have the opportunity to maintain strong connections to their culture, if the household into which an Indian child is placed for pre-adoption, adoption or guardianship does not include a parent who is a member of the Indian child's tribe, the court shall require the parties to the adoption to enter a cultural compact, at the discretion of the Indian child's tribe, that documents the parties' agreement regarding how the Indian child will continue to actively participate in the Indian child's cultural learning and activities and engagement with family members. Each cultural compact shall be specific to the Indian child and shall articulate the Indian child's understanding as the Indian child grows and matures. The cultural compact shall become part of the court record, shall be enforced by the court and shall be included in the adoption decree."

SECTION 22. A new section of the Children's Code is enacted to read:

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"[NEW MATERIAL] DISPOSITIONAL JUDGMENTS.--

A. At the conclusion of a dispositional hearing in a child custody proceeding involving an Indian child, in addition to other requirements for a state court's findings pursuant to the Children's Code, a state court shall include:

(1) when the judgment is made in a child custody proceeding held pursuant to the Family in Need of Court-Ordered Services Act or the Abuse and Neglect Act, findings of:

(a) whether the placement preferences set forth in the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978 have been incorporated into a plan for family services made pursuant to Section 32A-3B-15 NMSA 1978 or in a case plan as described in Section 32A-4-21 NMSA 1978; provided that if those placement preferences are not incorporated into the plan for family services or the case plan, good cause for noncompliance shall be clearly stated and supported;

(b) whether the plan for family services or the case plan provides for maintenance of the Indian child's cultural ties; and

(c) how the Indian child's cultural needs are considered and how, when reasonable, access to cultural practices and traditional treatment will be provided to the child; and

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(2) in a termination of parental rights proceeding pursuant to the Abuse and Neglect Act or the Adoption Act, findings that the requirements of the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978 have been met.

B. The state court shall determine during a review of a dispositional judgment involving an Indian child pursuant to Section 32A-4-25 NMSA 1978 whether the preferences set forth in the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978 and whether the child's case plan as described in Section 32A-4-21 NMSA 1978 provide for maintaining the Indian child's cultural ties. When placement preferences are not followed, good cause for noncompliance shall be clearly stated and supported."

SECTION 23. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] RETURN OF CUSTODY.--

A. Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody, and the state court shall grant that petition unless there is a showing, in a proceeding subject to the provisions of Section 11 of the State Indian Child Welfare Act, that the return of custody is not in the

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best interests of the Indian child.

B. Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive or adoptive placement, that placement shall be in accordance with the provisions of the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed."

SECTION 24. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When making a determination regarding the best interests of an Indian child pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, a state court shall, in consultation with the Indian child's tribe, consider the following relevant factors:

- A. the protection, safety and well-being of the Indian child;
- B. the prevention of unnecessary out-of-home placement of the Indian child;
- C. the prioritization of placement of the Indian child in accordance with the placement preferences provided pursuant to Section 19 of the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978;

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D. the critical importance to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community and with familial ties such as clanship and family with unique cultural characteristics; and

E. the importance to the Indian child of the ability of the Indian child's tribe to maintain its existence and integrity in promotion of the stability and security of Indian children and families."

SECTION 25. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] TRIBAL AFFILIATION AND OTHER INFORMATION.--

A. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the state court that entered the final decree shall inform that individual of the tribal affiliation, if any, of the individual's biological parents and provide any other information necessary to protect any rights flowing from the individual's tribal relationship.

B. An individual adopted pursuant to the Adoption Act shall have the right, for the purpose of membership in that individual's Indian tribe of origin, to access information kept by the department. Information needed by that individual for membership in that individual's Indian tribe of origin may be

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requested by the department. Information needed by an individual for membership in the individual's Indian tribe of origin may be requested from the department by the following persons:

- (1) the individual, after the individual reaches eighteen years of age;
- (2) when the individual is a child, the individual's parent or guardian; or
- (3) the individual's descendant or, if the individual's descendant is a child, an adult representative for the descendant.

C. When the department receives a request for information regarding an individual's Indian tribe of origin when that individual was adopted pursuant to the Adoption Act, the department shall examine its records to determine if the individual is of Indian descent. If the department establishes that an individual is of Indian descent, the department shall:

- (1) provide the requester with the tribal affiliation of the individual's biological parents; and
- (2) provide the requester any additional information necessary to establish tribal membership for the individual and to protect any rights flowing from the individual's tribal relationship, pursuant to the confidentiality provisions of the Children's Code."

**SECTION 26.** A new section of the Children's Code is

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enacted to read:

"[NEW MATERIAL] ADOPTION DECREES--INFORMATION  
AVAILABILITY.--

A. The clerk of a state court entering a final  
decree or order in an adoptive placement of an Indian child  
shall provide the secretary with a copy of that decree or order  
with other information as necessary to show:

- (1) the name and tribal membership or  
eligibility of membership of the child;
- (2) the names and addresses of the child's  
biological parents;
- (3) the names and addresses of the biological  
parents; and
- (4) the identity of any agency having files or  
information relating to the adoptive placement.

B. The attorney for the petitioner shall provide to  
the clerk of the state court a copy of the decree of adoption  
and a stamped envelope addressed to the secretary."

SECTION 27. A new section of the Children's Code is  
enacted to read:

"[NEW MATERIAL] EMERGENCY REMOVAL OR PLACEMENT OF AN  
INDIAN CHILD--TERMINATION--APPROPRIATE ACTION.--Nothing in the  
State Indian Child Welfare Act and the federal Indian Child  
Welfare Act of 1978 shall be construed to prevent the emergency  
removal of an Indian child who is a resident of or is domiciled

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on a reservation, but temporarily located off the reservation, from the Indian child's parent or Indian custodian or the emergency placement of that Indian child in a foster home or institution, under the Children's Code, in order to prevent imminent physical danger or harm to the Indian child. The department shall expeditiously initiate a child custody proceeding subject to the provisions of the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, transfer the Indian child to the jurisdiction of the appropriate Indian tribe or restore the child to the parent or Indian custodian, as may be appropriate."

**SECTION 28.** A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] STATE INDIAN CHILD WELFARE ACT  
SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--The provisions of the State Indian Child Welfare Act are in addition to other requirements for child custody proceedings set forth in the Children's Code and the Kinship Guardianship Act. To the extent the provisions of the State Indian Child Welfare Act conflict with the provisions of any other provisions of the federal Indian Child Welfare Act of 1978, the Children's Code or the Kinship Guardianship Act, the provisions of the State Indian Child Welfare Act shall apply."

**SECTION 29.** A new section of Children's Code is enacted to read:

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"[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The "office of tribal affairs" is created in the department. The office shall be dedicated to ensuring the department's compliance with and full implementation of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act."

SECTION 30. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The department and the court shall promulgate rules to implement the provisions of the State Indian Child Welfare Act."

SECTION 31. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

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

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

- (1) a delinquent child;
- (2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act;
- (3) a neglected child;

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- (4) an abused child;
- (5) a child subject to adoption; or
- (6) a child subject to placement for a developmental disability or a mental disorder.

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

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

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

~~[E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state~~

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~~agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.~~

F.] E. The court may acquire jurisdiction over a Motor Vehicle Code or municipal traffic code violation as set forth in Section 32A-2-29 NMSA 1978."

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

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

- A. the facts necessary to invoke the jurisdiction of the court;
- B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;
- C. the name, birth date and residence address of

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the child;

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

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

F. whether the child is an Indian child and, if so, any additional information required pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978; and

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

**SECTION 33.** Section 32A-3B-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 88, as amended) is amended to read:

"32A-3B-16. DISPOSITIONAL JUDGMENT.--

A. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

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- (1) the ability of the parent and child to share a residence;
- (2) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;
- (3) the child's adjustment to home, school and community;
- (4) whether the child's educational needs are being met;
- (5) the mental and physical health of all individuals involved;
- (6) the wishes of the child as to the child's custodian;
- (7) the wishes of the child's parent, guardian or custodian as to the child's custody;
- (8) whether there exists a relative of the child or any other individual who, after study by the department, is found to be qualified to receive and care for the child;
- (9) the availability of services recommended in the treatment plan;
- (10) the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected;

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~~[(11) whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been incorporated into the plan. When placement preferences have not been incorporated into the plan, an explanation shall be clearly stated and supported;~~

~~(12) when the child is an Indian child, whether the plan provides for maintaining the Indian child's cultural ties]~~

(11) if the child is an Indian child or there is reason to know the child is an Indian child, any other findings required for a dispositional judgment pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978; and

~~[(13)]~~ (12) when the child is an undocumented immigrant child, whether the family services plan included referral to nongovernmental agencies that may be able to assist the child, and family when appropriate, in addressing immigration status.

B. When there is an adjudication regarding a family in need of court-ordered services, the court shall enter judgment and make any of the following dispositions:

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

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- (2) place the child under the protective supervision of the department;
- (3) transfer legal custody of the child to:
  - (a) the department;
  - (b) an agency responsible for the care of neglected or abused children; or
  - (c) the child's noncustodial parent, if that is found to be in the child's best interests; or
- (4) if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

C. Unless a child of an adjudicated family in need of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children.

~~[D. When the child is an Indian child, the child's cultural needs shall be considered during dispositional judgment and, when reasonable, access to cultural practices and traditional treatment shall be provided to the Indian child.]"~~

SECTION 34. Section 32A-4-6 NMSA 1978 (being Laws 1993,

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Chapter 77, Section 100, as amended) is amended to read:

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

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

(1) by a law enforcement officer when the officer has evidence giving rise to reasonable grounds to believe that the child is abused or neglected and that there is an immediate threat to the child's safety; provided that the law enforcement officer contacts the department to enable the department to conduct an on-site safety assessment to determine whether it is appropriate to take the child into immediate custody, except that a child may be taken into custody by a law enforcement officer without a protective services assessment being conducted if:

(a) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(b) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(c) the child has been abandoned;

(d) the child is in need of emergency medical care;

(e) the department is not available to

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conduct a safety assessment in a timely manner; or

(f) the child is in imminent risk of abuse; or

(2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child pursuant to Paragraph (1) of this subsection.

B. A child shall not be taken into protective custody solely on the grounds that the child's parent, guardian or custodian refuses to consent to the administration of a psychotropic medication to the child.

C. When a child is taken into custody by law enforcement, the department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian.

D. When a child is taken into custody, the department shall make [~~reasonable~~] active efforts to determine whether the child is an Indian child as required pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978.

E. If a child taken into custody is an Indian child

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and is alleged to be neglected or abused, the department shall give notice to the [~~agent of the Indian child's tribe~~] appropriate parties in accordance with the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

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

**SECTION 35.** 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 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

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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 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 or maintenance at home by the department or participation in programs or services aimed at addressing the underlying causative factors that impact the safety or well-being of the child; or

(2) award legal custody of the child to the

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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. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

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

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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 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

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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 and the State Indian Child Welfare Act."

SECTION 36. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, preadoptive parent or relative providing care for the child, and an Indian child's tribe, pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978, if applicable, shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify

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the child or family involved in the proceedings.

D. In proceedings with an Indian child or a child who the court or the department has reason to believe is an Indian child, the Indian child's tribe may be present at a closed hearing, regardless if the Indian child's tribe has intervened.

~~[D-]~~ E. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. A child who is the subject of an abuse and neglect proceeding and is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

~~[E-]~~ F. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

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[F-] G. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

[G-] H. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of neglect or abuse, shall make and record its findings on whether the child is a neglected child, an abused child or both. Except in the case of a petition that relates to an Indian child, if the petition alleges that the parent, guardian or custodian has subjected the child to aggravated circumstances, then the court shall also make and record its findings on whether the aggravated circumstances have been proven. If the petition relates to an Indian child, aggravating circumstances shall not be considered by the court and shall not be recorded in the court's findings on the petition, pursuant to the State Indian Child Welfare Act.

[H-] I. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court shall enter an order finding that the child is neglected or abused and may proceed immediately or at a postponed hearing to

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make disposition of the case. If the court does not find that the child is neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

[~~F.~~] J. A party aggrieved by an order entered pursuant to Subsection [~~H.~~] I of this section may file an immediate appeal to the court of appeals.

[~~J.~~] K. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

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

**SECTION 37.** Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115, as amended) is amended to read:

"32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,

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REPORTS AND EXAMINATIONS.--

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

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

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

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

(3) the wishes of the child as to the child's

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custodian;

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

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

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

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

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

(9) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act or the placement preferences of the child's Indian tribe were followed and whether the child's case plan provides for

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maintaining the child's cultural ties;

(10) a case plan that sets forth steps to ensure that the child's physical, medical, cultural, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to facilitate permanent placement of the child in the parent's home;

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

(12) a case plan that sets forth steps to ensure that the child's educational needs are met and, for a child fourteen years of age or older, a case plan that specifically sets forth the child's educational and post-secondary goals; and

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

C. A copy of the predisposition report shall be

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provided by the department to counsel for all parties five days before the dispositional hearing.

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

**SECTION 38.** Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

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

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

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

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

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

(4) the wishes of the child as to the child's placement;

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

(6) whether reasonable efforts have been made by the department to identify, locate and give notice to all grandparents and other relatives and to conduct home studies on any appropriate relative who expresses an interest in providing care for the child. If the court finds that reasonable efforts in these areas have not been made, the court may make supplemental orders as necessary and may reconsider the matter at the initial judicial review and subsequent periodic review hearings. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act;

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

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

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

(10) the ability of the parent to care for the child in the home so that no harm will result to the child;

(11) whether reasonable efforts were made by

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the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were made to attempt reunification of the child with the natural parent;

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

(13) if the child is an Indian child, ~~[whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's case plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported]~~  
any other information required for a dispositional judgment pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978.

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

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

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

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

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

(b) the department.

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

(1) the efforts would be futile; or

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

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have

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reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

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

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

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

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

I. As required pursuant to the State Indian Child Welfare Act, when a child is placed in the custody of the department, [~~the department shall investigate whether the child~~

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~~is eligible for enrollment as a member of an Indian tribe and, if so]~~ the department shall [~~pursue the enrollment on the child's behalf]~~ work with the parent or the Indian tribe to establish membership, at the discretion of the parent or the Indian tribe. An Indian tribe shall determine membership and eligibility. The department shall provide records to assist if necessary, at the discretion of the parent or the Indian tribe.

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

**SECTION 39.** Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

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

A. The initial judicial review shall be held within sixty days of the disposition. At the initial judicial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the

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initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the council. The staff of the council, or an entity contracting with the council, shall review the case. If the staff or contracting entity determines that the case meets the criteria established in council rules, the staff or contracting entity shall designate the case for review by a substitute care review board. A representative of the substitute care review board, if designated, shall be permitted to attend and comment to the court.

B. The court shall conduct subsequent periodic judicial reviews of the dispositional order within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to a subsequent periodic judicial review, the department shall submit a progress report to the council or any designated substitute care review board. Prior to any judicial review by the court pursuant to this section, the substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court.

C. Judicial review pursuant to this section may be carried out by either of the following:

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

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

D. The children's court attorney shall give notice of the time, place and purpose of any judicial review hearing held pursuant to Subsection A, B or C of this section to:

(1) all parties, including:

(a) the child alleged to be neglected or abused or in need of court-ordered services, by and through the child's guardian ad litem or attorney;

(b) the child's parent, guardian or custodian, who has allegedly neglected or abused the child or is in need of court-ordered services; and

(c) any other person made a party by the court;

(2) the child's foster parent or substitute care provider;

(3) the child's court-appointed special advocate; and

(4) if designated by the council, the substitute care review board.

E. At any subsequent judicial review hearing held pursuant to Subsection B of this section, the department and

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all parties given notice pursuant to Subsection D of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

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

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

H. When the child is an Indian child or there is reason to know the child is an Indian child, the court shall determine during review of a dispositional order whether the

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placement preferences set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act or the placement preferences of the child's Indian tribe were followed and [~~whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported~~] make any other determinations required for dispositional judgment findings and issue orders pursuant to the State Indian Child Welfare Act and federal Indian Child Welfare Act of 1978.

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

(1) dismiss the action and return the child to the child's parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

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

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

(4) transfer or continue legal custody of the

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child to:

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

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

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

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

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

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment

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plan or abused its discretion in the placement or proposed placement of the child; or

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

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

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

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

K. When the court determines, pursuant to Paragraph (5) of Subsection I of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. The department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

**SECTION 40.** Section 32A-4-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 121, as amended) is amended to read:

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"32A-4-27. INTERVENTION--PERSONS PERMITTED TO

INTERVENE.--

A. At any stage of an abuse or neglect proceeding that does not involve an Indian child, a person described in this subsection may be permitted to intervene as a party with a motion for affirmative relief:

(1) a foster parent with whom the child has resided [~~with~~] for at least six months;

(2) a relative within the fifth degree of consanguinity with whom the child has resided;

(3) a stepparent with whom the child has resided; or

(4) a person who wishes to become the child's permanent guardian.

B. When determining whether a person described in Subsection A of this section should be permitted to intervene, the court shall consider:

(1) the person's rationale for the purposed intervention; and

(2) whether intervention is in the best interest of the child.

C. When the court determines that the child's best interest will be served as a result of intervention by a person described in Subsection A of this section, the court may permit intervention unless the party opposing intervention can

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demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan.

D. The persons described in this subsection shall be permitted to intervene during any stage of an abuse or neglect proceeding:

(1) a parent of the child who is not named in the petition alleging abuse or neglect; and

(2) when the child is an Indian child, the child's Indian tribe, the Indian child's relative or a member of the Indian child's extended family as provided by the State Indian Child Welfare Act.

E. The [~~child's~~] foster parent of a child that is not an Indian child shall be permitted to intervene when:

(1) the foster parent desires to adopt the child;

(2) the child has resided with the foster parent for at least six months within the year prior to the termination of parental rights;

(3) a motion for termination of parental rights has been filed by a person other than the foster parent; and

(4) bonding between the child and the child's foster parent is alleged as a reason for terminating parental rights in the motion for termination of parental rights.

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F. The foster parent, preadoptive parent or relative providing care for the child shall be given notice of, and an opportunity to be heard in, any review or hearing with respect to the child, except that this subsection shall not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to such a review or hearing solely on the basis of the notice and opportunity to be heard."

SECTION 41. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

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

A. In proceedings to terminate parental rights, unless extraordinary circumstances are present, the court shall ~~[give primary consideration to]~~ make the determination based on the physical, mental, [and] emotional and cultural welfare, well being and needs of the child, including the likelihood of the child being adopted if parental rights are terminated. If the child is an Indian child, the court shall also make the determination pursuant to the State Indian Child Welfare Act and the importance of maintained connections between Indian children and their Indian tribes and tribal culture. In proceedings to terminate parental rights with respect to an Indian child, the court shall consider whether an alternative to termination of parental rights, including permanent

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guardianship of the child, would best support the Indian child, the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978.

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

(1) there has been an abandonment of the child by [~~his~~] the child's parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

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

(b) notwithstanding the provisions of Subsection H of Section 32A-4-20 NMSA 1978, the parent has subjected the child to aggravated circumstances; or

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

(a) the child has lived in the home of

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others for an extended period of time;

(b) the parent-child relationship has disintegrated;

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

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

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

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

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

D. The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights:

(1) when the sole factual basis for the motion is that a child's parent is or was formerly incarcerated; or

(2) if the motion is based, to any extent, on the fact that the child is an Indian child or that the child's

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parent or parents are Indian.

E. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act shall:

(1) comply with the requirements of [that act] those respective acts;

(2) not be ordered unless the Indian child's tribe was provided timely notice of the proceeding in accordance with the State Indian Child Welfare Act and provided an opportunity to state whether it opposes the termination; and

(3) not be ordered if the Indian child's tribe proposes an alternate permanency plan, unless the department can show good cause why the alternate permanency plan should not be ordered.

F. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding

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that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. The court shall not waive any time requirements set forth in the Adoption Act, the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act. Unless otherwise stipulated by all parties, including Indian tribes when applicable regardless if the Indian tribe is a party, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act, federal Indian Child Welfare Act of 1978 and State Indian Child Welfare Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. In the case of a child who is an Indian child or a child the department or the court has reason to believe is an Indian child, a copy of the cultural compact shall be included in the adoption decree. The court clerk shall assign an adoption case number to the adoption decree."

**SECTION 42.** Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

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

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

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

- (1) the date, place of birth and marital status of the child, if known;
- (2) the grounds for termination and the facts and circumstances supporting the grounds for termination;
- (3) the names and addresses of the persons or authorized agency or agency officer to whom legal custody might be transferred;
- (4) whether the child resides or has resided with a foster parent who desires to adopt this child;
- (5) whether the motion is in contemplation of adoption;
- (6) the relationship or legitimate interest of the moving party to the child; and
- (7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act and, if so:

- (a) the tribal affiliations of the child's parents;
- (b) the specific actions taken by the moving party to notify the [~~parents' tribes~~] Indian child's tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the [~~tribes~~]

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Indian child's tribe shall be attached as exhibits to the petition; and

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

C. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on all other parties, the foster parent, preadoptive parent or relative providing care for the child with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Children's Court Rules for the service of motions, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act, notice shall also be sent by certified mail to the [~~tribes of the child's parents~~] Indian child's tribe and upon any "Indian custodian" as that term is

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defined in 25 U.S.C. Section 1903(6) and the State Indian Child Welfare Act. Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

D. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section. The moving party shall also file a motion for court-ordered mediation between the parent and any prospective adoptive parent to discuss an open adoption agreement. In the case of a child who is an Indian child or a child whom the department or the court has reason to believe is an Indian child, the court-ordered mediation shall not be waived and the Indian child's tribe shall be allowed to participate, whether or not it intervenes. If an open adoption agreement is reached at any time before termination of parental rights, it shall be made a part of the court record.

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

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

(2) move that the motion for the termination of parental rights be found premature and denied.

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

G. When a child has been in foster care for not less than fifteen of the previous twenty-two months, unless this time was incurred during voluntary placement agreements, the department shall file a motion to terminate parental rights, unless:

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

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

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

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

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

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

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

(8) adoption is not an appropriate plan for the child; or

(9) the parent's incarceration or participation in a court-ordered residential substance abuse treatment program constitutes the primary factor in the child's placement in substitute care and termination of parental rights is not in the child's best interest.

H. In the case of an Indian child or a child who is believed to be an Indian child, the department shall prove beyond a reasonable doubt that the department has complied with the active efforts to give notice, prevent removal, work toward

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reunification and comply with placement preferences pursuant to the Abuse and Neglect Act, federal Indian Child Welfare Act of 1978 and State Indian Child Welfare Act.

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

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

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

[I.] J. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in [~~25 U.S.C. Section 1912(f)~~] those acts.

[J.] K. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

[K.] L. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act, the court shall in any termination order make specific findings of all active efforts that the requirements of [~~that act~~] those acts have been met.

[L.] M. A judgment of the court terminating

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

[M-] N. When the court denies a motion to terminate parental rights, the court shall issue appropriate orders immediately. The court shall direct the parties to file a stipulated order and interim plan or a request for hearing within thirty days of the date of the hearing denying the termination of parental rights."

**SECTION 43.** Section 32A-4-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 126, as amended) is amended to read:

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

A. A motion for permanent guardianship may be filed by any party.

B. A motion for permanent guardianship shall set forth:

- (1) the date, place of birth and marital status of the child, if known;
- (2) the facts and circumstances supporting the grounds for permanent guardianship;
- (3) the name and address of the prospective guardian and a statement that the person agrees to accept the

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duties and responsibilities of guardianship;

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

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

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

~~[(a) the tribal affiliations of the child's parents;~~

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

~~(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes]~~ any additional requirements for that motion as provided pursuant to the State Indian Child Welfare Act.

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

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

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

E. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of:

(1) 25 U.S.C. Section 1912(f) in ~~[any]~~ a proceeding involving a child subject to the federal Indian

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Child Welfare Act of 1978; and

(2) the State Indian Child Welfare Act in a proceeding involving a child subject to that act or a child the department or the court believes to be subject to that act.

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

G. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

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

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

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

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

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J. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under the age of fourteen. The court shall appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is fourteen years of age or older at the inception of the proceedings.

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

**SECTION 44.** Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

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

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

B. The records described in Subsection A of this

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section shall be disclosed only to the parties and:

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

(2) court-appointed special advocates appointed to the neglect or abuse proceeding;

(3) the child's guardian ad litem;

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

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

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

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

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

(9) any state government social services agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social

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services agency of another country;

(10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the State Indian Child Welfare Act, the federal Indian Child Welfare Act of 1978 or any regulations promulgated [~~thereunder~~] under those acts;

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

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

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

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

(15) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance

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and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(16) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department;

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

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

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

C. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information

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shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

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

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

**SECTION 45.** Section 32A-5-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 131) is amended to read:

"32A-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE ACT OF 1978 AND THE STATE INDIAN CHILD WELFARE ACT.--The protections set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act, including provisions concerning notice to the Indian child's tribe, transfer to tribal court and placement preferences, apply to

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all proceedings involving an Indian child under the Adoption Act."

SECTION 46. Section 32A-5-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 134, as amended) is amended to read:

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

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

B. The clerk of the court shall mail a copy of the request for placement to the department within one working day of the request for placement being filed with the court. The attorney for the person requesting placement shall provide to the clerk of the court a copy of the request for placement and a stamped envelope addressed to the department as specified in department regulation.

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

D. The clerk of the court shall mail a copy of the decree of adoption to the department within one working day of the entry of the decree of adoption. The attorney for the

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petitioner shall provide to the clerk of the court a copy of the decree of adoption and a stamped envelope addressed to the department as specified in department regulation.

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

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

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

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

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

**SECTION 47.** Section 32A-5-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 140, as amended) is amended to read:

"32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--

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PLACEMENT ORDER--CERTIFICATION.--

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

B. Only a pre-placement study that has been prepared or updated within one year immediately prior to the date of placement, approving the petitioner as an appropriate adoptive parent, shall be filed with the court prior to issuance of a placement order, except as provided in Subsection C of Section 32A-5-12 NMSA 1978.

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

D. The pre-placement study shall be conducted by an agency or a person certified by the department to conduct the study. A person or agency that wants to be certified to perform pre-placement studies shall file documents verifying their qualifications with the department. The department shall publish a list of persons or agencies certified to conduct a pre-placement study. If necessary to defray additional costs associated with compiling the list, the department may assess

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and charge a reasonable administrative fee to the person or agency listed.

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

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

(1) the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage;

(2) the date and place of birth of the adoptee, if known, or the anticipated date and place of birth of the adoptee;

(3) a detailed statement of the circumstances and persons involved in the proposed placement;

(4) if the adoptee has been born, the address where the adoptee is residing at the time of the request for placement;

(5) if the adoptee has been born, the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived. If the adoptee is in the custody of an agency or the department, the address shall be the address of the agency or the county office of the department from which the child was

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placed;

(6) the existence of any court orders that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

(7) that the petitioner desires to establish a parent and child relationship between the petitioner and the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act, and, if so, the petition shall allege the actions taken to comply with the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act and all other allegations required pursuant to ~~[that act]~~ those acts;

(10) whether the adoption is subject to the Interstate Compact on the Placement of Children and what specific actions have been taken to comply with the Interstate Compact on the Placement of Children; and

(11) the name, address and telephone number of

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the agency or investigator who has agreed to do the pre-placement study.

G. The request for placement shall be served on all parties entitled to receive notice of the filing of a petition for adoption, as provided in Section 32A-5-27 NMSA 1978. An order allowing placement may be entered prior to service of the request for placement.

H. A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request.

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32A-5-14 NMSA 1978 and that the time requirements concerning placement set forth in this section have been met."

**SECTION 48.** Section 32A-5-15 NMSA 1978 (being Laws 1993, Chapter 77, Section 142, as amended) is amended to read:

"32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

A. The physical, mental and emotional welfare and needs of the child shall be the primary consideration for the termination of parental rights. The court may terminate the rights of the child's parents as provided by the Adoption Act.

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

(1) the child has been abandoned by the

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parents;

(2) the child has been a neglected or abused child and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future; or

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

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

(b) the parent-child relationship has disintegrated;

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

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

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

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

C. A finding by the court that all of the conditions set forth in ~~Subparagraph~~ Subparagraphs (a)

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through (e) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving an Indian child shall comply with the requirements of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act."

**SECTION 49.** Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143, as amended) is amended to read:

"32A-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

- (1) the department;
- (2) an agency; or
- (3) any other person having a legitimate

interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem or attorney in another action, a foster parent, a relative of the child or the child.

B. A petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

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- (1) the date, place of birth and marital status of the child, if known;
- (2) the grounds for termination and the facts and circumstances supporting the grounds for termination;
- (3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;
- (4) the basis for the court's jurisdiction;
- (5) that the petition is in contemplation of adoption;
- (6) the relationship or legitimate interest of the applicant to the child; and
- (7) whether the child is an Indian child and, if so,

~~[(a) the tribal affiliations of the child's parents;~~

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

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

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of the appropriate Indian tribes] any additional information as required pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978 for a petition to terminate parental rights.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, the individuals with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the

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affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceedings for termination of parental rights under this section.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall

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request a hearing on the petition. The hearing date shall be at least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

**SECTION 50.** Section 32A-5-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 144, as amended) is amended to read:

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"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--

A. Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

- (1) the adoptee, if fourteen years of age or older, except when the court finds that the adoptee does not have the mental capacity to give consent;
- (2) the adoptee's mother;
- (3) the adoptee's proposed adoptive parent;
- (4) the presumed father of the adoptee;
- (5) the adoptee's acknowledged father;
- (6) the department or the agency to whom the adoptee has been relinquished that has placed the adoptee for adoption or the department or the agency that has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and
- (7) the guardian of the adoptee's parent when, pursuant to provisions of the Uniform Probate Code, that guardian has express authority to consent to adoption.

B. In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of

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parental rights shall be obtained from an "Indian custodian", as required pursuant to the provisions of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

C. A consent or relinquishment executed by a parent who is a minor shall not be subject to avoidance or revocation solely by reason of the parent's minority."

SECTION 51. Section 32A-5-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 148, as amended) is amended to read:

"32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

A. Except when consent or relinquishment is implied, a consent or relinquishment by a parent shall be in writing, signed by the parent consenting or relinquishing and shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) if a consent to adoption is being executed, the identity of the petitioner, if known, or when the adoption is an independent adoption and the identity of the petitioner is unknown, how the petitioner was selected by the consenting parent;
- (4) if a relinquishment of parental rights is being executed, the name and address of the agency or the department;

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(5) that the person executing the consent or relinquishment has been counseled, as provided in Section 32A-5-22 NMSA 1978, by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting to the adoption of the named adoptee;

(6) that the consenting party has been advised of the legal consequences of the relinquishment or consent either by independent legal counsel or a judge;

(7) if the adoption is closed, that all parties understand that the court will not enforce any contact, regardless of any informal agreements that have made between the parties;

(8) that the consent to or relinquishment for adoption cannot be withdrawn;

(9) that the person executing the consent or relinquishment has received or been offered a copy of the consent or relinquishment;

(10) that a counseling narrative has been prepared pursuant to department regulations and is attached to the consent or relinquishment;

(11) that the person who performed the counseling meets the requirements set forth in the Adoption Act; and

(12) that the person executing the consent or relinquishment waives further notice of the adoption

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proceedings.

B. The consent of an adoptee, if fourteen years of age or older, shall be in writing, signed by the adoptee, consenting to the adoption and shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) the name of the petitioner;
- (4) that the adoptee has been counseled regarding the consent pursuant to department regulation;
- (5) that the adoptee has been advised of the legal consequences of the consent;
- (6) that the adoptee is voluntarily and unequivocally consenting to the adoption;
- (7) that the consent or relinquishment cannot be withdrawn;
- (8) that a counseling narrative has been prepared pursuant to department regulation and is attached to the consent; and
- (9) that the person who performed the counseling meets the requirements set forth in the Adoption Act.

C. In cases when the consent or relinquishment is in English and English is not the first language of the consenting or relinquishing person, the person taking the

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consent or relinquishment shall certify in writing that the document has been read and explained to the person whose consent or relinquishment is being taken in that person's first language, by whom the document was so read and explained and that the meaning and implications of the document are fully understood by the person giving the consent or relinquishment.

D. Unconditional consents or relinquishments are preferred, and, therefore, conditional consents or relinquishments shall be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, all conditions permitted under this subsection shall be met within one hundred eighty days of the execution of the conditional consent or relinquishment or the conclusion of any litigation concerning the petition for adoption. The court may grant an extension of this time for good cause.

E. Agency or department consents required pursuant to the provisions of Section 32A-5-17 NMSA 1978 shall state the following:

- (1) the date, place and time of execution;
- (2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
- (3) the name of the petitioner; and

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(4) the consent of the agency or department.

F. A consent or relinquishment taken by an individual appointed to take consents or relinquishments by an agency shall be notarized, except that a consent or relinquishment signed in the presence of a judge need not be notarized. A hearing before the court for the purpose of taking a consent or relinquishment shall be heard by the court within seven days of request for setting.

G. No consent to adoption or relinquishment of parental rights shall be valid if executed within forty-eight hours after the adoptee's birth. Consent to adoption or relinquishment of parental rights involving an Indian child shall comply with the more stringent requirements of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

H. The requirements of a consent to adoption or relinquishment of parental rights involving an Indian child and the rights of a parent of an Indian child to withdraw the consent or relinquishment shall be governed by the relevant provisions of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

I. For non-Indian children, a consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and opportunity to be heard is afforded to the

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petitioner, to the person seeking the withdrawal and to the agency placing a child for adoption, that the consent or relinquishment was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption."

SECTION 52. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153, as amended by Laws 2003, Chapter 294, Section 4 and by Laws 2003, Chapter 321, Section 4) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names

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by which the adoptee has been known and the adoptee's proposed new name; provided that in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom

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consents or relinquishments are required, attaching copies of those obtained and alleging the facts that excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of [~~his~~] the petitioner's identity to the parent or if the parent has not agreed to the release of [~~his~~] the parent's identity to the petitioner, the names and addresses of all persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall [~~allege:~~

~~(1) the tribal affiliation of the adoptee's parents;~~

~~(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and~~

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~~(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe]~~ include any specific allegations as required pursuant to the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign-born and, if so, copies of the child's passport and United States visa and of all documents demonstrating that the adoptee is legally free for adoption, including a certificate from the United States secretary of state that certifies that the adoption is a convention adoption;

P. whether the adoption is a convention adoption and, if so, the petition shall allege:

(1) that the country in which the child has been residing is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(2) that the agency or person who is providing the adoption service has been approved as an accrediting entity; and

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(3) that the certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court; and

Q. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

**SECTION 53.** Section 32A-5-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 154, as amended) is amended to read:

"32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

A. The petition for adoption shall be served by the petitioner on the following, unless it has been previously waived in writing:

(1) the department, by providing a copy to the court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

(2) any person, agency or institution whose consent or relinquishment is required by Section 32A-5-17 NMSA 1978, unless the notice has been previously waived;

(3) any acknowledged father of the adoptee;

(4) the legally appointed custodian or guardian of the adoptee;

(5) the spouse of any petitioner who has not joined in the petition;

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(6) the spouse of the adoptee;  
(7) the surviving parent of a deceased parent of the adoptee;

(8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;

(9) any person in whose home the child has resided for at least two months within the preceding six months;

(10) the agency or individual authorized to investigate the adoption under Section 32A-5-13 NMSA 1978; and

(11) any other person designated by the court.

B. Notice shall not be served on the following:

(1) an alleged father; and

(2) a person whose parental rights have been relinquished or terminated.

C. The petitioner shall provide the clerk of the court with a copy of the petition for adoption, to be mailed to the department pursuant to the provisions of Section 32A-5-7 NMSA 1978.

D. In an adoption in which the adoptee is an Indian child, in addition to the notice required pursuant to Subsection A of this section, notice of pendency of the adoption proceeding shall be served by the petitioner on the appropriate Indian tribe and on a parent or an "Indian custodian" pursuant to the provisions of the federal Indian

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Child Welfare Act of 1978 and the State Indian Child Welfare Act.

E. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall state that the failure to so respond shall be treated as a default and the person's consent to the adoption shall not be required. Provided, however, that this provision shall not apply to an agency, the department or an investigator preparing the post-placement report pursuant to Section 32A-5-31 NMSA 1978. If an agency, the department or an investigator preparing the post-placement report wants to contest the adoption, it shall notify the court within twenty days after completion of the post-placement report.

F. Service shall be made pursuant to the Rules of Civil Procedure for the District Courts. If the whereabouts of a parent whose consent is required is unknown, the investigator, department or agency charged with investigating the adoption under Section 32A-5-13 NMSA 1978 shall investigate the whereabouts of the parent and shall file by affidavit the results of the investigation with the court. Upon a finding by the court that information as to the whereabouts of a parent has been sufficiently investigated and is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall issue an order

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providing for service by publication.

G. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, shall be sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

H. The notice required by this section may be waived in writing by the person entitled to notice.

I. Proof of service of the notice on all persons for whom notice is required by this section shall be filed with the court before any hearing adjudicating the rights of the persons."

SECTION 54. Section 32A-5-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 155) is amended to read:

"32A-5-28. RESPONSE TO PETITION.--

A. Any person responding to a notice of a petition for adoption shall file a verified response to the petition within the time limits specified in Section [~~32-5-25~~] 32A-5-25 NMSA 1978.

B. The verified response shall follow the Rules of Civil Procedure for the District Courts and shall allege:

(1) the existence of any court orders known to the respondent that regulate custody, visitation or access to the adoptee but have not been filed with the court at the time

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the response is filed and copies of which shall be attached to the response;

(2) the relationship, if any, of the respondent to the adoptee;

(3) whether the adoptee is an Indian child, and, if so, the response shall set forth all allegations required under the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act;

(4) whether the adoption is subject to the Interstate Compact on the Placement of Children; and

(5) whether the adoption is an open adoption."

**SECTION 55.** Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 133, as amended by Laws 2003, Chapter 294, Section 5 and by Laws 2003, Chapter 321, Section 5) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with

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copies of the documents simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of

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the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;

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(5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign-born, the child is legally free for adoption and a certificate issued by the United States secretary of state that certifies the adoption as a convention adoption has been filed with the court;

(10) the results of the criminal records check required pursuant to provisions of the Adoption Act have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act have been met;

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(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978, the State Indian Child Welfare Act or the placement preferences of the appropriate Indian tribes have been followed or, if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new

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name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act to invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978 and in accordance with the provisions

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of the State Indian Child Welfare Act."

SECTION 56. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167, as amended) is amended to read:

"32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a child who was the adoptee in the particular proceeding, by the department or by an adoptee's sibling; provided that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

- (1) the health and medical histories of the

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adoptee's biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background, including ancestral information, without name references or geographical designations;

(4) physical descriptions; and

(5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. Any changes to post-adoption access to records referred to in Subsection B of this section shall be filed with the court, the placing agency and the department.

D. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing

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agency or the department unless for good cause the court orders to the contrary.

E. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

F. If mutual authorizations for release of identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

(1) the reason the information is sought;

(2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of

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another individual, including appointment of a confidential intermediary to contact the individual and request specific information;

(3) whether the individual about whom identifying information is sought is alive;

(4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families and the likely effect of disclosure on those individuals;

(5) the age, maturity and expressed needs of the adoptee;

(6) the report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

G. An adoptee shall have the right, for the purpose of ~~[enrolling]~~ membership in the adoptee's tribe of origin, to access information kept by the department. Information needed by an adoptee to ~~[enroll]~~ obtain membership in ~~[his]~~ the adoptee's tribe of origin may be requested from the department ~~[by the following persons:]~~

~~(1) the adoptee, after he reaches eighteen~~

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~~years of age;~~

~~(2) when the adoptee is a child, his adoptive parent or guardian; or~~

~~(3) an adoptee's descendant or, if the adoptee's descendant is a child, an adult representative for the descendant]~~ as provided pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978.

H. When the department receives a request for information regarding an adoptee's tribe of origin, the department shall examine its records to determine if the adoptee is of Indian descent. If the department establishes that an adoptee is of Indian descent, the department shall

~~[(1) provide the requester with the tribal affiliation of the adoptee's biological parents;~~

~~(2) submit to the tribe information necessary to establish tribal enrollment for the adoptee and to protect any rights flowing from the adoptee's tribal relationship; and~~

~~(3) provide notice to the requester of the department's submission of information to the adoptee's tribe]~~ provide any information or notice as required pursuant to the State Indian Child Welfare Act and the federal Indian Child Welfare Act of 1978."

SECTION 57. Section 40-10B-5 NMSA 1978 (being Laws 2001, Chapter 167, Section 5, as amended) is amended to read:

"40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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A. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists and who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen; or

(3) a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:

(a) the purpose and effect of the guardianship;

(b) that the parent has the right to be served with the petition and notices of hearings in the action; and

(c) that the parent may appear in court to contest the guardianship.

B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:

(1) facts that, if proved, will meet the requirements of Subsection B of Section 40-10B-8 NMSA 1978;

(2) the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;

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(3) the legal residence of the child and the place where the child resides, if different from the legal residence;

(4) the name and address of the petitioner;

(5) the kinship, if any, between the petitioner and the child;

(6) the names and addresses of the parents of the child;

(7) the names and addresses of persons having legal custody of the child;

(8) the existence of any matters pending involving the custody of the child;

(9) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;

(10) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the children, youth and families department consents to the relief requested in the petition;

(11) whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act and, if so,

~~[(a) the tribal affiliations of the child's parents; and~~

~~(b) the specific actions taken by the petitioner to notify the parents' tribes and the results of the~~

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~~contacts, including the names, addresses, titles and telephone numbers of the persons contacted, and copies of correspondence with the tribe]~~ shall include any information as required of a petition for a child custody proceeding pursuant to those acts;  
and

(12) other facts in support of the guardianship sought."

SECTION 58. Section 40-10B-6 NMSA 1978 (being Laws 2001, Chapter 167, Section 6, as amended) is amended to read:

"40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

A. The court shall set a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

B. The petition and a notice of the hearing shall be served upon:

(1) the children, youth and families department if there is any pending matter relating to the child pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

(2) the child if the child has reached the age of fourteen;

(3) the parents of the child;

(4) a person having custody of the child or visitation rights pursuant to a court order; and

(5) if the child is an Indian child as defined in the federal Indian Child Welfare Act of 1978 and the State

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Indian Child Welfare Act, the ~~[appropriate]~~ Indian tribe and ~~[any]~~ the child's parent or "Indian custodian", together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the federal Indian Child Welfare Act of 1978 and the State Indian Child Welfare Act.

C. Service of process required by Subsection A of this section shall be made in accordance with the requirements for giving notice of a hearing pursuant to Subsection A of Section 45-1-401 NMSA 1978.

D. The persons required to be served pursuant to Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to Rule 1-024 NMRA."

**SECTION 59. REPEAL.**--Sections 32A-1-14 and 32A-3B-6.1 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws 2005, Chapter 189, Section 37, as amended) are repealed.

**SECTION 60. APPLICABILITY.**--

A. The provisions of Section 7 of this act apply to tribal-state agreements that become effective on or after July 1, 2021.

B. The provisions of this act apply to all open cases prior to July 1, 2021.

**SECTION 61. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2021.