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AN ACT

RELATING TO GUARDIANSHIPS; PROVIDING RULEMAKING AUTHORITY TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; AMENDING AND CHANGING THE NAME OF THE FAMILY SERVICES ACT; AMENDING THE KINSHIP GUARDIANSHIP ACT; PROVIDING FOR VOLUNTARY PLACEMENT OF CHILDREN; PROVIDING FOR FINANCIAL SUBSIDIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 22-12A-14 NMSA 1978 (being Laws 2019, Chapter 223, Section 14, as amended) is amended to read:

"22-12A-14. TIMELY GRADUATION AND SUPPORT FOR STUDENTS WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has experienced a disruption in the student's education" means a student who experiences one or more changes in public school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department

1 pursuant to the Abuse and Neglect Act;

2 (b) as part of a family in need of  
3 court-ordered services voluntary placement pursuant to the  
4 Voluntary Placement and Family Services Act; or

5 (c) as a delinquent if the parent  
6 wishes to disclose the adjudication of delinquency; or

7 (3) placement in a mental health treatment  
8 facility or habilitation program for developmental  
9 disabilities pursuant to the Children's Mental Health and  
10 Developmental Disabilities Act or placement in treatment  
11 foster care.

12 B. When a student who has experienced a disruption  
13 in the student's education transfers to a new public school  
14 or school district, the receiving public school or school  
15 district shall communicate with the sending public school or  
16 school district within two days of the student's enrollment.  
17 The sending public school or school district shall provide  
18 the receiving public school or school district with any  
19 requested records within two days of having received the  
20 receiving public school's or school district's communication.

21 C. A student who has experienced a disruption in  
22 the student's education because of transferring to a new  
23 public school as the result of circumstances set forth in  
24 this section shall have:

25 (1) priority placement in classes that meet

1 state graduation requirements; and

2 (2) timely placement in elective classes  
3 that are comparable to those in which the student was  
4 enrolled at the student's previous public school or schools  
5 as soon as the public school or school district receives  
6 verification from the student's records.

7 D. For a student who has experienced a disruption  
8 in the student's education at any time during the student's  
9 high school enrollment, a school district and public schools  
10 shall ensure:

11 (1) acceptance of the student's state  
12 graduation requirements for a diploma of excellence pursuant  
13 to the Public School Code;

14 (2) equal access to participation in sports  
15 and other extracurricular activities, career and technical  
16 programs or other special programs for which the student  
17 qualifies;

18 (3) timely assistance and advice from  
19 counselors to improve the student's college or career  
20 readiness; and

21 (4) that the student receives all special  
22 education services to which the student is entitled.

23 E. A student who has experienced a disruption in  
24 the student's education and has transferred between public  
25 schools in different school districts or between public

1 schools within the same school district shall receive credit  
2 for any work completed prior to the transfer, regardless of  
3 whether the transfer occurred at the end of a grading period.  
4 The department shall promulgate and adopt a rule to determine  
5 how credit shall be awarded for courses that are partially  
6 completed, and school districts shall follow the department  
7 rule."

8 SECTION 2. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
9 Chapter 77, Section 13, as amended) is amended to read:

10 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

11 A. "active efforts" means efforts that are  
12 affirmative, active, thorough and timely and that represent a  
13 higher standard of conduct than reasonable efforts;

14 B. "adult" means a person who is eighteen years of  
15 age or older;

16 C. "child" means a person who is less than  
17 eighteen years old;

18 D. "council" means the substitute care advisory  
19 council established pursuant to Section 32A-8-4 NMSA 1978;

20 E. "court", when used without further  
21 qualification, means the children's court division of the  
22 district court and includes the judge, special master or  
23 commissioner appointed pursuant to the provisions of the  
24 Children's Code or supreme court rule;

25 F. "court-appointed special advocate" means a

1 person appointed pursuant to the provisions of the  
2 Children's Court Rules to assist the court in determining the  
3 best interests of the child by investigating the case and  
4 submitting a report to the court;

5 G. "custodian" means an adult with whom the child  
6 lives who is not a parent or guardian of the child;

7 H. "department" means the children, youth and  
8 families department, unless otherwise specified;

9 I. "disproportionate minority contact" means the  
10 involvement of a racial or ethnic group with the criminal or  
11 juvenile justice system at a proportion either higher or  
12 lower than that group's proportion in the general population;

13 J. "federal Indian Child Welfare Act of 1978"  
14 means the federal Indian Child Welfare Act of 1978, as that  
15 act may be amended or its sections renumbered;

16 K. "foster parent" means a person, including a  
17 relative of the child, licensed or certified by the  
18 department or a child placement agency to provide care for  
19 children in the custody of the department or agency;

20 L. "guardian" means a person appointed as a  
21 guardian by a court or Indian tribal authority;

22 M. "guardian ad litem" means an attorney appointed  
23 by the children's court to represent and protect the best  
24 interests of the child in a case; provided that no party or  
25 employee or representative of a party to the case shall be

1 appointed to serve as a guardian ad litem;

2 N. "Indian" means, whether an adult or child, a  
3 person who is:

4 (1) a member of an Indian tribe; or

5 (2) eligible for membership in an Indian  
6 tribe;

7 O. "Indian child" means an Indian person, or a  
8 person whom there is reason to know is an Indian person,  
9 under eighteen years of age, who is neither:

10 (1) married; or

11 (2) emancipated;

12 P. "Indian child's tribe" means:

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

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

19 Q. "Indian custodian" means an Indian who,  
20 pursuant to tribal law or custom or pursuant to state law:

21 (1) is an adult with legal custody of an  
22 Indian child; or

23 (2) has been transferred temporary physical  
24 care, custody and control by the parent of the Indian child;

25 R. "Indian tribe" means an Indian nation, tribe,

1 pueblo or other band, organized group or community of Indians  
2 recognized as eligible for the services provided to Indians  
3 by the secretary because of their status as Indians,  
4 including an Alaska native village as defined in 43 U.S.C.  
5 Section 1602(c) or a regional corporation as defined in 43  
6 U.S.C. Section 1606. For the purposes of notification to and  
7 communication with a tribe as required in the Indian Family  
8 Protection Act, "Indian tribe" also includes those tribal  
9 officials and staff who are responsible for child welfare and  
10 social services matters;

11 S. "judge", when used without further  
12 qualification, means the judge of the court;

13 T. "legal custody" means a legal status created by  
14 order of the court or other court of competent jurisdiction  
15 or by operation of statute that vests in a person, department  
16 or agency the right to determine where and with whom a child  
17 shall live; the right and duty to protect, train and  
18 discipline the child and to provide the child with food,  
19 shelter, personal care, education and ordinary and emergency  
20 medical care; the right to consent to major medical,  
21 psychiatric, psychological and surgical treatment and to the  
22 administration of legally prescribed psychotropic medications  
23 pursuant to the Children's Mental Health and Developmental  
24 Disabilities Act; and the right to consent to the child's  
25 enlistment in the armed forces of the United States;

1           U. "member" or "membership" means a determination  
2 made by an Indian tribe that a person is a member of or  
3 eligible for membership in that Indian tribe;

4           V. "parent" or "parents" means a biological or  
5 adoptive parent if the biological or adoptive parent has a  
6 constitutionally protected liberty interest in the care and  
7 custody of the child or a person who has lawfully adopted an  
8 Indian child pursuant to state law or tribal law or tribal  
9 custom;

10          W. "permanency plan" means a determination by the  
11 court that the child's interest will be served best by:

12                 (1) reunification;

13                 (2) placement for adoption after the  
14 parents' rights have been relinquished or terminated or after  
15 a motion has been filed to terminate parental rights;

16                 (3) placement with a person who will be the  
17 child's permanent guardian;

18                 (4) placement in the legal custody of the  
19 department with the child placed in the home of a fit and  
20 willing relative; or

21                 (5) placement in the legal custody of the  
22 department under a planned permanent living arrangement;

23          X. "person" means an individual or any other form  
24 of entity recognized by law;

25          Y. "plan of care" means a plan created by a health SJC/SB 31  
Page 8



1 care professional intended to ensure the safety and  
2 well-being of a substance-exposed newborn by addressing the  
3 treatment needs of the child and any of the child's parents,  
4 relatives, guardians, family members or caregivers to the  
5 extent those treatment needs are relevant to the safety of  
6 the child;

7 Z. "preadoptive parent" means a person with whom a  
8 child has been placed for adoption;

9 AA. "protective supervision" means the right to  
10 visit the child in the home where the child is residing,  
11 inspect the home, transport the child to court-ordered  
12 diagnostic examinations and evaluations and obtain  
13 information and records concerning the child;

14 BB. "relative" means a person related to another  
15 person:

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

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

22 CC. "reservation" means:

23 (1) "Indian country" as defined in 18 U.S.C.  
24 Section 1151;

25 (2) any lands to which the title is held by

1 the United States in trust for the benefit of an Indian tribe  
2 or individual; or

3 (3) any lands held by an Indian tribe or  
4 individual subject to a restriction by the United States  
5 against alienation;

6 DD. "reunification" means either a return of the  
7 child to the parent or to the home from which the child was  
8 removed or a return to the noncustodial parent;

9 EE. "secretary" means the United States  
10 secretary of the interior;

11 FF. "tribal court" means a court with jurisdiction  
12 over child custody proceedings that is either a court of  
13 Indian offenses, a court established and operated under the  
14 law or custom of an Indian tribe or any other administrative  
15 body that is vested by an Indian tribe with authority over  
16 child custody proceedings;

17 GG. "tribal court order" means a document issued  
18 by a tribal court that is signed by an appropriate authority,  
19 including a judge, governor or tribal council member, and  
20 that orders an action that is within the tribal court's  
21 jurisdiction; and

22 HH. "tribunal" means any judicial forum other than  
23 the court."

24 SECTION 3. Section 32A-3A-15 NMSA 1978 (being  
25 Laws 2019, Chapter 247, Section 14) is recompiled as

1 Section 32A-1-22 NMSA 1978 and is amended to read:

2 "32A-1-22. MEDICAL CANNABIS PROGRAM--REMOVAL OF  
3 CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--  
4 MEDICAL CARE.--

5 A. An individual's participation in the state's  
6 medical cannabis program established pursuant to the  
7 Lynn and Erin Compassionate Use Act shall not in itself  
8 constitute grounds for:

9 (1) intervention, removal or placement into  
10 state custody of a child in that individual's care pursuant  
11 to the Abuse and Neglect Act; or

12 (2) the provision of state prevention,  
13 diversion or intervention services to that individual's  
14 family pursuant to the Voluntary Placement and  
15 Family Services Act.

16 B. A person shall not be denied custody of or  
17 visitation or parenting time with a child, and there is no  
18 presumption of neglect or child endangerment, for conduct  
19 allowed under the Lynn and Erin Compassionate Use Act.

20 C. A school shall not refuse to enroll or  
21 otherwise penalize a person solely for conduct allowed  
22 pursuant to the Lynn and Erin Compassionate Use Act, unless  
23 failing to do so would cause the school to lose a monetary or  
24 licensing-related benefit under federal law or regulation.

25 D. For the purposes of medical care, including an

1 organ transplant, a qualified patient's use of cannabis  
2 pursuant to the Lynn and Erin Compassionate Use Act shall be  
3 considered the equivalent of the use of any other medication  
4 under the direction of a physician and shall not be  
5 considered to constitute the use of an illicit substance or  
6 otherwise disqualify a qualified patient from medical care."

7 SECTION 4. Section 32A-3A-1 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 63, as amended) is amended to read:

9 "32A-3A-1. SHORT TITLE.--Chapter 32A, Article 3A  
10 NMSA 1978 may be cited as the "Voluntary Placement and  
11 Family Services Act".

12 SECTION 5. Section 32A-3A-2 NMSA 1978 (being Laws 1993,  
13 Chapter 77, Section 64, as amended) is amended to read:

14 "32A-3A-2. DEFINITIONS.--As used in the Voluntary  
15 Placement and Family Services Act:

16 A. "child or family in need of family services"  
17 means a family:

18 (1) whose child's behavior endangers the  
19 child's health, safety, education or well-being;

20 (2) whose child is excessively absent from  
21 public school as defined in the Attendance for Success Act;

22 (3) whose child is absent from the child's  
23 place of residence for twenty-four hours or more without the  
24 consent of the parent, guardian or custodian;

25 (4) in which the parent, guardian or

1 custodian of a child refuses to permit the child to live with  
2 the parent, guardian or custodian; or

3 (5) in which the child refuses to live with  
4 the child's parent, guardian or custodian;

5 B. "family services" means services that address  
6 specific needs of the child or family;

7 C. "guardian" means a person appointed as a  
8 guardian by a court or Indian tribal authority;

9 D. "guardianship assistance agreement" means a  
10 written agreement entered into by the prospective guardian  
11 and the department or Indian tribe prior to the establishment  
12 of the guardianship by a court;

13 E. "guardianship assistance payments" means  
14 payments made by the department to a kinship guardian or  
15 successor guardian on behalf of a child pursuant to the terms  
16 of a guardianship assistance agreement;

17 F. "guardianship assistance program" means the  
18 financial subsidy program provided for in the Voluntary  
19 Placement and Family Services Act;

20 G. "kinship" means the relationship that exists  
21 between a child and a relative of the child, a godparent, a  
22 member of the child's tribe or clan or an adult with whom the  
23 child has a significant bond;

24 H. "subsidized guardianship" means a guardianship  
25 that meets subsidy eligibility criteria pursuant to the

1 Voluntary Placement and Family Services Act; and

2 I. "voluntary placement agreement" means a written  
3 agreement between the department and the parent or guardian  
4 of a child."

5 SECTION 6. Section 32A-3A-6 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 68) is amended to read:

7 "32A-3A-6. VOLUNTARY PLACEMENT OUTSIDE HOME--VOLUNTARY  
8 PLACEMENT AGREEMENT.--

9 A. The department may accept legal custody of a  
10 minor child from a parent or guardian for temporary voluntary  
11 placement outside the home through a voluntary placement  
12 agreement.

13 B. When a parent is considering a voluntary  
14 placement agreement, the department shall notify the office  
15 of family representation and advocacy. The office of family  
16 representation and advocacy shall assign the parent or  
17 guardian legal counsel prior to the signing and for the  
18 duration of the voluntary placement agreement. Prior to the  
19 signing of the voluntary placement agreement, counsel shall  
20 explain to the parent or guardian:

21 (1) the terms and consequences of the  
22 consent to the voluntary placement agreement, in detail;

23 (2) that the parent or guardian can withdraw  
24 consent at any time and the child shall be returned within  
25 forty-eight hours of when the written or verbal demand was

1 made; and

2 (3) that before the expiration of the  
3 forty-eight hours, the department may prevent the immediate  
4 return of the child by filing a petition alleging neglect or  
5 abuse and by obtaining a court order granting the department  
6 temporary custody of the child.

7 C. The department shall notify the office of  
8 family representation and advocacy when the voluntary  
9 placement agreement is terminated or expires.

10 D. The parent or guardian may request a  
11 collaborative meeting with the department prior to signing or  
12 at any point throughout the duration of the voluntary  
13 placement agreement. The department shall schedule the  
14 collaborative meeting in a timely manner.

15 E. Upon the signing of a voluntary placement  
16 agreement, the department shall notify the office of family  
17 representation and advocacy. The office of family  
18 representation and advocacy shall assign the child a guardian  
19 ad litem. Only an attorney with appropriate experience shall  
20 be appointed as guardian ad litem of the child. When a  
21 voluntary placement agreement is subject to court review, the  
22 guardian ad litem shall inform the court as to the child's  
23 wishes.

24 F. The parent or guardian, child or department may  
25 file a petition for court review of the voluntary placement

1 agreement prior to the signing or at any point throughout the  
2 duration of the voluntary placement agreement.

3 G. If court review is requested prior to signing  
4 the voluntary placement agreement, before approving the  
5 voluntary placement agreement, the court shall ensure that  
6 the voluntary placement agreement is executed in writing.

7 The court shall certify on the record that:

8 (1) the terms and consequences of the  
9 consent were fully explained in detail and in a manner that  
10 is understandable to the parent or guardian;

11 (2) the child's parent or guardian fully  
12 understands the English language or that the voluntary  
13 placement agreement was interpreted into the primary language  
14 of the child's parent or guardian;

15 (3) the child's parent or guardian is  
16 voluntarily entering into the voluntary placement agreement;

17 (4) confidentiality has been requested or  
18 indicated and execution of consent was made in a closed court  
19 proceeding not open to the public; and

20 (5) the child's parent or guardian is of  
21 sound mind and judgment."

22 SECTION 7. Section 32A-3A-7 NMSA 1978 (being Laws 1993,  
23 Chapter 77, Section 69, as amended) is amended to read:

24 "32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

25 A. A child may remain in voluntary placement for



1 up to one hundred eighty consecutive days.

2 B. Prior to the expiration of the voluntary  
3 placement agreement, if the parent or guardian agrees in  
4 writing that the child is to remain in voluntary placement  
5 for up to an additional one hundred eighty days, the  
6 department shall file a petition to extend the voluntary  
7 placement. The department shall provide notice of the  
8 hearing on the petition for extension to the parent or  
9 guardian.

10 C. The court shall hold a hearing and enter a  
11 written final order within thirty days of the filing of the  
12 petition. If the court grants an extension of up to one  
13 hundred eighty days, the order shall contain findings that  
14 proper notice was given, the parent or guardian consents to  
15 the extension of the voluntary placement and the voluntary  
16 placement agreement is in the child's best interest. If an  
17 extension is denied, the court shall enter a written order  
18 denying the extension and directing the department to  
19 immediately return the child to the parent or guardian.

20 D. In no event shall a child remain in voluntary  
21 placement for a period in excess of three hundred sixty-five  
22 days in any two-year period.

23 E. Any placement described in this section shall  
24 not be considered abandonment by a parent, guardian or  
25 custodian or other family member."

1 SECTION 8. Section 32A-3A-8 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 70, as amended) is amended to read:

3 "32A-3A-8. VOLUNTARY PLACEMENT--RETURN OF CHILD TO  
4 PARENT--DEPARTMENT DUTY UPON PARENT REFUSAL TO REGAIN  
5 CUSTODY.--

6 A. At any time, a parent or guardian may demand  
7 and obtain the return of a child voluntarily placed outside  
8 the home without seeking or obtaining court approval. The  
9 child shall be returned within forty-eight hours of when the  
10 written or verbal demand was made. However, before the  
11 expiration of the forty-eight-hour period, the department may  
12 prevent the immediate return of the child by filing a  
13 petition pursuant to the Family in Need of Court-Ordered  
14 Services Act or the Abuse and Neglect Act and proceeding  
15 under the applicable act.

16 B. If the parent or guardian of the child refuses  
17 to or cannot accept the child back into the parent's or  
18 guardian's custody, before the department files a petition  
19 alleging that the child is a neglected child or that the  
20 child's family needs court-ordered family services, the  
21 department shall:

22 (1) make reasonable efforts to place the  
23 child back in the custody of the parent or guardian and  
24 tailor the reasonable efforts to the facts and circumstances  
25 of the case and shall:

1 (a) document in writing the details  
2 demonstrating the quality and quantity of services and  
3 assistance provided to alleviate the causes and conditions  
4 leading to the parent or guardian's refusal or inability to  
5 accept the child back into the parent or guardian's custody,  
6 on the court record;

7 (b) assist the child's parent or  
8 guardian through the steps of a department case plan and with  
9 accessing or developing the resources necessary to satisfy  
10 the department case plan; and

11 (c) conduct a comprehensive assessment  
12 of the circumstances of the child's family with a goal of  
13 reunification;

14 (2) make reasonable efforts to maintain or  
15 reunite a child with the child's family by:

16 (a) identifying and establishing  
17 appropriate services and assisting the child's parent or  
18 guardian to overcome barriers to reunification, including  
19 assisting the parent or guardian in obtaining those services;

20 (b) conducting or causing to be  
21 conducted a diligent search for the child's extended family  
22 members and contacting and consulting with the child's  
23 extended family members and adult relatives to provide family  
24 structure and support for the child and the child's parent or  
25 guardian;

1 (c) offering and employing culturally  
2 appropriate family preservation strategies;

3 (d) taking steps to keep the child and  
4 the child's siblings together whenever possible; and

5 (e) identifying community resources,  
6 including housing, financial assistance, transportation,  
7 mental health services, health care, substance use prevention  
8 and treatment and peer support services, and assisting the  
9 child's parent or guardian; and

10 (3) record all efforts made toward  
11 reasonable efforts and report them to the court."

12 SECTION 9. Section 32A-3A-10 NMSA 1978 (being  
13 Laws 1993, Chapter 77, Section 72) is amended to read:

14 "32A-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--  
15 The parent or guardian whose child is in voluntary placement  
16 shall have the following rights to:

17 A. have visitation with the child;

18 B. be informed of changes in the child's school or  
19 of changes in the child's placement by the department;

20 C. authorize decisions regarding medical and  
21 dental care and behavioral health services, including  
22 decisions that affect the daily care, support, safety and  
23 well-being of the child;

24 D. permit the department to consent to emergency  
25 services to ensure the safety and well-being of the child,

1 including medical, dental or behavioral health treatment, if  
2 the department is unable to make immediate prior contact with  
3 the parent or guardian. The department shall notify the  
4 parent or guardian within two hours of making emergency  
5 decisions due to inability to make prior contact;

6 E. consent to all nonemergency and nonroutine  
7 medical care provided for the child;

8 F. make decisions regarding participation and  
9 attendance in cultural and religious events;

10 G. make decisions of substantial legal  
11 significance; and

12 H. serve as the educational decision maker unless  
13 the department determines that doing so would be contrary to  
14 the best interests of the child, in which case the foster  
15 parent or other substitute care provider will serve as the  
16 educational decision maker."

17 SECTION 10. A new section of the Voluntary Placement  
18 and Family Services Act is enacted to read:

19 "CONFIDENTIALITY.--

20 A. All records or information, whether on file  
21 with the court, an agency, the department, an attorney or  
22 other provider of professional services, concerning a party  
23 to a voluntary placement proceeding shall be confidential and  
24 closed to the public.

25 B. The disclosure of all mental health and

1 developmental disability records shall be made pursuant to  
2 the Children's Mental Health and Developmental  
3 Disabilities Act.

4 C. The records described in Subsection A of this  
5 section, other than mental health and developmental  
6 disability records, shall be disclosed only to the parties  
7 and:

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

12 (2) the attorney, including a public  
13 defender, representing the child in any child proceeding  
14 pursuant to the Children's Code;

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

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

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

24 (6) any state government social services  
25 agency in any state or, when in the opinion of the department

1 it is in the best interest of the child, a governmental  
2 social services agency of another country;

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

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

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

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

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

25 (12) children's safehouse organizations

1 conducting investigatory interviews of children on behalf of  
2 a law enforcement agency or the department;

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

8 (14) any person or entity attending a  
9 meeting arranged by the department to discuss the safety,  
10 well-being and permanency of a child when the parent,  
11 guardian or child over the age of fourteen years has  
12 consented to the disclosures occurring during the meeting;  
13 and

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

17 D. Whoever intentionally and unlawfully releases  
18 any information or records closed to the public pursuant to  
19 the Voluntary Placement and Family Services Act or releases  
20 or makes other unlawful use of records in violation of that  
21 act is guilty of a petty misdemeanor and shall be sentenced  
22 pursuant to the provisions of Section 31-19-1 NMSA 1978.

23 E. The department shall promulgate rules for  
24 implementing disclosure of records pursuant to this section  
25 and in compliance with state and federal law and the



1 Children's Court Rules."

2 SECTION 11. A new section of the Voluntary Placement  
3 and Family Services Act is enacted to read:

4 "CONDUCT OF HEARINGS.--

5 A. All hearings held pursuant to the  
6 Voluntary Placement and Family Services Act shall be closed  
7 to the general public.

8 B. Only the parties to a proceeding, their counsel  
9 and other persons approved by the court may be present at a  
10 closed hearing. Other persons the court finds to have a  
11 proper interest in the case or in the work of the court may  
12 be admitted by the court to closed hearings on the condition  
13 they refrain from divulging any information that would  
14 identify the child or family involved in the proceedings."

15 SECTION 12. A new section of the Voluntary Placement  
16 and Family Services Act is enacted to read:

17 "VOLUNTARY PLACEMENT--PLACEMENT.--

18 A. If the department accepts legal custody of a  
19 child, the child shall be placed in the least restrictive  
20 setting that most closely approximates a family in which the  
21 child's special needs, if any, may be met. The child shall  
22 be placed within reasonable proximity to the child's home,  
23 taking into account any special needs of the child.

24 Preference shall be given to placement with:

25 (1) a relative of the child;

1                   (2) a licensed foster home or any home  
2 authorized by law for the provision of foster care or group  
3 care or use as a protective residence;

4                   (3) a facility operated by a licensed child  
5 welfare services agency; or

6                   (4) a facility provided for in the  
7 Children's Shelter Care Act.

8                   B. The department shall provide the child with  
9 shelter in an appropriate facility, pursuant to the  
10 provisions of Section 32A-3B-6 NMSA 1978, that is located as  
11 close as possible to the child's residence. The child shall  
12 not be held in a jail or other facility intended or used for  
13 the incarceration of adults charged or convicted of criminal  
14 offenses or a facility for the detention of children alleged  
15 to be or adjudicated as delinquent children.

16                   C. If the child is placed in an evaluation  
17 facility or out-of-home treatment or rehabilitation program,  
18 the child shall be admitted pursuant to the provisions of  
19 Sections 32A-6A-19 through 32A-6A-22 NMSA 1978.

20                   D. The department shall make reasonable efforts to  
21 place siblings in custody by court order or voluntary  
22 placement agreement together, unless such joint placement  
23 would be contrary to the safety or well-being of any of the  
24 siblings in custody, and whether any siblings not jointly  
25 placed have been provided reasonable visitation or other

1 ongoing interaction, unless visitation or other ongoing  
2 interaction would be contrary to the safety or well-being of  
3 any of the siblings."

4 SECTION 13. A new section of the Voluntary Placement  
5 and Family Services Act is enacted to read:

6 "FINANCIAL SUBSIDIES--ELIGIBILITY.--

7 A. Prior to a guardianship being granted pursuant  
8 to the Kinship Guardianship Act or the Abuse and Neglect Act  
9 and in order to be eligible for guardianship assistance  
10 payments, the following conditions shall be satisfied:

11 (1) the child shall be in the custody of the  
12 department and have been removed from the child's home:

13 (a) pursuant to a voluntary placement  
14 agreement; or

15 (b) as a result of a judicial  
16 determination that the placement and care of the child should  
17 be vested in the department;

18 (2) the child shall be eligible for foster  
19 care maintenance payments while in the home of the  
20 prospective guardian;

21 (3) the child shall have been placed by the  
22 department and shall have lived with the prospective guardian  
23 for at least six consecutive months following the prospective  
24 guardian's licensure as a foster parent;

25 (4) the child has a strong attachment to the

1 prospective guardian and the prospective guardian is a  
2 relative or fictive kin of the child;

3 (5) the prospective guardian has a strong  
4 commitment to caring permanently for the child, documented  
5 via a meeting held prior to the proposed guardianship between  
6 the prospective guardian and the department discussing the  
7 prospective guardian's long-term commitment;

8 (6) if the child is fourteen years of age or  
9 older, the child has been consulted by the department and  
10 consents to the guardianship arrangement; and

11 (7) a fully executed guardianship assistance  
12 agreement is approved by the department; or

13 (8) the child is a sibling of a child who  
14 meets the eligibility criteria set forth in this subsection.

15 B. The department shall promulgate rules for  
16 guardianship assistance payments and payment of nonrecurring  
17 expenses."

18 SECTION 14. A new section of the Voluntary Placement  
19 and Family Services Act is enacted to read:

20 "FINANCIAL SUBSIDIES--NONRECURRING EXPENSES.--  
21 Nonrecurring expenses incurred by a prospective guardian  
22 associated with establishing a subsidized guardianship may be  
23 reimbursed for each eligible child, up to an amount  
24 established by the department, and also for any of an  
25 eligible child's siblings."

1 SECTION 15. A new section of the Voluntary Placement  
2 and Family Services Act is enacted to read:

3 "FINANCIAL SUBSIDIES--GUARDIANSHIP ASSISTANCE  
4 AGREEMENT.--

5 A. In order for a prospective guardian to receive  
6 guardianship assistance payments, the department shall  
7 negotiate and enter into a written guardianship assistance  
8 agreement before the guardianship is finalized with the  
9 prospective guardian of an eligible child. The agreement  
10 shall specify the following:

11 (1) the amount of and manner in which  
12 guardianship assistance payments will be provided;

13 (2) additional services and assistance for  
14 which the child and the prospective guardian will be  
15 eligible;

16 (3) a procedure by which the prospective  
17 guardian may apply for additional services;

18 (4) the responsibility of the prospective  
19 guardian to report changes in the needs of the child or the  
20 circumstances of the prospective guardian that affect  
21 guardianship assistance payments;

22 (5) reasonable and verified nonrecurring  
23 expenses associated with establishing a subsidized  
24 guardianship pursuant to the provisions of Section 14 of this  
25 2023 act; and

1 (6) terms by which the guardianship  
2 assistance agreement may be terminated and the ability of the  
3 department to recoup funds received due to improper payment.

4 B. A copy of the fully executed guardianship  
5 assistance agreement shall be given to the prospective  
6 guardian and to the department."

7 SECTION 16. A new section of the Voluntary Placement  
8 and Family Services Act is enacted to read:

9 "FINANCIAL SUBSIDIES--SUCCESSOR GUARDIANS.--

10 A. In order for a successor guardian to be  
11 eligible for guardianship assistance payments if the  
12 successor guardian serves as guardian in the event the  
13 guardian dies or is incapacitated, the successor guardian  
14 shall be named in the guardianship assistance agreement and  
15 any amendments thereto.

16 B. The department may pay the cost of nonrecurring  
17 expenses associated with the successor guardian obtaining a  
18 subsidized guardianship of the child, up to an amount  
19 established by the department.

20 C. The successor guardian does not need to be a  
21 relative and does not need to be licensed as a foster parent  
22 to receive guardianship assistance payments."

23 SECTION 17. A new section of the Voluntary Placement  
24 and Family Services Act is enacted to read:

25 "FINANCIAL SUBSIDIES--DISCONTINUANCE OF GUARDIANSHIP

1 ASSISTANCE PAYMENTS.--

2 A. The department shall immediately discontinue  
3 guardianship assistance payments when the department is  
4 advised or determines a child or guardian no longer meets the  
5 criteria to be eligible for guardianship assistance payments.

6 B. The department shall notify the guardian in  
7 writing of a discontinuation of guardianship assistance  
8 payments and the reasons for discontinuation.

9 C. The discontinuance of guardianship assistance  
10 payments does not terminate a guardianship or a guardian's  
11 legal responsibility that has been established by a court."

12 SECTION 18. A new section of the Voluntary Placement  
13 and Family Services Act is enacted to read:

14 "FINANCIAL SUBSIDIES--ADMINISTRATIVE APPEAL OF  
15 DECISIONS.--A child or prospective guardian may appeal a  
16 decision by the department to establish, deny, reduce or  
17 discontinue guardianship assistance payments within thirty  
18 days of the department's decision."

19 SECTION 19. A new section of the Voluntary Placement  
20 and Family Services Act is enacted to read:

21 "DEPARTMENT DUTIES--RULEMAKING.--The department shall  
22 promulgate rules as necessary to implement the provisions of  
23 the Voluntary Placement and Family Services Act."

24 SECTION 20. Section 32A-4-2 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 96, as amended) is amended to read:

1 "32A-4-2. DEFINITIONS.--As used in the Abuse and  
2 Neglect Act:

3 A. "abandonment" includes instances when the  
4 parent, without justifiable cause:

5 (1) left the child without provision for the  
6 child's identification for a period of fourteen days; or

7 (2) left the child with others, including  
8 the other parent or an agency, without provision for support  
9 and without communication for a period of:

10 (a) three months if the child was under  
11 six years of age at the commencement of the three-month  
12 period; or

13 (b) six months if the child was over  
14 six years of age at the commencement of the six-month period;

15 B. "abused child" means a child:

16 (1) who has suffered or who is at risk of  
17 suffering serious harm because of the action or inaction of  
18 the child's parent, guardian or custodian;

19 (2) who has suffered physical abuse,  
20 emotional abuse or psychological abuse inflicted or caused by  
21 the child's parent, guardian or custodian;

22 (3) who has suffered sexual abuse or sexual  
23 exploitation inflicted by the child's parent, guardian or  
24 custodian;

25 (4) whose parent, guardian or custodian has



1 knowingly, intentionally or negligently placed the child in a  
2 situation that may endanger the child's life or health; or

3 (5) whose parent, guardian or custodian has  
4 knowingly or intentionally tortured, cruelly confined or  
5 cruelly punished the child;

6 C. "aggravated circumstances" includes those  
7 circumstances in which the parent, guardian or custodian has:

8 (1) attempted, conspired to cause or caused  
9 great bodily harm to the child or great bodily harm or death  
10 to the child's sibling;

11 (2) attempted, conspired to cause or caused  
12 great bodily harm or death to another parent, guardian or  
13 custodian of the child;

14 (3) attempted, conspired to subject or has  
15 subjected the child to torture, chronic abuse or sexual  
16 abuse; or

17 (4) had parental rights over a sibling of  
18 the child terminated involuntarily;

19 D. "educational decision maker" means an  
20 individual appointed by the children's court to attend school  
21 meetings and to make decisions about the child's education  
22 that a parent could make under law, including decisions about  
23 the child's educational setting, and the development and  
24 implementation of an individual education plan for the child;

25 E. "fictive kin" means a person not related by

1 birth, adoption or marriage with whom a child has an  
2 emotionally significant relationship;

3 F. "great bodily harm" means an injury to a person  
4 that creates a high probability of death, that causes serious  
5 disfigurement or that results in permanent or protracted loss  
6 or impairment of the function of a member or organ of the  
7 body;

8 G. "neglected child" means a child:

9 (1) who has been abandoned by the child's  
10 parent, guardian or custodian;

11 (2) who is without proper parental care and  
12 control or subsistence, education, medical or other care or  
13 control necessary for the child's well-being because of the  
14 faults or habits of the child's parent, guardian or custodian  
15 or the failure or refusal of the parent, guardian or  
16 custodian, when able to do so, to provide them;

17 (3) who has been physically or sexually  
18 abused, when the child's parent, guardian or custodian knew  
19 or should have known of the abuse and failed to take  
20 reasonable steps to protect the child from further harm;

21 (4) whose parent, guardian or custodian is  
22 unable to discharge that person's responsibilities to and for  
23 the child because of incarceration, hospitalization or  
24 physical or mental disorder or incapacity; or

25 (5) who has been placed for care or adoption

1 in violation of the law; provided that nothing in the  
2 Children's Code shall be construed to imply that a child who  
3 is being provided with treatment by spiritual means alone  
4 through prayer, in accordance with the tenets and practices  
5 of a recognized church or religious denomination, by a duly  
6 accredited practitioner thereof is for that reason alone a  
7 neglected child within the meaning of the Children's Code;  
8 and further provided that no child shall be denied the  
9 protection afforded to all children under the  
10 Children's Code;

11 H. "physical abuse" includes any case in which the  
12 child suffers strangulation or suffocation and any case in  
13 which the child exhibits evidence of skin bruising, bleeding,  
14 malnutrition, failure to thrive, burns, fracture of any bone,  
15 subdural hematoma, soft tissue swelling or death and:

16 (1) there is not a justifiable explanation  
17 for the condition or death;

18 (2) the explanation given for the condition  
19 is at variance with the degree or nature of the condition;

20 (3) the explanation given for the death is  
21 at variance with the nature of the death; or

22 (4) circumstances indicate that the  
23 condition or death may not be the product of an accidental  
24 occurrence;

25 I. "relative" means a person related to another

1 person by birth, adoption or marriage within the fifth degree  
2 of consanguinity;

3 J. "sexual abuse" includes criminal sexual  
4 contact, incest or criminal sexual penetration, as those acts  
5 are defined by state law;

6 K. "sexual exploitation" includes:

7 (1) allowing, permitting or encouraging a  
8 child to engage in prostitution;

9 (2) allowing, permitting, encouraging or  
10 engaging a child in obscene or pornographic photographing; or

11 (3) filming or depicting a child for obscene  
12 or pornographic commercial purposes, as those acts are  
13 defined by state law;

14 L. "sibling" means a brother or sister having one  
15 or both parents in common by birth or adoption;

16 M. "strangulation" has the same meaning as set  
17 forth in Section 30-3-11 NMSA 1978;

18 N. "suffocation" has the same meaning as set forth  
19 in Section 30-3-11 NMSA 1978; and

20 O. "transition plan" means an individualized  
21 written plan for a child, based on the unique needs of the  
22 child, that outlines all appropriate services to be provided  
23 to the child to increase independent living skills. The plan  
24 shall also include responsibilities of the child, and any  
25 other party as appropriate, to enable the child to be

1 self-sufficient upon emancipation."

2 SECTION 21. Section 32A-28-2 NMSA 1978 (being  
3 Laws 2022, Chapter 41, Section 2) is amended to read:

4 "32A-28-2. DEFINITIONS.--As used in the Indian Family  
5 Protection Act:

6 A. "active efforts" means efforts that are  
7 affirmative, active, thorough and timely and that represent a  
8 higher standard of conduct than reasonable efforts;

9 B. "adoptive placement" means a permanent  
10 placement of an Indian child for adoption, including an  
11 action resulting in a final decree of adoption;

12 C. "child custody proceeding" means an action for  
13 foster care placement, termination of parental rights,  
14 permanent guardianship or adoptive placement or an action  
15 pursuant to Section 32A-3A-8 NMSA 1978 or the Family in Need  
16 of Court-Ordered Services Act and includes investigations and  
17 other preliminary activities preceding the formal initiation  
18 of an action, but does not include:

19 (1) delinquency proceedings; and

20 (2) custodial proceedings or kinship  
21 guardianships pursuant to Chapter 40 NMSA 1978;

22 D. "cultural compact" means an agreement that  
23 documents how an Indian child placed in an adoptive or  
24 guardianship home will continue to actively participate in  
25 the child's cultural learning and activities and that is

1 entered into among:

2 (1) the adoptive parents or guardians of the  
3 Indian child, which parents or guardians are not members of  
4 the Indian child's tribe; and

5 (2) the Indian child's tribe;

6 E. "discussion with an Indian tribe" means  
7 documented good faith efforts to actively communicate and  
8 work with an Indian tribe;

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

16 G. "fictive kin" means a person:

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

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

25 (3) chosen by an Indian child who is

1 fourteen years of age or older, regardless of when the  
2 relationship between the person and the Indian child was  
3 established, when it is in the best interest of the child to  
4 identify that person as fictive kin; and

5 H. "foster care placement" means:

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

13 (2) the temporary placement of an Indian  
14 child in foster care pursuant to a voluntary agreement  
15 entered into between a parent, guardian or Indian custodian  
16 and the department pursuant to the Voluntary Placement and  
17 Family Services Act."

18 SECTION 22. Section 40-10B-3 NMSA 1978 (being  
19 Laws 2001, Chapter 167, Section 3, as amended) is amended to  
20 read:

21 "40-10B-3. DEFINITIONS.--As used in the  
22 Kinship Guardianship Act:

23 A. "caregiver" means an adult, who is not a parent  
24 of a child, with whom a child resides and who provides that  
25 child with the care, maintenance and supervision consistent

1 with the duties and responsibilities of a parent of the  
2 child;

3 B. "child" means an individual who is a minor;

4 C. "department" means the children, youth and  
5 families department;

6 D. "guardian" means a person appointed as a  
7 guardian by a court or Indian tribal authority;

8 E. "Indian" means, whether an adult or child, a  
9 person who is:

10 (1) a member of an Indian tribe; or

11 (2) eligible for membership in an Indian  
12 tribe;

13 F. "Indian child" means an Indian person, or a  
14 person whom there is reason to know is an Indian person,  
15 under eighteen years of age, who is neither:

16 (1) married; or

17 (2) emancipated;

18 G. "Indian child's tribe" means:

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

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

25 H. "Indian custodian" means an Indian who,



1 pursuant to tribal law or custom or pursuant to state law:

2 (1) is an adult with legal custody of an  
3 Indian child; or

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

6 I. "Indian tribe" means an Indian nation, tribe,  
7 pueblo or other band, organized group or community of Indians  
8 recognized as eligible for the services provided to Indians  
9 by the secretary of the interior because of their status as  
10 Indians, including an Alaska native village as defined in  
11 43 U.S.C. Section 1602(c) or a regional corporation as  
12 defined in 43 U.S.C. Section 1606. For the purposes of  
13 notification to and communication with a tribe as required in  
14 the Indian Family Protection Act, "Indian tribe" also  
15 includes those tribal officials and staff who are responsible  
16 for child welfare and social services matters;

17 J. "kinship" means the relationship that exists  
18 between a child and a relative of the child, a godparent, a  
19 member of the child's tribe or clan or an adult with whom the  
20 child has a significant bond;

21 K. "parent" means a biological or adoptive parent  
22 of a child whose parental rights have not been terminated and  
23 includes an individual identified as a parent under the  
24 New Mexico Uniform Parentage Act; and

25 L. "relative" means an individual related to a

1 child as a spouse, parent, stepparent, brother, sister,  
2 stepbrother, stepsister, half-brother, half-sister, uncle,  
3 aunt, niece, nephew, first cousin or any person denoted by  
4 the prefix "grand" or "great", or the spouse or former spouse  
5 of the persons specified."

6 SECTION 23. Section 40-10B-5 NMSA 1978 (being  
7 Laws 2001, Chapter 167, Section 5, as amended) is amended  
8 to read:

9 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

13 (1) a kinship caregiver;

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

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

21 (a) the purpose and effect of the  
22 guardianship;

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

1 (c) that the parent may appear in court  
2 to contest the guardianship; or

3 (4) a caregiver with whom the department has  
4 placed the child pursuant to the Children's Code.

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

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

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

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

16 (4) the name and address of the petitioner;

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

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

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

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

25 (9) a statement that the petitioner agrees

1 to accept the duties and responsibilities of guardianship;

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

6 (11) whether the child is an Indian child or  
7 there is reason to know that the child is an Indian child,  
8 and subject to provisions of the Indian Family Protection Act  
9 and, if so:

10 (a) the Indian child's tribe;

11 (b) the tribal affiliations of the  
12 Indian child's parents; and

13 (c) active efforts made to comply with  
14 the notice requirements pursuant to the Indian Family  
15 Protection Act, including results of the contact and the  
16 names, addresses, titles and telephone numbers of the persons  
17 contacted. Copies of any correspondence with the Indian  
18 child's tribe shall be attached as exhibits to the petition;  
19 and

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

22 SECTION 24. Section 40-10B-6 NMSA 1978 (being  
23 Laws 2001, Chapter 167, Section 6, as amended) is amended to  
24 read:

25 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

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

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

6                   (1) the department if there is any pending  
7 matter relating to the child pursuant to the provisions of  
8 the Children's Code;

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

11                   (3) the parents of the child;

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

14                   (5) if the child is an Indian child or there  
15 is reason to know the child is an Indian child subject to the  
16 provisions of the Indian Family Protection Act, the  
17 appropriate Indian tribe and any "Indian custodian",  
18 together with a notice of pendency of the guardianship  
19 proceedings, pursuant to the provisions of the Indian Family  
20 Protection Act.

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

25           D. The persons required to be served pursuant to

1 Subsection B of this section have a right to file a response  
2 as parties to this action. Other persons may intervene  
3 pursuant to Rule 1-024 NMRA."

4 SECTION 25. Section 40-10B-7 NMSA 1978 (being  
5 Laws 2001, Chapter 167, Section 7) is amended to read:

6 "40-10B-7. TEMPORARY GUARDIANSHIP PENDING HEARING.--

7 A. After the filing of the petition, upon motion  
8 of the petitioner or a person required to be served pursuant  
9 to Subsection B of Section 40-10B-6 NMSA 1978, or upon its  
10 own motion, the court may appoint a temporary guardian to  
11 serve for not more than one hundred eighty days or until the  
12 case is decided on the merits, whichever occurs first.

13 B. A motion for temporary guardianship shall be  
14 heard within twenty days of the date the motion is filed.  
15 The motion and notice of hearing shall be served on all  
16 persons required to be served pursuant to Subsection B of  
17 Section 40-10B-6 NMSA 1978.

18 C. An order pursuant to Subsection A of this  
19 section may be entered ex parte upon good cause shown. If  
20 the order is entered ex parte, a copy of the order shall be  
21 served on the persons required to be served pursuant to  
22 Subsection B of Section 40-10B-6 NMSA 1978. If a person  
23 files an objection to the order, the court immediately shall  
24 schedule a hearing to be held within ten days of the date the  
25 objection is filed. Notice of the hearing shall be given to

1 the petitioner and all persons required to be served pursuant  
2 to Subsection B of Section 40-10B-6 NMSA 1978."

3 SECTION 26. Section 40-10B-8 NMSA 1978 (being  
4 Laws 2001, Chapter 167, Section 8, as amended) is amended to  
5 read:

6 "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF  
7 PROOF--JUDGMENT--CHILD SUPPORT.--

8 A. Upon hearing, if the court finds that a  
9 qualified person seeks appointment, the venue is proper, the  
10 required notices have been given, the requirements of  
11 Subsection B of this section have been proved and the best  
12 interests of the minor will be served by the requested  
13 appointment, it shall make the appointment. In other cases,  
14 the court may dismiss the proceedings or make any other  
15 disposition of the matter that will serve the best interests  
16 of the minor.

17 B. A guardian may be appointed pursuant to the  
18 Kinship Guardianship Act only if:

19 (1) a parent of the child is living and has  
20 consented in writing to the appointment of a guardian and the  
21 consent has not been withdrawn;

22 (2) a parent of the child is living but all  
23 parental rights in regard to the child have been terminated  
24 or suspended by prior court order; or

25 (3) the child has resided with the

1 petitioner without the parent for a period of ninety days or  
2 more immediately preceding the date the petition is filed and  
3 a parent having legal custody of the child is currently  
4 unwilling or unable to provide adequate care, maintenance and  
5 supervision for the child or there are extraordinary  
6 circumstances; and

7 (4) no guardian of the child is  
8 currently appointed pursuant to a provision of the  
9 Uniform Probate Code.

10 C. The burden of proof shall be by clear and  
11 convincing evidence.

12 D. As part of a judgment entered pursuant to the  
13 Kinship Guardianship Act, the court may order a parent to pay  
14 the reasonable costs of support and maintenance of the  
15 child that the parent is financially able to pay. The  
16 court may use the child support guidelines set forth in  
17 Section 40-4-11.1 NMSA 1978 to calculate a reasonable  
18 payment.

19 E. The court may order visitation between a parent  
20 and child to maintain or rebuild a parent-child relationship  
21 if the visitation is in the best interests of the child."

22 SECTION 27. Section 40-10B-11 NMSA 1978 (being  
23 Laws 2001, Chapter 167, Section 11) is amended to read:

24 "40-10B-11. NOMINATION OBJECTION BY CHILD.--In a  
25 proceeding for appointment of a guardian pursuant to the



1 Kinship Guardianship Act:

2 A. the court shall appoint a person nominated by a  
3 child who has reached the age of fourteen unless the court  
4 finds the nomination contrary to the best interests of the  
5 child; and

6 B. the court shall not appoint a person as  
7 guardian if a child who has reached the age of fourteen files  
8 a written objection in the proceeding before the person  
9 accepts appointment as guardian unless the court makes a  
10 specific finding that it is in the best interest of the  
11 child."

12 SECTION 28. Section 40-10B-12 NMSA 1978 (being  
13 Laws 2001, Chapter 167, Section 12) is amended to read:

14 "40-10B-12. REVOCATION OF GUARDIANSHIP.--

15 A. Any person, including a child who has reached  
16 the age of fourteen, may move for revocation of a  
17 guardianship created pursuant to the Kinship Guardianship  
18 Act. The person requesting revocation shall attach to the  
19 motion a transition plan proposed to facilitate the  
20 reintegration of the child into the home of a parent or a new  
21 guardian. A transition plan shall take into consideration  
22 the child's age, development and any bond with the guardian.

23 B. If the court finds that a preponderance of the  
24 evidence proves a change in circumstances and the revocation  
25 is in the best interests of the child, it shall grant the

