

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 373

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

AN ACT

RELATING TO FAMILIES; ENACTING THE OFFICE OF CHILD ADVOCATE  
ACT; PROVIDING FOR THE STATE CHILD ADVOCATE; CREATING THE  
OFFICE OF CHILD ADVOCATE AND ESTABLISHING THE POWERS AND DUTIES  
OF THAT OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE STATE  
CHILD ADVOCATE SELECTION COMMITTEE; AMENDING 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 13 of  
this act may be cited as the "Office of Child Advocate Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Office of

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1 Child Advocate Act:

2 A. "committee" means the state child advocate  
3 selection committee;

4 B. "near fatality" means an injury or condition  
5 caused by abuse or neglect that results in a child:

6 (1) being placed in serious or critical  
7 condition, as certified by a licensed physician; and

8 (2) receiving critical care for at least  
9 twenty-four hours following the child's admission to a critical  
10 care unit; and

11 C. "office" means the office of child advocate."

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

14 "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--CREATED.--The  
15 "office of child advocate" is created and is administratively  
16 attached to the office of the attorney general pursuant to  
17 Section 9-1-7 NMSA 1978. The office shall maintain autonomy  
18 over the office's budget and any decisions the office may  
19 take."

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

22 "[NEW MATERIAL] STATE CHILD ADVOCATE--APPOINTMENT--  
23 DUTIES.--The head of the office is the "state child advocate",  
24 who shall be appointed for a term of six years, except that the  
25 initial term shall begin on July 1, 2024 and shall end on

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1 December 31, 2024. The state child advocate may be reappointed  
2 to successive terms. An appointed state child advocate shall  
3 serve and have all of the duties, responsibilities and  
4 authority of that office until appointment of a new state child  
5 advocate. The governor or the supreme court may remove the  
6 state child advocate only for malfeasance, misfeasance or abuse  
7 of office."

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

10 "[NEW MATERIAL] STATE CHILD ADVOCATE SELECTION COMMITTEE--  
11 DUTIES.--

12 A. The "state child advocate selection committee"  
13 is created and consists of nine members, including:

14 (1) one member who shall be selected by the  
15 president pro tempore of the senate;

16 (2) one member who shall be selected by the  
17 minority floor leader of the senate;

18 (3) one member who shall be selected by the  
19 speaker of the house of representatives;

20 (4) one member who shall be selected by the  
21 minority floor leader of the house of representatives;

22 (5) four members who shall be selected by the  
23 governor:

24 (a) no more than two of whom are from  
25 the same political party and have not changed political party

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1 affiliation in the last two years;

2 (b) one of whom shall have specialized  
3 expertise in the federal Indian Child Welfare Act of 1978 and  
4 the Indian Family Protection Act; and

5 (c) one of whom shall have extensive  
6 knowledge of child protective services, juvenile justice  
7 services or child welfare; and

8 (6) a committee chair, whom a majority of the  
9 other eight members select and who is:

10 (a) not a candidate for the position of  
11 state child advocate; and

12 (b) a person with extensive knowledge of  
13 child welfare and the Children's Code.

14 B. The committee shall meet exclusively for the  
15 purpose of nominating persons to fill a current or impending  
16 vacancy in the position of state child advocate. The committee  
17 shall actively solicit, accept and evaluate applications for  
18 the position of state child advocate and may require applicants  
19 to submit any information that the committee deems relevant to  
20 the consideration of applications. Within ninety days before  
21 the date on which the term of a state child advocate ends or no  
22 later than sixty days after the occurrence of a vacancy in the  
23 state child advocate position, the committee shall convene and,  
24 within sixty days after convening, submit to the governor the  
25 names of persons who are recommended for appointment to the

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1 position by a majority of the committee members.

2 C. After receiving nominations for the state child  
3 advocate, the governor may make one request of the committee  
4 for submission of additional names. The committee shall  
5 promptly submit those additional names if a majority of the  
6 committee members find that additional persons would be  
7 qualified and recommends those persons for appointment as state  
8 child advocate. The governor shall fill a vacancy or appoint a  
9 successor to fill an impending vacancy in the office of state  
10 child advocate within sixty days after receiving final  
11 nominations from the committee by appointing one of the persons  
12 nominated by the committee.

13 D. The committee is administratively attached to  
14 the office of the attorney general pursuant to the provisions  
15 of Section 9-1-7 NMSA 1978.

16 E. After the initial meeting of the committee, the  
17 governor or the chair of the committee may call subsequent  
18 meetings of the committee to nominate persons to fill a current  
19 or impending vacancy in the position of state child advocate.

20 F. The members of the committee shall receive per  
21 diem and mileage as provided in the Per Diem and Mileage Act  
22 and shall receive no other compensation, perquisite or  
23 allowance."

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

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1           "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--POWERS--  
2 DUTIES.--The office:

3           A. shall:

4                   (1) review the department's provision of  
5 services to children and families, receive complaints  
6 concerning the actions of the department or of any entity that  
7 provides services to children and families through funds  
8 provided by the department and make appropriate referrals when  
9 the state child advocate determines that a child or family may  
10 be in need of assistance from the office;

11                   (2) review current systems to determine the  
12 extent to which the department's policies and procedures  
13 protect and enhance children's personal dignity, right to  
14 privacy, appropriate health care and education in accordance  
15 with state and federal law;

16                   (3) adopt and promulgate rules in accordance  
17 with the State Rules Act as are deemed necessary to carry out  
18 the provisions of the Office of Child Advocate Act;

19                   (4) operate a toll-free hotline and electronic  
20 communication portal to receive complaints pursuant to this  
21 section;

22                   (5) investigate and attempt to resolve  
23 complaints made by or on behalf of children placed in the  
24 custody of the department, receiving services under the  
25 supervision of the department, referred to the department or

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1 whose parent, guardian or custodian is under investigation by  
2 the department;

3 (6) upon investigation of a complaint, notify  
4 the complainant and subjects of the complaint of the  
5 investigation or, if the office declines to investigate a  
6 complaint or continue an investigation, notify the complainant  
7 and the subjects of the complaint that no further action will  
8 be taken by the office;

9 (7) update the complainant on the progress of  
10 the investigation every ninety days and notify the complainant  
11 and the subjects of the complaint of the final outcome within  
12 ninety days of the completion of the investigation;

13 (8) provide information about recipients'  
14 rights and responsibilities related to departmental services;

15 (9) provide information concerning child and  
16 family welfare to the governor, state agencies and legislators;

17 (10) compile an annual report pursuant to  
18 Section 7 of the Office of Child Advocate Act;

19 (11) subpoena witnesses to provide testimony  
20 in cases in which a fatality or near fatality of a child has  
21 occurred while the child was in the custody of the department;

22 (12) access information or records that are  
23 necessary for carrying out the provisions of the Office of  
24 Child Advocate Act; and

25 (13) access and review information, records or

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1 documents, including records of third parties, that the office  
2 deems necessary to conduct a thorough and independent review of  
3 a complaint so long as the department would be entitled to  
4 access or receive such information, records or documents; and

5 B. may:

6 (1) hire and contract for such professional,  
7 technical and support staff as needed to carry out the  
8 functions of the office;

9 (2) meet or communicate with any child placed  
10 in the custody of the department, receiving services under the  
11 supervision of the department, referred to the department or  
12 whose parent, guardian or custodian is under investigation by  
13 the department in a developmentally sensitive method; and

14 (3) decide whether to investigate a complaint  
15 or refer a complaint to another agency for investigation."

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

18 "[NEW MATERIAL] ANNUAL REPORT--REPORT CONTENTS--CREATION  
19 AND MAINTENANCE OF WEBSITE CONTAINING REPORT INFORMATION.--

20 A. Each year, the office shall submit to the  
21 legislative finance committee, the department and the governor  
22 on or before September 1 a report addressing services provided  
23 by the department, including:

24 (1) the quality of services provided to  
25 children and families;

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1 (2) the conditions of placements for New  
2 Mexico's children, including the number of out-of-state  
3 placements and an assessment of each active congregate care and  
4 juvenile justice facility in which children in the custody of  
5 the department are placed;

6 (3) the number of children removed from a  
7 residence of a parent, foster parent or guardian;

8 (4) the number of children returned to a  
9 household from which they were removed;

10 (5) the number of children removed from a  
11 household subsequent to being returned to a household from  
12 which they were removed;

13 (6) the number of children placed in the  
14 custody of a juvenile justice facility;

15 (7) the number of children placed in the  
16 custody of the department who have run away from a department  
17 placement, the number of children placed in the custody of the  
18 department who have been found after running away and the  
19 number of children placed in the custody of the department who  
20 are currently missing;

21 (8) the number of cases in which families  
22 subject to court-ordered treatment plans or voluntary placement  
23 agreements have absconded with children placed in the custody  
24 of the department;

25 (9) a review of systemic issues related to

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1 services for assistance to children and families within the  
2 child protection and juvenile justice systems;

3 (10) findings and recommendations related to  
4 the implementation of the federal Indian Child Welfare Act of  
5 1978 and the Indian Family Protection Act;

6 (11) recommendations related to improving  
7 services for children and families;

8 (12) data disaggregated by race, ethnicity,  
9 gender, geographic location, sexual identity, disability status  
10 and any other categories that the office deems necessary; and

11 (13) the training and certification process  
12 for the state child advocate and office staff.

13 B. The office shall create and maintain a web page  
14 on which the data contained in Subsection A of this section  
15 shall be provided in an accessible manner and updated  
16 quarterly.

17 C. Each year the annual report shall be posted to  
18 the web page created pursuant to Subsection B of this section."

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

21 "[NEW MATERIAL] TRAINING AND CERTIFICATION.--

22 A. The state child advocate shall ensure that  
23 office staff are trained in:

24 (1) federal, state, local and tribal laws,  
25 regulations and policies with respect to child protection and

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1 juvenile justice services in the state;

2 (2) investigative techniques, including  
3 trauma-informed care and questioning;

4 (3) the federal Indian Child Welfare Act of  
5 1978, the Indian Family Protection Act, tribal culture, tribal  
6 relations and sovereign nation status; and

7 (4) department policies and procedures.

8 B. The state child advocate shall develop  
9 procedures for the training and certification of appropriate  
10 staff.

11 C. An officer, employee or other representative of  
12 the office shall not investigate any complaint filed with the  
13 office unless that person is certified by the office."

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

16 "[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are  
17 employees of the office or who have contracts with the office  
18 shall not have a conflict of interest with the department or  
19 with an entity that provides services to children and families  
20 through funds provided by the department relating to the  
21 performance of their responsibilities pursuant to the  
22 Children's Code. For the purposes of this section, a conflict  
23 of interest exists whenever the state child advocate, an  
24 employee of the office or a person having a contract with the  
25 office:

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1           A. licenses, certifies or accredits a provider or  
2 facility delivering services to children and families pursuant  
3 to the Children's Code;

4           B. has a direct ownership interest in a provider or  
5 facility delivering services to children and families pursuant  
6 to the Children's Code;

7           C. is employed by or participates in the management  
8 of a provider or facility delivering services to children and  
9 families pursuant to the Children's Code; or

10          D. receives, directly or indirectly, remuneration  
11 pursuant to a compensation arrangement with a provider or  
12 facility delivering services to children and families pursuant  
13 to the Children's Code."

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

16          "[NEW MATERIAL] INCIDENTS, FATALITIES AND NEAR  
17 FATALITIES.--

18           A. The department shall provide the office with a  
19 copy of all reports related to actual physical injury to  
20 children in the custody of the department within thirty days of  
21 receiving the report, whether substantiated or unsubstantiated.

22           B. The department shall provide the office with a  
23 written notification within seventy-two hours of:

24                 (1) a fatality or near fatality of a child in  
25 its custody or referred or receiving services under the

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1 supervision of the department; and

2 (2) the restraint or seclusion of a child in  
3 its custody."

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

6 "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by  
7 the office, law enforcement agencies shall share with the  
8 office all law enforcement reports involving children  
9 identified by the agencies as having been placed in the custody  
10 of the department, receiving services under the supervision of  
11 the department, referred to the department or whose parent,  
12 guardian or custodian is under investigation by the  
13 department."

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

16 "[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

17 A. The office shall maintain the confidentiality of  
18 all case records, third-party records and court records, as  
19 well as any information gathered in the course of  
20 investigations and system monitoring duties. These records are  
21 exempt from public inspection and copying pursuant to the  
22 Inspection of Public Records Act and shall be kept confidential  
23 unless:

24 (1) disclosure is ordered by the court;

25 (2) disclosure is necessary to prevent

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1 imminent harm and the imminent harm is communicated directly to  
2 the state child advocate or staff of the office;

3 (3) disclosure is necessary to the department  
4 in order for the department to determine the appropriateness of  
5 initiating an investigation regarding potential abuse or  
6 neglect or other emergency circumstances; or

7 (4) disclosure is necessary to the department  
8 in order for the department to determine the appropriateness of  
9 initiating an investigation to determine facility compliance  
10 with applicable rules of licensure or certification or both.

11 B. Notwithstanding the provisions of Subsection A  
12 of this section, the office may publicly report any patterns of  
13 conduct or repeated incidents identified by the office in  
14 carrying out the provisions of the Office of Child Advocate  
15 Act; provided that the office shall not publicly disclose  
16 either of the following:

17 (1) individually identifiable information  
18 about a child; and

19 (2) investigation findings when there is  
20 pending law enforcement investigation or prosecution."

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

23 "[NEW MATERIAL] NOTIFICATION OF OFFICE OF CHILD  
24 ADVOCATE.--The department shall notify all children placed in  
25 the custody of the department, receiving services under the

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1 supervision of the department, referred to the department or  
2 whose parent, guardian or custodian is under investigation by  
3 the department and their parents, guardians, foster parents and  
4 identified fictive kin of the existence of the office, its  
5 purpose and function and its toll-free hotline and electronic  
6 communication portal with instructions for access."

7 SECTION 14. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 61, as amended) is amended to read:

9 "32A-2-32. CONFIDENTIALITY--RECORDS.--

10 A. All records pertaining to the child, including  
11 all related social records, behavioral health screenings,  
12 diagnostic evaluations, psychiatric reports, medical reports,  
13 social studies reports, records from local detention  
14 facilities, client-identifying records from facilities for the  
15 care and rehabilitation of delinquent children, pre-parole or  
16 supervised release reports and supervision histories obtained  
17 by the juvenile probation office, parole officers and the  
18 juvenile public safety advisory board or in possession of the  
19 department, are confidential and shall not be disclosed  
20 directly or indirectly to the public.

21 B. The disclosure of all mental health and  
22 developmental disability records shall be made pursuant to the  
23 Children's Mental Health and Developmental Disabilities Act.

24 C. The records described in Subsection A of this  
25 section, other than mental health and developmental disability

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1 records, shall be disclosed only to any of the following,  
2 provided that the agency, person or institution receiving  
3 information shall not re-release the information without proper  
4 consent or as otherwise provided by law:

- 5 (1) court personnel;
- 6 (2) the child's court appointed special  
7 advocates;
- 8 (3) the child's attorney or guardian ad litem  
9 representing the child in any matter;
- 10 (4) department personnel;
- 11 (5) corrections department personnel;
- 12 (6) law enforcement officials when the request  
13 is related to the investigation of a crime;
- 14 (7) district attorneys or children's court  
15 attorneys;
- 16 (8) a state government social services agency  
17 in any state;
- 18 (9) those persons or entities of a child's  
19 Indian tribe specifically authorized to inspect such records  
20 pursuant to the federal Indian Child Welfare Act of 1978, the  
21 Indian Family Protection Act or any regulations promulgated  
22 under ~~[that act]~~ those acts;
- 23 (10) tribal juvenile justice system and social  
24 service representatives;
- 25 (11) a foster parent, if the records are those



1 of a child currently placed with that foster parent or of a  
2 child being considered for placement with that foster parent,  
3 when the disclosure of the information is necessary for the  
4 child's treatment or care and shall include only that  
5 information necessary to provide for treatment and care of the  
6 child;

7 (12) school personnel involved with the child  
8 if the records concern the child's educational needs, but shall  
9 only include that information necessary to provide for the  
10 child's educational planning and needs;

11 (13) a health care or mental health  
12 professional involved in the evaluation or treatment of the  
13 child, the child's parents, guardians or custodian or other  
14 family members;

15 (14) representatives of the protection and  
16 advocacy system;

17 (15) the child's parent, guardian or legal  
18 custodian when the disclosure of the information is necessary  
19 for the child's treatment or care and shall include only that  
20 information necessary to provide for the treatment or care of  
21 the child;

22 (16) any other person or entity, by order of  
23 the court, having a legitimate interest in the case or the work  
24 of the court who agrees not to otherwise release the records;

25 [~~and~~]

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1 (17) the child, if fourteen years of age or  
2 older; and

3 (18) the office of child advocate and its  
4 employees and contractors, pursuant to the requirements of the  
5 Delinquency Act, if the records are needed for the purpose of  
6 implementing the Office of Child Advocate Act.

7 D. If disclosure of otherwise confidential records  
8 is made to the child or any other person or entity pursuant to  
9 a valid release of information signed by the child, all victim  
10 or witness identifying information shall be redacted or  
11 otherwise deleted.

12 E. Whoever intentionally and unlawfully releases  
13 any information or records closed to the public pursuant to  
14 this section or releases or makes other unlawful use of records  
15 in violation of this section is guilty of a petty misdemeanor.

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

20 SECTION 15. Section 32A-4-33 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 127, as amended) is amended to read:

22 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

23 A. All records or information concerning a party to  
24 a neglect or abuse proceeding, including social records,  
25 diagnostic evaluations, psychiatric or psychological reports,

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1 videotapes, transcripts and audio recordings of a child's  
2 statement of abuse or medical reports incident to or obtained  
3 as a result of a neglect or abuse proceeding or that were  
4 produced or obtained during an investigation in anticipation of  
5 or incident to a neglect or abuse proceeding shall be  
6 confidential and closed to the public.

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

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

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

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

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

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

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

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

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

5 (9) any state government or tribal government  
6 social services agency in any state or when, in the opinion of  
7 the department, it is in the best interest of the child, a  
8 governmental social services agency of another country;

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

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

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

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

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1 (14) protection and advocacy representatives  
2 pursuant to the federal Developmental Disabilities Assistance  
3 and Bill of Rights Act and the federal Protection and Advocacy  
4 for Mentally Ill Individuals Amendments Act of 1991;

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

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

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

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

21 (19) the office of child advocate and its  
22 employees and contractors, pursuant to the requirements of the  
23 Abuse and Neglect Act, if the records are needed for the  
24 purpose of implementing the Office of Child Advocate Act.

25 C. A parent, guardian or legal custodian whose

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1 child has been the subject of an investigation of abuse or  
2 neglect where no petition has been filed shall have the right  
3 to inspect any medical report, psychological evaluation, law  
4 enforcement reports or other investigative or diagnostic  
5 evaluation; provided that any identifying information related  
6 to the reporting party or any other party providing information  
7 shall be deleted. The parent, guardian or legal custodian  
8 shall also have the right to the results of the investigation  
9 and the right to petition the court for full access to all  
10 department records and information except those records and  
11 information the department finds would be likely to endanger  
12 the life or safety of any person providing information to the  
13 department.

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

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

24 SECTION 16. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2023.

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