

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 209

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

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
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

1 Child Welfare Act:

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

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

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

17 D. "cultural compact" means an agreement that
18 documents how an Indian child placed in an adoptive or
19 guardianship home will continue to actively participate in the
20 child's cultural learning and activities and that is entered
21 into among:

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

25 (2) the Indian child's tribe;

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

8 F. "fictive kin" means a person:

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

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

17 (3) chosen by an Indian child who is fourteen
18 years of age or older, regardless of when the relationship
19 between the person and the Indian child was established, when
20 it is in the best interest of the child to identify that person
21 as fictive kin;

22 G. "foster care placement" means:

23 (1) an action pursuant to the Abuse and
24 Neglect Act removing an Indian child from the child's parent,
25 guardian or Indian custodian for temporary placement in a

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1 foster home or institution or the home of a guardian where the
2 parent or Indian custodian cannot have the child returned upon
3 demand, but in which parental rights have not been terminated;
4 or

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

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

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

15 (1) a member of an Indian tribe;

16 (2) eligible for membership in an Indian
17 tribe; or

18 (3) the biological child of a member of an
19 Indian tribe;

20 J. "Indian child's tribe" means:

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

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

1 contacts;

2 K. "Indian custodian" means an Indian person:

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

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

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

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

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

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

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1 tribal custom;

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

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

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

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

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

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

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

24 U. "termination procedure" means an action pursuant
25 to the Abuse and Neglect Act or the Adoption Act that results

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1 in the termination of a parent-child relationship; and

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

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

10 "[NEW MATERIAL] DETERMINATION OF DOMICILE AND RESIDENCE.--
11 In a child custody proceeding involving an Indian child, the
12 state court shall determine and make an order of the domicile
13 and residence of the Indian child and whether the Indian child
14 is a ward of a tribal court. The department shall communicate
15 with any tribal court as necessary to make a determination
16 pursuant to this section."

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

19 "[NEW MATERIAL] INDIAN CHILD'S DOMICILE.--For the purposes
20 of the State Indian Child Welfare Act, an Indian child's
21 domicile is, in order of priority, the domicile of the child's:

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

25 B. Indian custodian; or

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1 C. guardian."

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

4 "[~~NEW MATERIAL~~] ACTIVE EFFORTS IN INVESTIGATIONS AND CHILD
5 CUSTODY PROCEEDINGS.--In an investigation or a child custody
6 proceeding pursuant to the State Indian Child Welfare Act:

7 A. active efforts shall:

8 (1) be documented in detail in writing
9 demonstrating the quality and quantity of services and
10 assistance provided, on the court record;

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

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

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

21 (5) be tailored to the facts and circumstances
22 of the case; and

23 B. active efforts may include:

24 (1) conducting a comprehensive assessment of
25 the circumstances of an Indian child's family with a goal of

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underscored material = new
[bracketed material] = delete

1 reunification;

2 (2) identifying and establishing appropriate
3 services and assisting the Indian child's parents to overcome
4 barriers to reunification, including actively assisting the
5 parents in obtaining those services;

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

9 (4) conducting or causing to be conducted a
10 diligent search for the Indian child's extended family members
11 and contacting and consulting with the Indian child's extended
12 family members and adult relatives to provide family structure
13 and support for the Indian child and the Indian child's
14 parents;

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

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

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

25 (8) identifying community resources, including

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1 housing, financial assistance, employment training,
2 transportation, mental health, health care, substance abuse
3 prevention and treatment, parent training and peer support
4 services and actively assisting the Indian child's parents or,
5 when appropriate, the Indian child's extended family members,
6 in using and accessing those resources;

7 (9) monitoring process and participation of
8 the Indian child's parents, Indian custodians or extended
9 family members if the services as described in Paragraphs (2),
10 (3), (5) and (8) of this subsection are not available;

11 (10) providing post-reunification services
12 and monitoring for the duration of the state court's
13 jurisdiction; and

14 (11) any other efforts that are appropriate to
15 the Indian child's circumstances."

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

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

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

23 B. When an Indian child or a child who the
24 department has reason to know is an Indian child is placed in
25 the custody of the department, the department shall provide

1 records to the parent, Indian custodian or Indian tribe to
 2 assist, if necessary, at the request of the parent, Indian
 3 custodian or Indian tribe. The Indian tribe shall have the
 4 sole right to determine membership and membership eligibility,
 5 as defined by the Indian tribe's law, custom, tradition and
 6 practice.

7 C. If the department has reason to know that a
 8 child is a member of or eligible for membership in an Indian
 9 tribe, the department shall confirm that active efforts were
 10 used, which shall include:

11 (1) identifying the Indian tribe;

12 (2) working with the Indian tribe to verify
 13 whether the child is a member of or is eligible for membership
 14 in the Indian tribe or is a biological child of a parent who is
 15 a member of or is eligible for membership in the Indian tribe;

16 (3) treating the child as an Indian child,
 17 until it is determined that the child is not an Indian child;
 18 and

19 (4) conducting any additional investigations
 20 into whether there is a reason to know the child is an Indian
 21 child."

22 SECTION 7. A new section of the Children's Code is
 23 enacted to read:

24 "[NEW MATERIAL] INDIAN CHILD CUSTODY PROCEEDINGS--
 25 JURISDICTION--TRANSFER--COMMUNICATIONS.--

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

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

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

16 D. In a state court proceeding for the foster care
17 placement, preadoptive placement, guardianship placement,
18 adoptive placement or termination of parental rights to an
19 Indian child not domiciled or residing within the reservation
20 of the Indian child's tribe, the state court, in the absence of
21 good cause to the contrary, shall transfer that proceeding to
22 the jurisdiction of the Indian tribe, absent objection by
23 either parent, upon the motion of either parent or the Indian
24 custodian or the Indian child's tribe; provided that the
25 transfer shall be subject to declination by the tribal court of

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1 that Indian tribe. For the purpose of transferring a case, a
2 finding of good cause shall not be based on:

3 (1) the advanced stage of the proceeding if
4 the parent, Indian custodian or Indian child's tribe did not
5 receive notice of the proceeding until an advanced stage;

6 (2) whether there have been prior proceedings
7 involving the Indian child for which no petition to transfer
8 was filed;

9 (3) predictions of whether the transfer could
10 result in a change in the placement of the Indian child;

11 (4) the Indian child's perceived cultural
12 connections with the Indian tribe or reservation;

13 (5) consideration of any perceived inadequacy
14 of judicial systems; or

15 (6) consideration of the perceived
16 socioeconomic conditions within an Indian tribe or reservation.

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

22 F. A state court shall:

23 (1) hold a hearing on record;

24 (2) allow each parent of the Indian child, the
25 Indian child's custodian and the Indian child's tribe to

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1 participate in any communications pertaining to jurisdiction
2 with a tribal court or, if that person is unable to participate
3 in a communication, provide the person with an opportunity to
4 represent facts and legal arguments supporting the person's
5 position before the state court makes a decision regarding
6 jurisdiction;

7 (3) create and maintain a record of any
8 communications made pursuant to this subsection;

9 (4) notify each parent of the Indian child,
10 the Indian child's custodian or the Indian child's tribe in
11 advance of each communication; and

12 (5) provide each parent of the Indian child,
13 the Indian child's custodian or the Indian child's tribe with
14 access to the record of the communication."

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

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

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

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

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

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

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

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

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

11 D. A tribal-state agreement shall:

12 (1) provide for cooperative delivery of child
13 welfare services to Indian children in this state, including
14 the use, to the extent available, of services provided by the
15 Indian tribe; and

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

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

24 "[NEW MATERIAL] TRANSFER.--Upon granting a transfer motion
25 for a child custody proceeding involving an Indian child

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1 pursuant to Subsection D of Section 7 of the State Indian Child
2 Welfare Act, a state court shall expeditiously:

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

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

8 C. direct the department to:

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

13 (2) provide the Indian child's tribe with
14 documentation related to the Indian child's eligibility for
15 state and federal assistance and information related to the
16 Indian child's social history, treatment diagnosis and services
17 and other relevant case- and service-related data; and

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

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

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

25 A. Every agency and court of the state or political

1 subdivision of the state shall give full faith and credit to
2 the public acts, records and judicial proceedings of an Indian
3 tribe applicable to an Indian child custody proceeding to the
4 same extent that agency or court gives full faith and credit to
5 the public acts, records and judicial proceedings of any other
6 entity.

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

14 C. A tribal court order pertaining to an Indian
15 child that accesses state resources shall be recognized and
16 enforced. An Indian child residing on or off a reservation, as
17 a resident of this state, shall have the same right to services
18 that are available to other children of this state. The cost
19 of the services provided to an Indian child shall be determined
20 and provided for in the same manner as services are made to
21 other children of the state, utilizing tribal, state and
22 federal funds.

23 D. Any state services requiring a tribal-state
24 agreement based on a funding source shall be negotiated and
25 entered into based on good faith to meet the provisions of

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1 Subsection C of this section."

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

4 "[NEW MATERIAL] IMPROPER REMOVAL OF A CHILD FROM CUSTODY--
5 DECLINATION OF JURISDICTION--RETURN OF A CHILD--DANGER
6 EXCEPTION--EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD--
7 TERMINATION--APPROPRIATE ACTION.--

8 A. When a petitioner in an Indian child custody
9 proceeding before a state court has improperly removed the
10 child from custody of the parent or Indian custodian or has
11 improperly retained custody after a visit or other temporary
12 relinquishment of custody, the state court shall decline
13 jurisdiction over that petition and shall return the child to
14 the child's parent or Indian custodian unless returning the
15 child to the child's parent or Indian custodian could subject
16 the child to a substantial and immediate danger or threat of
17 that danger.

18 B. Nothing in the State Indian Child Welfare Act
19 shall be construed to prevent the emergency removal of an
20 Indian child who is a resident of or is domiciled on a
21 reservation, but temporarily located off the reservation, from
22 the Indian child's parent or Indian custodian or the emergency
23 placement of that Indian child in a foster home or institution,
24 pursuant to Sections 32A-1-10, 32A-3B-4 and 32A-4-16 NMSA 1978,
25 in order to prevent imminent physical danger or harm to the

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1 Indian child. The department shall expeditiously initiate a
2 child custody proceeding subject to the provisions of the State
3 Indian Child Welfare Act and the federal Indian Child Welfare
4 Act of 1978, transfer the Indian child to the jurisdiction of
5 the appropriate Indian tribe or restore the child to the parent
6 or Indian custodian, as may be appropriate."

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

9 "[NEW MATERIAL] INVESTIGATIONS--PENDING COURT
10 PROCEEDINGS--NOTICE--STANDARDS OF EVIDENCE--DOCUMENTATION OF
11 APPLICABILITY AND COMPLIANCE.--

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

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

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1 B. During an investigation that involves a child
2 who the department knows or has reason to know is an Indian
3 child, the department shall:

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

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

8 C. The department's active efforts to coordinate
9 services to prevent taking the Indian child, or a child who the
10 department knows or has reason to know may be an Indian child,
11 into custody shall be documented in any subsequent action
12 resulting in the child coming into the department's custody.

13 D. At the beginning of every proceeding under the
14 Family Services Act, Family in Need of Court-Ordered Services
15 Act, Abuse and Neglect Act and Adoption Act, the court shall
16 make a written determination as to whether the federal Indian
17 Child Welfare Act of 1978 and the State Indian Child Welfare
18 Act apply to the case.

19 E. Upon initiating a child custody proceeding
20 related to a child that the department knows or has reason to
21 know is an Indian child, the department shall notify the Indian
22 child's tribe of:

23 (1) the investigation;

24 (2) the involvement of the Indian child;

25 (3) active efforts that have been made to

1 provide remedial services and rehabilitative programs designed
2 to prevent the breakup of the Indian family and that these
3 efforts have proved unsuccessful;

4 (4) the department's obligation to collaborate
5 with the Indian child's tribe to identify a qualified expert
6 witness to participate in the proceeding if the investigation
7 results in an adjudication or termination of parental rights
8 proceeding; and

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

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

17 G. With respect to those proceedings to which the
18 federal Indian Child Welfare Act of 1978 and the State Indian
19 Child Welfare Act apply, the record shall include written
20 statements of compliance with those acts regarding notice,
21 evidentiary and other requirements.

22 H. In a child custody proceeding when the state
23 court knows or has reason to know that an Indian child is
24 involved, the department shall notify the parent or Indian
25 custodian and the Indian child's tribe, by registered mail with

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1 return receipt requested, of:

2 (1) the pending proceedings;

3 (2) the right of the Indian child's parent,
4 Indian custodian and Indian child's tribe to:

5 (a) intervention; and

6 (b) petition the state court to transfer
7 the proceeding to the tribal court;

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

11 (4) the right of the Indian child's tribe to
12 participate in a child custody proceeding whether or not the
13 Indian child's tribe intervenes.

14 I. The standards of evidence of the following child
15 custody proceedings are as follows:

16 (1) the court shall not order a foster care
17 placement of an Indian child unless clear and convincing
18 evidence is presented, including the testimony of one or more
19 qualified expert witnesses, demonstrating that the child's
20 continued custody by the child's parent or Indian custodian is
21 likely to result in serious emotional or physical damage to the
22 child;

23 (2) the court shall not order a termination of
24 parental rights for an Indian child unless evidence beyond a
25 reasonable doubt is presented, including the testimony of one

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1 or more qualified expert witnesses, demonstrating that the
2 child's continued custody by the child's parent or Indian
3 custodian is likely to result in serious emotional or physical
4 damage to the child;

5 (3) for a foster care placement or termination
6 of parental rights, the evidence shall show a causal
7 relationship between the particular conditions in the home and
8 the likelihood that continued custody of the child will result
9 in serious emotional or physical damage to the particular child
10 who is the subject of the child custody proceeding; and

11 (4) without a causal relationship identified
12 in Paragraph (3) of this section, evidence that shows only the
13 existence of community or family poverty, isolation, single
14 parenthood, custodian age, crowded or inadequate housing,
15 substance abuse or nonconforming social behavior shall not by
16 itself constitute clear and convincing evidence or evidence
17 beyond a reasonable doubt that continued custody is likely to
18 result in serious emotional or physical damage to the child.

19 J. If there is a reason to know that the Indian
20 child's parent or Indian custodian has limited English
21 proficiency and may not understand the contents of the notice
22 pursuant to Subsection H of this section, the state court shall
23 provide language access services as required by Title VI of the
24 federal Civil Rights Act of 1964 and other applicable federal
25 and state laws. If the state court is unable to secure

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1 translation or interpretation support, the state court shall
2 contact or direct a party to contact the Indian child's tribe
3 or the local office of the United States department of the
4 interior bureau of Indian affairs for assistance identifying a
5 qualified translator or interpreter.

6 K. If the identity or location of the parent or
7 Indian custodian and the Indian tribe cannot be determined, a
8 notice shall be given to the secretary in the same manner as
9 provided in Subsection H of this section. The secretary shall
10 have fifteen days after receipt of the notice to provide the
11 same notice to the parent or Indian custodian and the Indian
12 tribe.

13 L. A foster care placement or termination of
14 parental rights proceeding shall not be held until at least ten
15 days after receipt of notice by the parent or Indian custodian
16 and the Indian tribe or the secretary pursuant to this section;
17 provided that the parent or Indian custodian or the Indian
18 tribe shall, upon request, be granted up to twenty additional
19 days to prepare for that proceeding.

20 M. Nothing in this section prevents a state court
21 from reviewing a removal of an Indian child from the child's
22 parent or Indian custodian at an emergency custody proceeding
23 before the expiration of the waiting periods provided in
24 Subsections K and L of this section to determine the
25 appropriateness of the removal and potential return of the

1 child."

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

4 "[NEW MATERIAL] RIGHT TO INTERVENE.--In a state court
5 proceeding for the foster care placement or preadoptive
6 placement, guardianship placement, adoptive placement of or
7 termination of the parental rights to an Indian child, only the
8 Indian child's relative or a member of the Indian child's
9 extended family, the Indian custodian of the child and the
10 Indian child's tribe have a right to intervene at any point in
11 the proceeding."

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

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

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

19 B. A party that files a petition, motion or other
20 document in a state court that seeks to effect a child care
21 proceeding of an Indian child shall include in that petition,
22 motion or document:

23 (1) the Indian child's tribe or that the
24 department has reason to know that the child is an Indian
25 child;

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1 (2) the tribal affiliations of the Indian
2 child's parents;

3 (3) the active efforts made to notify the
4 Indian child's tribe pursuant to the State Indian Child Welfare
5 Act and the federal Indian Child Welfare Act of 1978;

6 (4) a statement of and evidence satisfactory
7 to the state court that active efforts have been made to
8 provide remedial services and rehabilitative programs designed
9 to prevent the breakup of the Indian family and that these
10 efforts have proved unsuccessful and the reasons these efforts
11 were unsuccessful, if known;

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

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

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

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

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

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

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

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

15 (4) the Indian tribe recorded by the state
16 court pursuant to Subsection B of this section if the Indian
17 child is eligible for membership with each of those Indian
18 tribes and the Indian tribes cannot agree on the designation of
19 the Indian child's tribe.

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

25 (1) the preference of each of the Indian

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1 child's parents;

2 (2) the duration of the Indian child's current
3 or prior domicile or residence on or near the reservation of
4 each Indian tribe;

5 (3) the tribal membership of the Indian
6 child's custodial parent or Indian custodian;

7 (4) the interests asserted by each Indian
8 tribe;

9 (5) whether the Indian tribe has previously
10 adjudicated a case involving an Indian child;

11 (6) the Indian tribe's custom and tradition;
12 and

13 (7) if the court determines that the Indian
14 child is of sufficient age and capacity to meaningfully self-
15 identify the Indian child's tribe, the self-identification of
16 the Indian child.

17 C. If an Indian child is a member of or is eligible
18 for membership in more than one Indian tribe, the state court
19 shall permit an Indian tribe, in addition to the Indian child's
20 tribe as determined pursuant to Subsection A of this section,
21 to participate in the child custody proceeding in an advisory
22 capacity or as a party."

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

25 "[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--

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1 RIGHT TO COUNSEL.--

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

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

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

18 (2) an individual present at the hearing,
19 officer of the court present at the hearing, Indian tribe or
20 Indian organization or agency informs the court that
21 information has been discovered indicating that the child is an
22 Indian child;

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

25 (4) the court is informed that the domicile or

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1 residence of the child, the child's parent or the child's
2 Indian custodian is on a reservation or in an Alaska native
3 village;

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

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

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

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

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

18 (1) treat the child as an Indian child until
19 the court determines, on the record, that the child is not an
20 Indian child; and

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

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1 to verify whether:

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

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

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

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

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1 based.

2 F. In a child custody proceeding involving an
3 Indian child or a child who the court or the department has
4 reason to know is an Indian child, the Indian child's tribe may
5 be present and may participate at a closed hearing, regardless
6 of whether the Indian child's tribe has intervened."

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

9 "[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

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

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

19 C. When the department notifies an Indian child's
20 tribe of the pendency of an investigation involving an Indian
21 child from that Indian tribe, the department shall have the
22 burden of collaborating, informing and identifying to the
23 Indian tribe the qualified expert witness to testify in any
24 adjudicatory or termination proceeding that results from the
25 investigation. The qualified expert witness shall be a person

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1 who is:

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

4 (2) knowledgeable about the tribal law,
5 custom, tradition, cultural impact and family and child-rearing
6 practices of the Indian child's tribe; and

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

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

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

15 E. If, after active efforts and in no case later
16 than forty-five days after contacting the Indian child's tribe
17 for a recommendation, the department does not receive a
18 recommendation from the Indian tribe, the department shall
19 identify a qualified expert witness who meets the requirements
20 provided in Paragraphs (1) and (2) of Subsection C of this
21 section from a list of qualified expert witnesses compiled
22 through cooperation among the Indian tribes in the state and
23 the department.

24 F. If, sixty days following the initiation of an
25 investigation, the department has not identified a qualified

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1 expert witness to testify as required by the State Indian Child
2 Welfare Act and the federal Indian Child Welfare Act of 1978,
3 in considering a motion by the department for a continuance,
4 the court shall consider whether it is in the best interest of
5 the Indian child to remain in the department's custody for
6 additional time.

7 G. An employee of the department shall not serve as
8 a qualified expert witness pursuant to this section."

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

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

13 A. When a parent or Indian custodian voluntarily
14 consents to a foster care placement or to termination of
15 parental rights, that consent is not valid unless executed in
16 writing and recorded before a judge of competent jurisdiction
17 and accompanied by the presiding judge's certificate that the
18 terms and consequences of the consent were fully explained in
19 detail and were fully understood by the parent or Indian
20 custodian. The state court shall also certify that either the
21 parent or the Indian custodian fully understood the explanation
22 in English or that it was interpreted into a language that the
23 parent or Indian custodian understood. Any consent to a foster
24 care placement or termination of parental rights that is given
25 prior to or within ten days after birth of an Indian child is

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1 not valid.

2 B. A parent or Indian custodian may withdraw
3 consent to a voluntary foster care placement of an Indian child
4 pursuant to the Children's Code at any time and, upon receipt
5 of the request to withdraw, the Indian child shall be
6 immediately returned to the parent or Indian custodian.

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

13 D. After the entry of a final decree of adoption of
14 an Indian child in a state court that is made pursuant to the
15 Adoption Act, the parent may withdraw consent to the adoption
16 upon the grounds that consent was obtained through fraud or
17 duress and may petition the court to vacate the decree. Upon a
18 finding that the consent was obtained through fraud or duress,
19 the court shall vacate the decree and return the child to the
20 parent. An adoption that has been in effect for at least two
21 years shall not be invalidated except as otherwise provided by
22 law."

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

25 "[NEW MATERIAL] PETITION TO COURT OF COMPETENT

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1 JURISDICTION TO INVALIDATE ACTION.--An Indian child who is the
2 subject of an action for foster care placement, preadoptive
3 placement, guardianship, adoptive placement or termination of
4 parental rights pursuant to the Children's Code, a parent or
5 Indian custodian from whose custody the child was removed or
6 the Indian child's tribe may petition any court of competent
7 jurisdiction to invalidate that action upon a showing that the
8 action violated any provision of Section 7, 12, 13, 16, 17, 18,
9 20, 21 or 23 of the State Indian Child Welfare Act."

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

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

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

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

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

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

25 (4) is in accordance with the order of

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

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

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

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

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

14 (1) the socioeconomic status of any placement;

15 (2) a home environment that does not impact
16 the safety and well-being of the Indian child; or

17 (3) ordinary bonding or attachment that
18 occurred from time spent in a non-preferred placement that was
19 made in violation of the State Indian Child Welfare Act or the
20 federal Indian Child Welfare Act of 1978.

21 C. If an Indian child is placed in a placement that
22 is contrary to the placement preferences provided in this
23 section, it shall not be a concurrent plan, and the department
24 shall:

25 (1) conduct monitoring at least every thirty

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1 days to determine whether a placement that comports with the
2 placement preferences provided in this section is available;

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

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

- 9 (a) contacting the Indian tribe;
- 10 (b) conducting a relative search;
- 11 (c) interviewing relatives throughout
12 the case;
- 13 (d) continually assessing and
14 reevaluating relatives;
- 15 (e) providing the Indian tribe with all
16 information in regard to family members;
- 17 (f) offering relative limited license;
- 18 (g) assisting relatives through the
19 licensing process and making the licensing process more
20 accessible;
- 21 (h) conducting timely home studies when
22 identifying a placement that aligns with the placement
23 preference;
- 24 (i) continued contact, including
25 visitation;

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1 (j) providing culturally appropriate
2 interventions; and

3 (k) first-line intervention.

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

14 E. In the case of a child who is an Indian child or
15 a child who the department or the court has reason to know is
16 an Indian child, the court-ordered mediation pursuant to
17 Section 32A-4-29 NMSA 1978 shall not be waived and the Indian
18 child's tribe shall be allowed to participate, whether or not
19 it intervenes.

20 F. If an Indian child is placed in a household that
21 does not include a parent or guardian who is a member of the
22 Indian child's tribe, upon placement and at least annually
23 thereafter, the department shall provide mandatory training to
24 the foster or preadoptive parent that includes information on
25 the Indian child's tribal culture and language, created in

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1 conjunction with, and at the discretion of, the Indian tribe,
2 tribal experts and relatives.

3 G. The administrative office of the courts in
4 collaboration with the department shall develop and deliver
5 annual mandatory training to all children's court judges,
6 district court judges and all attorneys, guardians ad litem and
7 youth attorneys who are both court appointed or whose practice
8 involves or represents clients in the areas of child welfare or
9 juvenile justice. The training shall include information on:

10 (1) the federal Indian Child Welfare Act of
11 1978;

12 (2) the State Indian Child Welfare Act,
13 including cultural compacts; and

14 (3) the Indian tribes geographically located
15 within the state.

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

20 I. An Indian child shall be placed in accordance
21 with the placement preferences unless there is good cause to
22 the contrary; provided that:

23 (1) if any party asserts that good cause not
24 to follow the placement preferences exists, the reasons for
25 this belief or assertion shall be stated orally on the record

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1 or provided in writing to the parties to the child custody
2 proceeding and the court;

3 (2) the party seeking the departure from the
4 placement preferences should bear the burden of proving by
5 clear and convincing evidence that there is good cause to
6 depart from the preferences; and

7 (3) a court's determination of good cause to
8 depart from the placement preferences shall be made on the
9 record or in writing and may be based on the considerations set
10 forth by the State Indian Child Welfare Act and the federal
11 Indian Child Welfare Act of 1978."

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

14 "[NEW MATERIAL] CHANGE IN PLACEMENT--PLACEMENT
15 PREFERENCE--DEPARTMENT DUTIES.--If an Indian child is placed in
16 a foster or substitute care placement that was contrary to the
17 placement preferences provided in Section 20 of the State
18 Indian Child Welfare Act, and regardless of the length of time
19 that the child was in the foster or substitute care placement,
20 the department shall conduct a reassessment of placement
21 preferences for the child, in accordance with Section 20 of
22 that act, before the child's placement may be changed to an
23 adoptive or other permanent placement. The reassessment shall
24 include consultation with the Indian child's tribe."

25 SECTION 22. A new section of the Children's Code is

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1 enacted to read:

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

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

23 "[NEW MATERIAL] DISPOSITIONAL JUDGMENTS.--

24 A. At the conclusion of a dispositional hearing in
25 a child custody proceeding involving an Indian child, in

1 addition to other requirements for a state court's findings
2 pursuant to the Children's Code, a state court shall include:

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

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

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

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

23 (2) in a termination of parental rights
24 proceeding pursuant to the Abuse and Neglect Act or the
25 Adoption Act, findings that the requirements of the State

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1 Indian Child Welfare Act and the federal Indian Child Welfare
2 Act of 1978 have been met.

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

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

14 "[NEW MATERIAL] RETURN OF CUSTODY.--

15 A. Whenever a final decree of adoption of an Indian
16 child has been vacated or set aside or the adoptive parents
17 voluntarily consent to the termination of their parental rights
18 to the child, a biological parent or prior Indian custodian may
19 petition for return of custody, and the state court shall grant
20 that petition unless there is a showing, in a proceeding
21 subject to the provisions of Section 12 of the State Indian
22 Child Welfare Act, that the return of custody is not in the
23 best interests of the Indian child.

24 B. Whenever an Indian child is removed from a
25 foster care home or institution for the purpose of further

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1 foster care, preadoptive or adoptive placement, that placement
2 shall be in accordance with the provisions of the State Indian
3 Child Welfare Act and the federal Indian Child Welfare Act of
4 1978, except in the case where an Indian child is being
5 returned to the parent or Indian custodian from whose custody
6 the child was originally removed."

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

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

15 A. the protection, safety and well-being of the
16 Indian child;

17 B. the prevention of unnecessary out-of-home
18 placement of the Indian child;

19 C. the prioritization of placement of the Indian
20 child in accordance with the placement preferences provided
21 pursuant to Section 20 of the State Indian Child Welfare Act
22 and the federal Indian Child Welfare Act of 1978;

23 D. the critical importance to the Indian child of
24 establishing, developing or maintaining a political, cultural,
25 social and spiritual relationship with the Indian child's tribe

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1 and tribal community and with familial ties such as clanship
2 and family with unique cultural characteristics; and

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

7 SECTION 26. A new section of the Children's Code is
8 enacted to read:

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

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

18 B. An individual adopted pursuant to the Adoption
19 Act shall have the right, for the purpose of membership in that
20 individual's Indian tribe of origin, to access information kept
21 by the department. Information needed by that individual for
22 membership in that individual's Indian tribe of origin may be
23 requested by the department. Information needed by an
24 individual for membership in the individual's Indian tribe of
25 origin may be requested from the department by the following

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1 persons:

2 (1) the individual, after the individual
3 reaches eighteen years of age;

4 (2) when the individual is a child, the
5 individual's parent or guardian; or

6 (3) the individual's descendant or, if the
7 individual's descendant is a child, an adult representative for
8 the descendant.

9 C. When the department receives a request for
10 information regarding an individual's Indian tribe of origin
11 when that individual was adopted pursuant to the Adoption Act,
12 the department shall:

13 (1) provide the requester with the tribal
14 affiliation of the individual's biological parents; and

15 (2) provide the requester any additional
16 information necessary to establish tribal membership for the
17 individual and to protect any rights flowing from the
18 individual's tribal relationship, pursuant to the
19 confidentiality provisions of the Children's Code."

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

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

24 A. The clerk of a state court entering a final
25 decree or order in an adoptive placement of an Indian child

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1 shall provide the secretary with a copy of that decree or order
2 with other information as necessary to show:

3 (1) the name and tribal membership or
4 eligibility of membership of the child;

5 (2) the names and addresses of the child's
6 biological parents;

7 (3) the names and addresses of the biological
8 parents; and

9 (4) the identity of any agency having files or
10 information relating to the adoptive placement.

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

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

16 "[NEW MATERIAL] STATE INDIAN CHILD WELFARE ACT
17 SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--

18 A. The provisions of the State Indian Child Welfare
19 Act govern child custody proceedings involving Indian children.
20 The provisions of the Children's Code and the Kinship
21 Guardianship Act are in addition to the State Indian Child
22 Welfare Act. To the extent the provisions of those acts or any
23 provision of New Mexico state law conflicts with the provisions
24 of the State Indian Child Welfare Act, the provisions of the
25 State Indian Child Welfare Act shall apply.

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1 B. To the extent a provision of the State Indian
2 Child Welfare Act conflicts with a provision of the federal
3 Indian Child Welfare Act of 1978, the provision of law that
4 provides the most protection to the interests of a parent or
5 Indian custodian shall be deemed to apply, as required pursuant
6 to 25 U.S.C. 1921. Regardless of whether state or federal law
7 is applied, the best interests of the Indian child shall be
8 provided the required consideration."

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

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

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

19 "[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The
20 department, through meaningful consultation with the Indian
21 nations, tribes and pueblos of the state, shall promulgate
22 rules to implement the provisions of the State Indian Child
23 Welfare Act."

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

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

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

8 (1) a delinquent child;

9 (2) a child of a family in need of
10 court-ordered services or a child in need of services pursuant
11 to the Family in Need of Court-Ordered Services Act;

12 (3) a neglected child;

13 (4) an abused child;

14 (5) a child subject to adoption; or

15 (6) a child subject to placement for a
16 developmental disability or a mental disorder.

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

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

25 D. Nothing in this section shall be construed to in

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1 any way abridge the rights of any Indian tribe to exercise
2 jurisdiction over child custody matters as defined by and in
3 accordance with the federal Indian Child Welfare Act of 1978
4 and the State Indian Child Welfare Act.

5 ~~[E. A tribal court order pertaining to an Indian~~
6 ~~child in an action under the Children's Code shall be~~
7 ~~recognized and enforced by the district court for the judicial~~
8 ~~district in which the tribal court is located. A tribal court~~
9 ~~order pertaining to an Indian child that accesses state~~
10 ~~resources shall be recognized and enforced pursuant to the~~
11 ~~provisions of intergovernmental agreements entered into by the~~
12 ~~Indian child's tribe and the department or another state~~
13 ~~agency. An Indian child residing on or off a reservation, as a~~
14 ~~citizen of this state, shall have the same right to services~~
15 ~~that are available to other children of the state, pursuant to~~
16 ~~intergovernmental agreements. The cost of the services~~
17 ~~provided to an Indian child shall be determined and provided~~
18 ~~for in the same manner as services are made available to other~~
19 ~~children of the state, utilizing tribal, state and federal~~
20 ~~funds and pursuant to intergovernmental agreements. The tribal~~
21 ~~court, as the court of original jurisdiction, shall retain~~
22 ~~jurisdiction and authority over the Indian child.~~

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

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

3 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
4 initiating proceedings pursuant to the provisions of Chapter
5 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the
6 Matter of, a child", and shall set forth with
7 specificity:

8 A. the facts necessary to invoke the jurisdiction
9 of the court;

10 B. if violation of a criminal statute or other law
11 or ordinance is alleged, the citation to the appropriate law;

12 C. the name, birth date and residence address of
13 the child;

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

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

25 F. whether the child is an Indian child and, if so,

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1 any additional information required pursuant to the State
2 Indian Child Welfare Act and the federal Indian Child Welfare
3 Act of 1978; and

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

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

9 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

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

13 (1) the ability of the parent and child to
14 share a residence;

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

18 (3) the child's adjustment to home, school and
19 community;

20 (4) whether the child's educational needs are
21 being met;

22 (5) the mental and physical health of all
23 individuals involved;

24 (6) the wishes of the child as to the child's
25 custodian;

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

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

7 (9) the availability of services recommended
8 in the treatment plan;

9 (10) the department's efforts to work with the
10 parent and child in the home and a description of the in-home
11 treatment programs that the department has considered and
12 rejected;

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

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

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

1 Welfare Act of 1978; and

2 [~~(13)~~] (12) when the child is an undocumented
3 immigrant child, whether the family services plan included
4 referral to nongovernmental agencies that may be able to assist
5 the child, and family when appropriate, in addressing
6 immigration status.

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

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

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

15 (3) transfer legal custody of the child to:

16 (a) the department;

17 (b) an agency responsible for the care
18 of neglected or abused children; or

19 (c) the child's noncustodial parent, if
20 that is found to be in the child's best interests; or

21 (4) if the evidence indicates that the child's
22 educational needs are not being met, the local education agency
23 may be joined as a party and directed to assess the child's
24 needs within forty-five days, attempt to meet the child's
25 educational needs and document its efforts to meet the child's

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1 educational needs.

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

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

12 SECTION 34. Section 32A-4-6 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 100, as amended) is amended to read:

14 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

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

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

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

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

9 (c) the child has been abandoned;

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

12 (e) the department is not available to
13 conduct a safety assessment in a timely manner; or

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

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

24 B. A child shall not be taken into protective
25 custody solely on the grounds that the child's parent, guardian

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1 or custodian refuses to consent to the administration of a
2 psychotropic medication to the child.

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

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

12 E. If a child taken into custody is an Indian child
13 and is alleged to be neglected or abused, the department shall
14 give notice to the [~~agent of the Indian child's tribe~~]
15 appropriate parties in accordance with the federal Indian Child
16 Welfare Act of 1978 and the State Indian Child Welfare Act.

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

20 SECTION 35. Section 32A-4-18 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 112, as amended) is amended to read:

22 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
23 PROBABLE CAUSE.--

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

1 department has petitioned the court for temporary custody, a
2 custody hearing shall be held within ten days from the date the
3 petition is filed to determine if the child should remain in or
4 be placed in the department's custody pending adjudication.
5 Upon written request of the respondent, the hearing may be held
6 earlier, but in no event shall the hearing be held sooner than
7 two days after the date the petition was filed.

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

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

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

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

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

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

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

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1 the child.

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

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

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

14 E. Reasonable efforts shall be made to preserve and
15 reunify the family, with the paramount concern being the
16 child's health and safety. When the department determines that
17 the home of an adult relative of the child meets all relevant
18 child protection and licensing standards and placement in the
19 home would be in the best interest of the child, the department
20 shall give a preference to placement of the child in that home.
21 The department shall make reasonable efforts to conduct home
22 studies on appropriate relatives who express an interest in
23 providing placement for the child. If the child is an Indian
24 child, the person shall meet the standards set forth in the
25 federal Indian Child Welfare Act of 1978 and the State Indian

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1 Child Welfare Act.

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

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

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

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

14 G. At the conclusion of the custody hearing, the
15 court may order the respondent or the child alleged to be
16 neglected or abused, or both, to undergo appropriate diagnostic
17 examinations or evaluations. If the court determines that
18 probable cause does not exist, the court may order the
19 respondent or the child alleged to be neglected or abused, or
20 both, to undergo appropriate diagnostic examinations or
21 evaluations as necessary to protect the child's best interests,
22 based upon the allegations in the petition and the evidence
23 presented at the custody hearing. Copies of any diagnostic or
24 evaluation reports ordered by the court shall be provided to
25 the parties at least five days before the adjudicatory hearing

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1 is scheduled. The reports shall not be sent to the court.

2 H. The Rules of Evidence shall not apply to custody
3 hearings.

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

14 J. Nothing in this section shall be construed to
15 abridge the rights of Indian children pursuant to the federal
16 Indian Child Welfare Act of 1978 and the State Indian Child
17 Welfare Act."

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

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

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

25 B. All abuse and neglect hearings shall be closed

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1 to the general public.

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

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

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1 E. If the court finds that it is in the best
2 interest of a child under fourteen years of age, the child may
3 be excluded from a hearing under the Abuse and Neglect Act. A
4 child fourteen years of age or older may be excluded from a
5 hearing only if the court makes a finding that there is a
6 compelling reason to exclude the child and states the factual
7 basis for the finding.

8 F. Those persons or parties granted admission to a
9 closed hearing who intentionally divulge information in
10 violation of this section are guilty of a petty misdemeanor.

11 G. The court shall determine if the allegations of
12 the petition are admitted or denied. If the allegations are
13 denied, the court shall proceed to hear evidence on the
14 petition. The court, after hearing all of the evidence bearing
15 on the allegations of neglect or abuse, shall make and record
16 its findings on whether the child is a neglected child, an
17 abused child or both. Except in the case of a petition that
18 relates to an Indian child, if the petition alleges that the
19 parent, guardian or custodian has subjected the child to
20 aggravated circumstances, then the court shall also make and
21 record its findings on whether the aggravated circumstances
22 have been proven. If the petition relates to an Indian child,
23 aggravating circumstances shall not be considered by the court
24 and shall not be recorded in the court's findings on the
25 petition, pursuant to the State Indian Child Welfare Act.

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1 H. If the court finds on the basis of a valid
2 admission of the allegations of the petition or on the basis of
3 clear and convincing evidence, competent, material and relevant
4 in nature, that the child is neglected or abused, the court
5 shall enter an order finding that the child is neglected or
6 abused and may proceed immediately or at a postponed hearing to
7 make disposition of the case. If the court does not find that
8 the child is neglected or abused, the court shall dismiss the
9 petition and may refer the family to the department for
10 appropriate services.

11 I. A party aggrieved by an order entered pursuant
12 to Subsection H of this section may file an immediate appeal to
13 the court of appeals.

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

21 K. On the court's motion or that of a party, the
22 court may continue the hearing on the petition for a period not
23 to exceed thirty days to receive reports and other evidence in
24 connection with disposition. The court shall continue the
25 hearing pending the receipt of the predisposition study and

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1 report if that document has not been prepared and received.
2 During any continuances under this subsection, the court shall
3 make an appropriate order for legal custody."

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

6 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
7 REPORTS AND EXAMINATIONS.--

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

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

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

19 (2) a statement of how an intervention plan is
20 designed to achieve placement of the child in the least
21 restrictive setting available, consistent with the best
22 interests and special needs of the child, including a statement
23 of the likely harm the child may suffer as a result of being
24 removed from the parent's home, including emotional harm that
25 may result due to separation from the child's parents, and a

1 statement of how the intervention plan is designed to place the
2 child in close proximity to the parent's home without causing
3 harm to the child due to separation from parents, siblings or
4 any other person who may significantly affect the child's best
5 interest;

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

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

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

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

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

25 (8) a statement of the child's medical and

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1 educational background;

2 (9) if the child is an Indian child, whether
3 the placement preferences set forth in the federal Indian Child
4 Welfare Act of 1978 and the State Indian Child Welfare Act or
5 the placement preferences of the child's Indian tribe were
6 followed and whether the child's case plan provides for
7 maintaining the child's cultural ties;

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

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

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

24 (13) a description of the child's foster care
25 placement and whether it is appropriate in terms of the

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1 educational setting and proximity to the school the child was
2 enrolled in at the time of the placement, including plans for
3 travel for the child to remain in the school in which the child
4 was enrolled at the time of placement, if reasonable and in the
5 child's best interest.

6 C. A copy of the predisposition report shall be
7 provided by the department to counsel for all parties five days
8 before the dispositional hearing.

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

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

15 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
16 CHILD.--

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

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

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- 1 (2) the child's adjustment to the child's
- 2 home, school and community;
- 3 (3) the mental and physical health of all
- 4 individuals involved;
- 5 (4) the wishes of the child as to the child's
- 6 placement;
- 7 (5) the wishes of the child's parent, guardian
- 8 or custodian as to the child's custody;
- 9 (6) whether reasonable efforts have been made
- 10 by the department to identify, locate and give notice to all
- 11 grandparents and other relatives and to conduct home studies on
- 12 any appropriate relative who expresses an interest in providing
- 13 care for the child. If the court finds that reasonable efforts
- 14 in these areas have not been made, the court may make
- 15 supplemental orders as necessary and may reconsider the matter
- 16 at the initial judicial review and subsequent periodic review
- 17 hearings. If the child is an Indian child, the person shall
- 18 meet the standards set forth in the federal Indian Child
- 19 Welfare Act of 1978 and the State Indian Child Welfare Act;
- 20 (7) whether consideration has been given to
- 21 the child's familial identity and connections;
- 22 (8) whether there exists a relative of the
- 23 child or other individual who, after study by the department,
- 24 is found to be qualified to receive and care for the child;
- 25 (9) the availability of services recommended

1 in the case plan prepared as a part of the predisposition study
2 in accordance with the provisions of Section 32A-4-21 NMSA
3 1978;

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

6 (11) whether reasonable efforts were made by
7 the department to prevent removal of the child from the home
8 prior to placement in substitute care and whether reasonable
9 efforts were made to attempt reunification of the child with
10 the natural parent;

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

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

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1 any other information required for a dispositional judgment
2 pursuant to the State Indian Child Welfare Act and the federal
3 Indian Child Welfare Act of 1978.

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

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

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

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

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

16 (b) the department.

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

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1 (1) the efforts would be futile; or

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

4 D. If a child is an Indian child or there is reason
5 to know that the child is an Indian child, active efforts shall
6 be complied with regardless of whether the following apply:

7 (1) the efforts would be futile; or

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

10 ~~[D.]~~ E. Any parent, guardian or custodian of a
11 child who is placed in the legal custody of the department or
12 other person pursuant to Subsection B of this section shall
13 have reasonable rights of visitation with the child as
14 determined by the court, unless the court finds that the best
15 interests of the child preclude any visitation.

16 ~~[E.]~~ F. The court may order reasonable visitation
17 between a child placed in the custody of the department and the
18 child's siblings or any other person who may significantly
19 affect the child's best interest, if the court finds the
20 visitation to be in the child's best interest.

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

25 ~~[G.]~~ H. When the court vests legal custody in an

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1 agency, institution or department, the court shall transmit
2 with the dispositional judgment copies of the clinical reports,
3 the predisposition study and report and any other information
4 it has pertinent to the care and treatment of the child.

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

11 [F.] J. As required pursuant to the State Indian
12 Child Welfare Act, when a child is placed in the custody of the
13 department, ~~[the department shall investigate whether the child~~
14 ~~is eligible for enrollment as a member of an Indian tribe and,~~
15 ~~if so]~~ the department shall ~~[pursue the enrollment on the~~
16 ~~child's behalf]~~ work with the parent or the Indian tribe to
17 establish membership, at the discretion of the parent or the
18 Indian tribe. An Indian tribe shall have the sole right to
19 determine membership and membership eligibility, as defined by
20 the Indian tribe's law, custom, tradition and practice. The
21 department shall provide records to assist if necessary, at the
22 discretion of the parent or the Indian tribe.

23 [J.] K. When the court determines pursuant to
24 Subsection C of this section that no reasonable efforts at
25 reunification are required, the court shall conduct, within

1 thirty days, a permanency hearing as described in Section
2 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
3 implement and finalize the permanency plan in a timely manner."

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

6 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL
7 JUDGMENTS.--

8 A. The initial judicial review shall be held within
9 sixty days of the disposition. At the initial judicial review,
10 the parties shall demonstrate to the court efforts made to
11 implement the treatment plan approved by the court in its
12 dispositional order. The court shall determine the extent to
13 which the treatment plan has been implemented and make
14 supplemental orders as necessary to ensure compliance with the
15 treatment plan and the safety of the child. Prior to the
16 initial judicial review, the department shall submit a copy of
17 the adjudicatory order, the dispositional order and notice of
18 the initial judicial review to the council. The staff of the
19 council, or an entity contracting with the council, shall
20 review the case. If the staff or contracting entity determines
21 that the case meets the criteria established in council rules,
22 the staff or contracting entity shall designate the case for
23 review by a substitute care review board. A representative of
24 the substitute care review board, if designated, shall be
25 permitted to attend and comment to the court.

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

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

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

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

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

24 (1) all parties, including:

25 (a) the child alleged to be neglected or

1 abused or in need of court-ordered services, by and through the
2 child's guardian ad litem or attorney;

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

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

8 (d) if the child is an Indian child, the
9 Indian child's tribe pursuant to the State Indian Child Welfare
10 Act;

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

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

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

17 E. At any subsequent judicial review hearing held
18 pursuant to Subsection B of this section, the department and
19 all parties given notice pursuant to Subsection D of this
20 section shall have the opportunity to present evidence and to
21 cross-examine witnesses. At the hearing, the department shall
22 show that it has made reasonable effort to implement any
23 treatment plan approved by the court in its dispositional order
24 and shall present a treatment plan consistent with the purposes
25 of the Children's Code for any period of extension of the

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1 dispositional order. The respondent shall demonstrate to the
2 court that efforts to comply with the treatment plan approved
3 by the court in its dispositional order and efforts to maintain
4 contact with the child were diligent and made in good faith.
5 The court shall determine the extent of compliance with the
6 treatment plan and whether progress is being made toward
7 establishing a stable and permanent placement for the child.

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

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

16 H. When the child is an Indian child, the court
17 shall determine during review of a dispositional order whether
18 the placement preferences set forth in the [~~federal Indian~~
19 ~~Child Welfare Act of 1978~~] State Indian Child Welfare Act or
20 the placement preferences of the Indian child's [~~Indian~~] tribe
21 were followed and whether the [~~child's treatment plan provides~~
22 ~~for maintaining the child's cultural ties. When placement~~
23 ~~preferences have not been followed, good cause for~~
24 ~~noncompliance shall be clearly stated and supported~~] department
25 has made active efforts to implement the Indian child's

1 treatment plan and unify the Indian family. When placement
2 preferences have not been followed, good cause for
3 noncompliance shall be clearly stated and supported and the
4 department shall identify placement in compliance with the
5 State Indian Child Welfare Act.

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

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

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

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

20 (4) transfer or continue legal custody of the
21 child to:

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

24 (b) a relative or other individual who,
25 after study by the department or other agency designated by the

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1 court, is found by the court to be qualified to receive and
2 care for the child and is appointed as a permanent guardian of
3 the child; or

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

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

14 (a) the efforts would be futile; or

15 (b) the parent, guardian or custodian
16 has subjected the child to aggravated circumstances;

17 (6) make additional orders regarding the
18 treatment plan or placement of the child to protect the child's
19 best interests if the court determines the department has
20 failed in implementing any material provision of the treatment
21 plan or abused its discretion in the placement or proposed
22 placement of the child; [øx]

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

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1 order:

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

5 (b) a hearing on the merits of
6 terminating parental rights; or

7 (8) continue the Indian child in the legal
8 custody of the department with or without any required parental
9 involvement in a treatment plan. Active efforts shall be made
10 to preserve and reunify the Indian family, with the paramount
11 concern being the Indian child's health and safety, pursuant to
12 the State Indian Child Welfare Act.

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

17 K. When the court determines, pursuant to Paragraph
18 (5) of Subsection I of this section, that no reasonable efforts
19 at reunification are required, the court shall conduct, within
20 thirty days, a permanency hearing as described in Section
21 32A-4-25.1 NMSA 1978. The department shall make reasonable
22 efforts to place the child in a timely manner in accordance
23 with the permanency plan and to complete whatever steps are
24 necessary to finalize the permanent placement of the child."

25 SECTION 40. Section 32A-4-25.2 NMSA 1978 (being Laws

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1 2009, Chapter 239, Section 47) is amended to read:

2 "32A-4-25.2. TRANSITION SERVICES.--

3 A. Prior to a child's reaching seventeen years of
4 age, the department shall meet with the child, the child's
5 attorney and others of the child's choosing, including
6 biological family members, to develop a transition plan. The
7 department shall assist the child in identifying and planning
8 to meet the child's needs after the child's eighteenth
9 birthday, including housing, education, employment or income,
10 health and mental health, local opportunities for mentors and
11 continuing support services.

12 B. The department shall present the child's
13 proposed transition plan to the court at the first hearing
14 scheduled after the child's seventeenth birthday.

15 C. The court shall order a transition plan for the
16 child. The transition plan approved by the court shall be
17 reviewed at every subsequent review and permanency hearing.

18 D. If the child is an Indian child, the Indian
19 child's tribe shall be included in developing the transition
20 plan and shall be provided a copy of the transition plan prior
21 to the presentation of the plan to the court."

22 SECTION 41. Section 32A-4-25.3 NMSA 1978 (being Laws
23 2009, Chapter 239, Section 48) is amended to read:

24 "32A-4-25.3. DISCHARGE HEARING.--

25 A. At the last review or permanency hearing held

1 prior to the child's eighteenth birthday, the court shall
2 review the transition plan and shall determine whether the
3 department has made reasonable efforts to implement the
4 requirements of Subsection B of this section.

5 B. The court shall determine:

6 (1) whether written information concerning the
7 child's family history, the whereabouts of any sibling if
8 appropriate and education and health records have been provided
9 to the child;

10 (2) whether the child's social security card,
11 certified birth certificate, state-issued identification card,
12 death certificate of a parent and proof of citizenship or
13 residence have been provided to the child;

14 (3) whether assistance in obtaining medicaid
15 has been provided to the child, unless the child is ineligible
16 for medicaid; and

17 (4) whether referral for a guardianship or
18 limited guardianship if the child is incapacitated has been
19 made.

20 C. If the court finds that the department has not
21 made reasonable efforts to meet all the requirements of
22 Subsection B of this section and that termination of
23 jurisdiction would be harmful to the young adult, the court may
24 continue to exercise its jurisdiction for a period not to
25 exceed one year from the child's eighteenth birthday. The

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1 young adult must consent to continued jurisdiction of the
2 court. The court may dismiss the case at any time after the
3 child's eighteenth birthday for good cause.

4 D. If the child is an Indian child, the department
5 shall provide documentation of the Indian child's tribal
6 membership and information regarding all other tribes with
7 which the Indian child may have a connection or family and any
8 benefits to which the Indian child may be entitled. The court
9 shall make findings determining that the department made active
10 efforts to meet the requirements of this section and may
11 continue to exercise its jurisdiction for a period not to
12 exceed one year from the child's eighteenth birthday. The
13 young adult must consent to continued jurisdiction of the
14 court. The court may dismiss the case at any time after the
15 child's eighteenth birthday for good cause."

16 SECTION 42. Section 32A-4-27 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 121, as amended) is amended to read:

18 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO
19 INTERVENE.--

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

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

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

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

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

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

10 (1) the person's rationale for the proposed
11 intervention; and

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

14 C. When the court determines that the child's best
15 interest will be served as a result of intervention by a person
16 described in Subsection A of this section, the court may permit
17 intervention unless the party opposing intervention can
18 demonstrate that a viable plan for reunification with the
19 respondents is in progress and that intervention could impede
20 the progress of the reunification plan.

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

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

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

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

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

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

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

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

15 (4) bonding between the child and the child's
16 foster parent is alleged as a reason for terminating parental
17 rights in the motion for termination of parental rights. If
18 the child is an Indian child, bonding between the Indian child
19 and the Indian child's foster parent shall not be considered as
20 a factor in terminating parental rights.

21 F. The foster parent, preadoptive parent or
22 relative providing care for the child shall be given notice of,
23 and an opportunity to be heard in, any review or hearing with
24 respect to the child, except that this subsection shall not be
25 construed to require that any foster parent, preadoptive parent

1 or relative providing care for the child be made a party to
 2 such a review or hearing solely on the basis of the notice and
 3 opportunity to be heard."

4 SECTION 43. Section 32A-4-28 NMSA 1978 (being Laws 1993,
 5 Chapter 77, Section 122, as amended) is amended to read:

6 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
 7 DECREE.--

8 A. In proceedings to terminate parental rights, the
 9 court shall [~~give primary consideration to~~] make the
 10 determination based on the physical, mental and emotional
 11 welfare and needs of the child, including the likelihood of the
 12 child being adopted if parental rights are terminated. If the
 13 child is an Indian child, the court shall also make all
 14 required determinations pursuant to the State Indian Child
 15 Welfare Act and include in its determination the importance of
 16 maintained connections between Indian children and their Indian
 17 tribes and tribal culture. In proceedings to terminate
 18 parental rights with respect to an Indian child, the court
 19 shall consider whether an alternative to termination of
 20 parental rights, including permanent guardianship of the child,
 21 would best support the Indian child pursuant to the State
 22 Indian Child Welfare Act and the federal Indian Child Welfare
 23 Act of 1978.

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

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

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

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

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

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

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

22 (b) the parent-child relationship has
23 disintegrated;

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

1 the child;

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

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

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

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

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

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

19 (2) if the motion is based, to any extent, on
20 the fact that the child is an Indian child or that the child's
21 parent or parents are Indian.

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

25 (1) comply with the requirements of [~~that act~~]

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1 those respective acts;

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

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

10 F. If the court finds that parental rights should
11 be terminated; that the requirements for the adoption of a
12 child have been satisfied; that the prospective adoptive parent
13 is a party to the action; and that good cause exists to waive
14 the filing of a separate petition for adoption, the court may
15 proceed to grant adoption of the child, absent an appeal of the
16 termination of parental rights. The court shall not waive any
17 time requirements set forth in the Adoption Act unless the
18 termination of parental rights occurred pursuant to the
19 provisions of Paragraph (3) of Subsection B of this section.
20 The court may enter a decree of adoption only after finding
21 that the party seeking to adopt the child has satisfied all of
22 the requirements set forth in the Adoption Act. The court
23 shall not waive any time requirements set forth in the Adoption
24 Act, the federal Indian Child Welfare Act of 1978 and the State
25 Indian Child Welfare Act. Unless otherwise stipulated by all

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1 parties, including Indian tribes when applicable regardless if
 2 the Indian tribe is a party, an adoption decree shall take
 3 effect sixty days after the termination of parental rights, to
 4 allow the department sufficient time to provide counseling for
 5 the child and otherwise prepare the child for the adoption.
 6 The adoption decree shall conform to the requirements of the
 7 Adoption Act, federal Indian Child Welfare Act of 1978 and
 8 State Indian Child Welfare Act and shall have the same force
 9 and effect as other adoption decrees entered pursuant to [~~that~~
 10 ~~act~~] those acts. The court clerk shall assign an adoption case
 11 number to the adoption decree."

12 SECTION 44. Section 32A-4-29 NMSA 1978 (being Laws 1993,
 13 Chapter 77, Section 123, as amended) is amended to read:

14 "32A-4-29. TERMINATION PROCEDURE.--

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

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

20 (1) the date, place of birth and marital
 21 status of the child, if known;

22 (2) the grounds for termination and the facts
 23 and circumstances supporting the grounds for termination;

24 (3) the names and addresses of the persons or
 25 authorized agency or agency officer to whom legal custody might

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1 be transferred;

2 (4) whether the child resides or has resided
3 with a foster parent who desires to adopt this child;

4 (5) whether the motion is in contemplation of
5 adoption;

6 (6) the relationship or legitimate interest of
7 the moving party to the child; and

8 (7) whether the child is subject to the
9 federal Indian Child Welfare Act of 1978 and the State Indian
10 Child Welfare Act and, if so:

11 (a) the tribal affiliations of the
12 child's parents;

13 (b) the specific actions taken by the
14 moving party to notify the [~~parents' tribes~~] Indian child's
15 tribe and the results of the contacts, including the names,
16 addresses, titles and telephone numbers of the persons
17 contacted. Copies of any correspondence with the [~~tribes~~]
18 Indian child's tribe shall be attached as exhibits to the
19 petition; [~~and~~]

20 (c) what specific efforts were made to
21 comply with the placement preferences set forth in the [~~federal~~
22 ~~Indian Child Welfare Act of 1978 or the placement preferences~~
23 ~~of the appropriate Indian tribes~~] State Indian Child Welfare
24 Act; and

25 (d) the specific actions that were made

1 to comply with active efforts that have been made to provide
2 remedial services and rehabilitative programs designed to
3 prevent the breakup of the Indian family.

4 C. Notice of the filing of the motion, accompanied
5 by a copy of the motion, shall be served by the moving party on
6 all other parties, the foster parent, preadoptive parent or
7 relative providing care for the child with whom the child is
8 residing, foster parents with whom the child has resided for
9 six months within the previous twelve months, the custodian of
10 the child, any person appointed to represent any party and any
11 other person the court orders. Service shall be in accordance
12 with the Children's Court Rules for the service of motions,
13 except that foster parents and attorneys of record in this
14 proceeding shall be served by certified mail. The notice shall
15 state specifically that the person served shall file a written
16 response to the motion within twenty days if the person intends
17 to contest the termination. In any case involving a child
18 subject to the federal Indian Child Welfare Act of 1978 and the
19 State Indian Child Welfare Act, notice shall also be sent by
20 certified mail to the [~~tribes of the child's parents~~] Indian
21 child's tribe and upon any "Indian custodian" as that term is
22 defined in 25 U.S.C. Section 1903(6) and the State Indian Child
23 Welfare Act. Further notice shall not be required on a parent
24 who has been provided notice previously pursuant to Section
25 32A-4-17 NMSA 1978 and who failed to make an appearance. If

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1 the child is an Indian child, the notice shall meet the
2 standards set forth in the federal Indian Child Welfare Act of
3 1978 and the State Indian Child Welfare Act.

4 D. When a motion to terminate parental rights is
5 filed, the moving party shall request a hearing on the motion.
6 The hearing date shall be at least thirty days, but no more
7 than sixty days, after service is effected upon the parties
8 entitled to service under this section. The moving party shall
9 also file a motion for court-ordered mediation between the
10 parent and any prospective adoptive parent to discuss an open
11 adoption agreement. If an open adoption agreement is reached
12 at any time before termination of parental rights, it shall be
13 made a part of the court record.

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

- 18 (1) litigate a motion for the termination of
19 parental rights that was initially filed by another party; or
20 (2) move that the motion for the termination
21 of parental rights be found premature and denied.

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

24 G. When a child has been in foster care for not
25 less than fifteen of the previous twenty-two months, and this

1 time was not incurred during voluntary placement agreements,
2 the department shall file a motion to terminate parental
3 rights, unless:

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

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

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

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

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

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1 placed in a family setting;

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

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

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

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

14 H. In the case of an Indian child or a child who
15 the department knows or has reason to know is an Indian child,
16 the department shall prove beyond a reasonable doubt that the
17 department has complied with the active efforts to give notice,
18 prevent removal, work toward reunification and comply with
19 placement preferences pursuant to the Abuse and Neglect Act,
20 federal Indian Child Welfare Act of 1978 and State Indian Child
21 Welfare Act.

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

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

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

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

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

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

18 [~~L.~~] M. A judgment of the court terminating
19 parental rights divests the parent of all legal rights and
20 privileges and dispenses with both the necessity for the
21 consent to or receipt of notice of any subsequent adoption
22 proceeding concerning the child. A judgment of the court
23 terminating parental rights shall not affect the child's rights
24 of inheritance from and through the child's biological parents.

25 [~~M.~~] N. When the court denies a motion to terminate

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1 parental rights, the court shall issue appropriate orders
2 immediately. The court shall direct the parties to file a
3 stipulated order and interim plan or a request for hearing
4 within thirty days of the date of the hearing denying the
5 termination of parental rights."

6 SECTION 45. Section 32A-4-32 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 126, as amended) is amended to read:

8 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

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

11 B. A motion for permanent guardianship shall set
12 forth:

13 (1) the date, place of birth and marital
14 status of the child, if known;

15 (2) the facts and circumstances supporting the
16 grounds for permanent guardianship;

17 (3) the name and address of the prospective
18 guardian and a statement that the person agrees to accept the
19 duties and responsibilities of guardianship;

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

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

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

25 [~~(a) the tribal affiliations of the~~

1 ~~child's parents;~~

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

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

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

17 D. Notice of the filing of the motion, accompanied
18 by a copy of the motion, shall be served by the moving party on
19 any parent who has not previously been made a party to the
20 proceeding, the parents of the child, foster parents with whom
21 the child is residing, the foster parent, preadoptive parent or
22 relative providing care for the child with whom the child has
23 resided for six months, the child's custodian, the department,
24 any person appointed to represent any party, including the
25 child's guardian ad litem, and any other person the court

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1 orders provided with notice. Service shall be in accordance
2 with the Children's Court Rules for the service of motions. In
3 a case involving a child subject to the [~~federal Indian Child~~
4 ~~Welfare Act of 1978, notice shall also be sent by certified~~
5 ~~mail to the Indian tribes of the child's parents and to any~~
6 ~~"Indian custodian" as that term is defined in 25 U.S.C. Section~~
7 ~~1903(6)] State Indian Child Welfare Act and the federal Indian
8 Child Welfare Act of 1978, notice shall also be sent as
9 required pursuant to those acts. Further notice shall not be
10 required to a parent who has been provided notice previously
11 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
12 an appearance, unless the child is an Indian child, in which
13 case notice shall always be made pursuant to the State Indian
14 Child Welfare Act.~~

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

19 (1) 25 U.S.C. Section 1912(f) in [~~any~~] a
20 proceeding involving a child subject to the federal Indian
21 Child Welfare Act of 1978; and

22 (2) the State Indian Child Welfare Act in a
23 proceeding involving a child subject to that act or a child the
24 department or the court knows or has reason to know is subject
25 to that act.

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

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

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

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

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

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

22 J. The court shall appoint a guardian ad litem for
23 the child in all proceedings for the revocation of permanent
24 guardianship if the child is under the age of fourteen. The
25 court shall appoint an attorney for the child in all

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1 proceedings for the revocation of permanent guardianship if the
2 child is fourteen years of age or older at the inception of the
3 proceedings.

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

9 SECTION 46. Section 32A-4-33 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 127, as amended) is amended to read:

11 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

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

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

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

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1 possession;

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

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

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

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

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

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

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

19 (9) any state government social services
20 agency in any state or when, in the opinion of the department
21 it is in the best interest of the child, a governmental social
22 services agency of another country;

23 (10) those persons or entities of an Indian
24 tribe specifically authorized to inspect the records pursuant
25 to the State Indian Child Welfare Act, the federal Indian Child

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1 Welfare Act of 1978 or any regulations promulgated [~~thereunder~~]
2 under those acts;

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

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

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

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

20 (15) protection and advocacy representatives
21 pursuant to the federal Developmental Disabilities Assistance
22 and Bill of Rights Act and the federal Protection and Advocacy
23 for Mentally Ill Individuals Amendments Act of 1991;

24 (16) children's safehouse organizations
25 conducting investigatory interviews of children on behalf of a

1 law enforcement agency or the department;

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

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

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

15 C. A parent, guardian or legal custodian whose
16 child has been the subject of an investigation of abuse or
17 neglect where no petition has been filed shall have the right
18 to inspect any medical report, psychological evaluation, law
19 enforcement reports or other investigative or diagnostic
20 evaluation; provided that any identifying information related
21 to the reporting party or any other party providing information
22 shall be deleted. The parent, guardian or legal custodian
23 shall also have the right to the results of the investigation
24 and the right to petition the court for full access to all
25 department records and information except those records and

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1 information the department finds would be likely to endanger
2 the life or safety of any person providing information to the
3 department.

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

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

14 SECTION 47. Section 32A-5-4 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 131) is amended to read:

16 "32A-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE
17 ACT OF 1978 AND THE STATE INDIAN CHILD WELFARE ACT.--The
18 protections set forth in the federal Indian Child Welfare Act
19 of 1978 and the State Indian Child Welfare Act, including
20 provisions concerning notice to the Indian child's tribe,
21 transfer to tribal court and placement preferences, apply to
22 all proceedings involving an Indian child under the Adoption
23 Act."

24 SECTION 48. Section 32A-5-7 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 134, as amended) is amended to read:

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1 "32A-5-7. CLERK OF THE COURT--DUTIES.--

2 A. The clerk of the court shall file pleadings
3 captioned pursuant to the provisions of Section 32A-5-9 NMSA
4 1978. The clerk of the court shall not file incorrectly
5 captioned pleadings.

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

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

19 D. The clerk of the court shall mail a copy of the
20 decree of adoption to the department within one working day of
21 the entry of the decree of adoption. The attorney for the
22 petitioner shall provide to the clerk of the court a copy of
23 the decree of adoption and a stamped envelope addressed to the
24 department as specified in department regulation.

25 ~~[E. In any adoption involving an Indian child, the~~

1 ~~clerk of the court shall provide the secretary of the interior~~
2 ~~with a copy of any decree of adoption or adoptive placement~~
3 ~~order and other information as required by the federal Indian~~
4 ~~Child Welfare Act of 1978. The attorney for the petitioner~~
5 ~~shall provide to the clerk of the court a copy of an adoption~~
6 ~~decree, an adoptive placement order, any other information~~
7 ~~required by the federal Indian Child Welfare Act of 1978 and a~~
8 ~~stamped envelope addressed to the secretary of the interior.~~

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

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

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

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

19 **SECTION 49.** Section 32A-5-13 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 140, as amended) is amended to read:

21 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
22 PLACEMENT ORDER--CERTIFICATION.--

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

1 prior to actual placement.

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

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

14 D. The pre-placement study shall be conducted by an
15 agency or a person certified by the department to conduct the
16 study. A person or agency that wants to be certified to
17 perform pre-placement studies shall file documents verifying
18 their qualifications with the department. The department shall
19 publish a list of persons or agencies certified to conduct a
20 pre-placement study. If necessary to defray additional costs
21 associated with compiling the list, the department may assess
22 and charge a reasonable administrative fee to the person or
23 agency listed.

24 E. When a person or agency that wants to be
25 certified to perform pre-placement studies files false

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1 documentation with the department, the person or agency shall
2 be subject to the provisions of Section 32A-5-42 NMSA 1978.

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

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

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

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

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

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

23 (6) the existence of any court orders that are
24 known to the petitioner and that regulate custody, visitation
25 or access to the adoptee, copies of which shall be attached to

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1 the request for placement as exhibits; if copies of any such
2 court orders are unavailable at the time of filing the request
3 for placement, the copies shall be filed prior to the issuance
4 of the order of placement;

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

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

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

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

21 (11) the name, address and telephone number of
22 the agency or investigator who has agreed to do the
23 pre-placement study.

24 G. The request for placement shall be served on all
25 parties entitled to receive notice of the filing of a petition

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1 for adoption, as provided in Section 32A-5-27 NMSA 1978. An
2 order allowing placement may be entered prior to service of the
3 request for placement.

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

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

12 SECTION 50. Section 32A-5-15 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 142, as amended) is amended to read:

14 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

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

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

21 (1) the child has been abandoned by the
22 parents;

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

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1 future; or

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

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

7 (b) the parent-child relationship has
8 disintegrated;

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

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

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

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

20 C. A finding by the court that all of the
21 conditions set forth in ~~Subparagraph~~ Subparagraphs (a)
22 through (e) of Paragraph (3) of Subsection B of this section
23 exist shall create a rebuttable presumption of abandonment.

24 D. The termination of parental rights involving an
25 Indian child shall comply with the requirements of the federal

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1 Indian Child Welfare Act of 1978 and the State Indian Child
2 Welfare Act."

3 SECTION 51. Section 32A-5-16 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 143, as amended) is amended to read:

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

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

12 (1) the department;

13 (2) an agency; or

14 (3) any other person having a legitimate
15 interest in the matter, including a petitioner for adoption,
16 the child's guardian, the child's guardian ad litem or attorney
17 in another action, a foster parent, a relative of the child or
18 the child.

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

22 (1) the date, place of birth and marital
23 status of the child, if known;

24 (2) the grounds for termination and the facts
25 and circumstances supporting the grounds for termination;

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1 (3) the names and addresses of the person,
2 authorized agency or agency officer to whom custody might be
3 transferred;

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

5 (5) that the petition is in contemplation of
6 adoption;

7 (6) the relationship or legitimate interest of
8 the applicant to the child; and

9 (7) whether the child is an Indian child and,
10 if so,

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

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

19 ~~(c) what specific efforts were made to~~
20 ~~comply with the placement preferences set forth in the federal~~
21 ~~Indian Child Welfare Act of 1978 or the placement preferences~~
22 ~~of the appropriate Indian tribes] any additional information as~~
23 required pursuant to the State Indian Child Welfare Act and the
24 federal Indian Child Welfare Act of 1978 for a petition to
25 terminate parental rights.

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

17 D. If the identification or whereabouts of a parent
18 is unknown, the petitioner shall file a motion for an order
19 granting service by publication or an order stating that
20 service by publication is not required. A motion for an order
21 granting service by publication shall be supported by the
22 affidavit of the petitioner, the agency or the petitioner's
23 attorney detailing the efforts made to locate the parent. Upon
24 being satisfied that reasonable efforts to locate the parent
25 have been made and that information as to the identity or

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1 whereabouts of the parent is still insufficient to effect
2 service in accordance with SCRA, Rule 1-004, the court shall
3 order service by publication or order that publication is not
4 required because the parent's consent is not required pursuant
5 to the provisions of Section 32A-5-19 NMSA 1978.

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

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

20 G. Within thirty days after the filing of a
21 petition to terminate parental rights, the petitioner shall
22 request a hearing on the petition. The hearing date shall be
23 at least thirty days after service is effected upon the parent
24 of the child or completion of publication.

25 H. The grounds for any attempted termination shall

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

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

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

20 SECTION 52. Section 32A-5-17 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 144, as amended) is amended to read:

22 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
23 REQUIRED.--

24 A. Consent to adoption or relinquishment of
25 parental rights to the department or an agency licensed by the

1 state of New Mexico shall be required of the following:

2 (1) the adoptee, if fourteen years of age or
3 older, except when the court finds that the adoptee does not
4 have the mental capacity to give consent;

5 (2) the adoptee's mother;

6 (3) the adoptee's proposed adoptive parent;

7 (4) the presumed father of the adoptee;

8 (5) the adoptee's acknowledged father;

9 (6) the department or the agency to whom the
10 adoptee has been relinquished that has placed the adoptee for
11 adoption or the department or the agency that has custody of
12 the adoptee; provided, however, that the court may grant the
13 adoption without the consent of the department or the agency if
14 the court finds the adoption is in the best interests of the
15 adoptee and that the withholding of consent by the department
16 or the agency is unreasonable; and

17 (7) the guardian of the adoptee's parent when,
18 pursuant to provisions of the Uniform Probate Code, that
19 guardian has express authority to consent to adoption.

20 B. In any adoption involving an Indian child,
21 consent to adoption by the petitioner or relinquishment of
22 parental rights shall be obtained from an "Indian custodian",
23 as required pursuant to the provisions of the federal Indian
24 Child Welfare Act of 1978 and the State Indian Child Welfare
25 Act.

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

4 SECTION 53. Section 32A-5-21 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 148, as amended) is amended to read:

6 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

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

11 (1) the date, place and time of execution;

12 (2) the date and place of birth of the adoptee
13 and any names by which the adoptee has been known;

14 (3) if a consent to adoption is being
15 executed, the identity of the petitioner, if known, or when the
16 adoption is an independent adoption and the identity of the
17 petitioner is unknown, how the petitioner was selected by the
18 consenting parent;

19 (4) if a relinquishment of parental rights is
20 being executed, the name and address of the agency or the
21 department;

22 (5) that the person executing the consent or
23 relinquishment has been counseled, as provided in Section
24 32A-5-22 NMSA 1978, by a certified counselor of the person's
25 choice and with this knowledge the person is voluntarily and

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1 unequivocally consenting to the adoption of the named adoptee;

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

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

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

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

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

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

20 (12) that the person executing the consent or
21 relinquishment waives further notice of the adoption
22 proceedings.

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

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

19 C. In cases when the consent or relinquishment is
20 in English and English is not the first language of the
21 consenting or relinquishing person, the person taking the
22 consent or relinquishment shall certify in writing that the
23 document has been read and explained to the person whose
24 consent or relinquishment is being taken in that person's first
25 language, by whom the document was so read and explained and

1 that the meaning and implications of the document are fully
2 understood by the person giving the consent or relinquishment.

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

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

- 18 (1) the date, place and time of execution;
19 (2) the date and place of birth of the adoptee
20 and any names by which the adoptee has been known;
21 (3) the name of the petitioner; and
22 (4) the consent of the agency or department.

23 F. A consent or relinquishment taken by an
24 individual appointed to take consents or relinquishments by an
25 agency shall be notarized, except that a consent or

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1 relinquishment signed in the presence of a judge need not be
2 notarized. A hearing before the court for the purpose of
3 taking a consent or relinquishment shall be heard by the court
4 within seven days of request for setting.

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

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

18 I. For non-Indian children, a consent to or
19 relinquishment for adoption shall not be withdrawn prior to the
20 entry of a decree of adoption unless the court finds, after
21 notice and opportunity to be heard is afforded to the
22 petitioner, to the person seeking the withdrawal and to the
23 agency placing a child for adoption, that the consent or
24 relinquishment was obtained by fraud. In no event shall a
25 consent or relinquishment be withdrawn after the entry of a

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1 decree of adoption."

2 SECTION 54. Section 32A-5-26 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,
4 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended
5 to read:

6 "32A-5-26. PETITION--CONTENT.--A petition for adoption
7 shall be filed and verified by the petitioner and shall allege:

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

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

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

21 D. the birth name of the adoptee, any other names
22 by which the adoptee has been known and the adoptee's proposed
23 new name; provided that in the case of an agency adoption, if
24 the petitioner and the biological parents have not agreed to
25 the release of the adoptee's identity to the other person, the

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1 birth name and any other names by which the adoptee has been
2 known shall be filed with the court as separate documents at
3 the time the petition is filed;

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

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

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

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

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

21 J. the names and addresses of all persons from whom
22 consents or relinquishments are required, attaching copies of
23 those obtained and alleging the facts that excuse or imply the
24 consents or relinquishments of the others; provided that if the
25 petitioner has not agreed to the release of ~~his~~ the

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1 petitioner's identity to the parent or if the parent has not
2 agreed to the release of [~~his~~] the parent's identity to the
3 petitioner, the names and addresses of all persons from whom
4 consents or relinquishments are required shall be filed with
5 the court as separate documents at the time the petition for
6 adoption is filed;

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

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

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

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

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

22 ~~(3) what specific efforts were made to comply~~
23 ~~with the placement preferences set forth in the federal Indian~~
24 ~~Child Welfare Act of 1978 or the placement preferences of the~~
25 ~~appropriate Indian tribe] include any specific allegations as~~

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1 required pursuant to the federal Indian Child Welfare Act of
2 1978 and the State Indian Child Welfare Act;

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

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

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

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

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

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

25 Q. the name, address and telephone number of the

1 agency or individual who has agreed to conduct the post-
 2 placement report in accordance with Section 32A-5-31 NMSA 1978,
 3 if different than the agency or individual who prepared the
 4 pre-placement study in accordance with Section 32A-5-13 NMSA
 5 1978."

6 SECTION 55. Section 32A-5-27 NMSA 1978 (being Laws 1993,
 7 Chapter 77, Section 154, as amended) is amended to read:

8 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

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

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

14 (2) any person, agency or institution whose
 15 consent or relinquishment is required by Section 32A-5-17 NMSA
 16 1978, unless the notice has been previously waived;

17 (3) any acknowledged father of the adoptee;

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

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

22 (6) the spouse of the adoptee;

23 (7) the surviving parent of a deceased parent
 24 of the adoptee;

25 (8) any person known to the petitioner having

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1 custody of or visitation with the adoptee under a court order;

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

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

7 (11) any other person designated by the court.

8 B. Notice shall not be served on the following:

9 (1) an alleged father; and

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

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

16 D. In an adoption in which the adoptee is an Indian
17 child, in addition to the notice required pursuant to
18 Subsection A of this section, notice of pendency of the
19 adoption proceeding shall be served by the petitioner on the
20 appropriate Indian tribe and on a parent or an "Indian
21 custodian" pursuant to the provisions of the federal Indian
22 Child Welfare Act of 1978 and the State Indian Child Welfare
23 Act.

24 E. The notice shall state that the person served
25 shall respond to the petition within twenty days if the person

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1 intends to contest the adoption and shall state that the
2 failure to so respond shall be treated as a default and the
3 person's consent to the adoption shall not be required.
4 Provided, however, that this provision shall not apply to an
5 agency, the department or an investigator preparing the post-
6 placement report pursuant to Section 32A-5-31 NMSA 1978. If an
7 agency, the department or an investigator preparing the post-
8 placement report wants to contest the adoption, it shall notify
9 the court within twenty days after completion of the post-
10 placement report.

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

23 G. As to any other person for whom notice is
24 required under Subsection A of this section, service by
25 certified mail, return receipt requested, shall be sufficient.

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1 If the service cannot be completed after two attempts, the
2 court shall issue an order providing for service by
3 publication.

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

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

10 SECTION 56. Section 32A-5-28 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 155) is amended to read:

12 "32A-5-28. RESPONSE TO PETITION.--

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

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

19 (1) the existence of any court orders known to
20 the respondent that regulate custody, visitation or access to
21 the adoptee but have not been filed with the court at the time
22 the response is filed and copies of which shall be attached to
23 the response;

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

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

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

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

8 SECTION 57. Section 32A-5-36 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,
10 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended
11 to read:

12 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
13 ADOPTION.--

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

20 B. The petitioner shall file all documents required
21 pursuant to the Adoption Act and serve the department with
22 copies of the documents simultaneously with the request for
23 hearing on the petition for adoption.

24 C. If any person who claims to be the biological
25 father of the adoptee has appeared before the court and filed a

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1 written petition or response seeking custody and assuming
2 financial responsibility of the adoptee, the court shall hear
3 evidence as to the merits of the petition. If the court
4 determines by a preponderance of the evidence that the person
5 is not the biological father of the adoptee or that the child
6 was conceived through an act of rape or incest, the petition
7 shall be dismissed and the person shall no longer be a party to
8 the adoption. If the court determines that the person is the
9 biological father of the adoptee, the court shall further
10 determine whether the person qualifies as a presumed or
11 acknowledged father whose consent is necessary for adoption,
12 pursuant to Section 32A-5-17 NMSA 1978. If the court
13 determines that the person is the biological father, but does
14 not qualify as a presumed or acknowledged father, the court
15 shall adjudicate the person's rights pursuant to the provisions
16 of the Adoption Act.

17 D. If the mother or father of the adoptee has
18 appeared before the court and filed a written petition that
19 alleges the invalidity of the mother's or father's own consent
20 or relinquishment for adoption previously filed in the adoption
21 proceeding, the court shall hear evidence as to the merits of
22 the petition. If the court determines that the allegations
23 have not been proved by a preponderance of the evidence, the
24 petition shall be dismissed. If the court determines that the
25 allegations of the petition are true, the consent or

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1 relinquishment for adoption shall be held invalid, and the
2 court shall determine, in the best interests of the adoptee,
3 the person who shall have custody of the child.

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

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

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

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

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

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

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

25 (6) at least ninety days have passed since the

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1 filing of the petition for adoption, except the court may
2 shorten or waive this period of time in cases in which the
3 child is being adopted by a stepparent, a relative or a person
4 named in the child's deceased parent's will pursuant to
5 provisions of Section 32A-5-12 NMSA 1978;

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

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

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

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

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

22 (12) when the child is an Indian child, the
23 placement preferences set forth in the federal Indian Child
24 Welfare Act of 1978, the State Indian Child Welfare Act or the
25 placement preferences of the appropriate Indian tribes have

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1 been followed or, if not followed, good cause for noncompliance
2 has been clearly stated and supported, as required by the
3 federal Indian Child Welfare Act of 1978 and the State Indian
4 Child Welfare Act and provision has been made to ensure that
5 the Indian child's cultural ties to the Indian child's tribe
6 are protected and fostered; and

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

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

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

21 I. The decree of adoption shall include the new
22 name of the adoptee and shall not include any other name by
23 which the adoptee has been known or the names of the former
24 parents. The decree of adoption shall order that from the date
25 of the decree, the adoptee shall be the child of the petitioner

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1 and accorded the status set forth in Section 32A-5-37 NMSA
2 1978.

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

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

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

23 SECTION 58. Section 32A-5-40 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 167, as amended) is amended to read:

25 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

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

21 (1) the health and medical histories of the
22 adoptee's biological parents;

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

25 (3) the adoptee's general family background,

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1 including ancestral information, without name references or
2 geographical designations;

3 (4) physical descriptions; and

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

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

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

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

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

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

20 D. The consent or refusal referred to in Subsection
21 B of this section shall be honored by the court, the placing
22 agency or the department unless for good cause the court orders
23 to the contrary.

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

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1 department:

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

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

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

19 (1) the reason the information is sought;
20 (2) any procedure available for satisfying the
21 petitioner's request without disclosing the name or identity of
22 another individual, including appointment of a confidential
23 intermediary to contact the individual and request specific
24 information;

25 (3) whether the individual about whom

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1 identifying information is sought is alive;

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

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

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

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

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

21 ~~(1) the adoptee, after he reaches eighteen~~
22 ~~years of age;~~

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

25 ~~(3) an adoptee's descendant or, if the~~

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

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

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

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

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

19 SECTION 59. Section 40-10B-5 NMSA 1978 (being Laws 2001,
 20 Chapter 167, Section 5, as amended) is amended to read:

21 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

24 (1) a kinship caregiver;

25 (2) a caregiver, who has reached the age of

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

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

7 (a) the purpose and effect of the
8 guardianship;

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

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

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

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

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

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

25 (4) the name and address of the petitioner;

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

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

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

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

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

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

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

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

20 [~~(b) the specific actions taken by the~~
21 ~~petitioner to notify the parents' tribes and the results of the~~
22 ~~contacts, including the names, addresses, titles and telephone~~
23 ~~numbers of the persons contacted, and copies of correspondence~~
24 ~~with the tribe] shall include any information as required of a
25 petition for a child custody proceeding pursuant to those acts;~~

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1 and

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

4 SECTION 60. Section 40-10B-6 NMSA 1978 (being Laws 2001,
5 Chapter 167, Section 6, as amended) is amended to read:

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

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

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

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

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

17 (3) the parents of the child;

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

20 (5) if the child is an Indian child as defined
21 in the federal Indian Child Welfare Act of 1978 and the State
22 Indian Child Welfare Act, the ~~[appropriate]~~ Indian tribe and
23 ~~[any]~~ the child's parent or "Indian custodian", together with a
24 notice of pendency of the guardianship proceedings, pursuant to
25 the provisions of the federal Indian Child Welfare Act of 1978

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1 and the State Indian Child Welfare Act.

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

6 D. The persons required to be served pursuant to
7 Subsection B of this section have a right to file a response as
8 parties to this action. Other persons may intervene pursuant
9 to Rule 1-024 NMRA."

10 SECTION 61. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
11 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
12 2005, Chapter 189, Section 37, as amended) are repealed.

13 SECTION 62. APPLICABILITY.--

14 A. The provisions of Section 8 of this act apply to
15 tribal-state agreements that become effective on or after July
16 1, 2021.

17 B. The provisions of this act apply to all open
18 cases prior to July 1, 2021.

19 SECTION 63. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2021.