

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 107

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

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

AN ACT

RELATING TO CHILDREN; REVISING THE CHILDREN'S CODE; EXTENDING
THE PERIOD FOR FILING A PETITION HHC→**AND PROVIDING**
NOTICE←HHC ; RESTRICTING THE RETURN OF A CHILD IF TAKEN INTO
CUSTODY MORE THAN ONCE IN SIX MONTHS HHC→; ~~REVISING PROVISIONS~~
~~FOR CUSTODY HEARINGS Sfl1→; DECLARING AN EMERGENCY←Sfl1 HHC→;~~
~~DECLARING AN EMERGENCY←HHC .←HHC HHC→.←HHC~~

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

.224667.5AIC March 13, 2023 (6:20pm)

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SECTION 1. Section 32A-4-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 98, as amended) is amended to read:

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

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

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

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

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within a reasonable period of time from the date the report was made.

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

E. When a child is taken into custody, the department shall file a petition within [~~two~~] three days, unless the provisions of Subsection F of Section 32A-4-7 NMSA 1978 apply, in which case the petition shall be filed within five days.

HHHC→**F. When the department files a petition, it shall simultaneously provide to the office of family representation and advocacy, and if a child is an Indian child, to the child's Indian nation, tribe or pueblo:**

(1) the petition;

(2) the name, telephone numbers and addresses of each respondent; and

(3) the names, dates of birth and placement information for each child who is a subject of the petition, including:

(a) the type of placement; and

(b) the name, telephone number and address for the person or entity that holds the license for each child's placement.

G.←HHHC If a petition is not filed in a timely

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manner, the child shall be released to the child's parent, guardian or custodian."

SECTION 2. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101, as amended) is amended to read:

"32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(2) deliver the child to the department or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify the department that the child has been placed in the department's legal custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to a medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after

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delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within ~~two~~ three days from the date that the child was taken into custody.

E. The department may release the child at any time within the ~~two-day~~ three-day period after the child was taken into custody if it is determined by the department that release is appropriate or if release has been ordered by the court.

F. If a child that has been taken into custody and released to the child's parent, guardian or custodian is taken into custody again within HHC→six months←HHC HHC→one year←HHC of having been taken into custody, the child shall

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not be released from custody until a department Sfl1→~~executive manager or acting department executive manager~~←Sfl1 Sfl1→~~review is conducted~~←Sfl1 , in consultation with the children's court managing attorney, Sfl1→~~reviews~~←Sfl1 Sfl1→~~to review~~←Sfl1 the child's case and documents and Sfl1→~~determines~~←Sfl1 Sfl1→~~determine~~←Sfl1 whether the child should be released to the child's parent, guardian or custodian or if it is in the best interest of the child to file a petition alleging neglect or abuse. Sfl1→~~The department's review shall be conducted by a person above the level of supervisor who has been authorized by the secretary of children, youth and families to review such cases. If the secretary has not authorized anyone to review such cases, the department's review shall be conducted by the director of the protective services division of the department.~~←Sfl1 The three-day deadline for filing the petition pursuant to Subsections D and E of this section is extended to five days when the child's case is reviewed pursuant to this subsection."

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

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

~~[A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a~~

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~~custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication.~~

~~Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.]~~

~~A. When a child alleged to be neglected or abused has been placed in the temporary custody of the department, or the department has petitioned the court alleging abuse or neglect, a custody hearing shall be held no more than five days after the petition is filed to determine if probable cause exists that the child should remain in or be placed in the custody of the department pending the sixty-day adjudication hearing. The court may grant one continuance that does not exceed five days.~~

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

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

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

~~(2) the child is in immediate danger from the~~

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~~child's surroundings and removal from those surroundings is necessary for the child's safety or well-being;~~

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

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

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

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

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

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

~~E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. When the department determines that the home of an adult relative of the child meets all relevant~~

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~~child protection and licensing standards and placement in the home would be in the best interest of the child, the department shall give a preference to placement of the child in that home. The department shall make reasonable efforts to conduct home studies on appropriate relatives who express an interest in providing placement for the child.~~

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

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

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

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

~~G. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. If the court determines that probable cause does not exist, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or~~

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~~evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.~~

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

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

Sf11 → ~~SECTION 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.~~ ←Sf11

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