

1 SENATE BILL

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Crystal Brantley and Gail Armstrong

10 AN ACT

11 RELATING TO CHILDREN; ESTABLISHING A BEST INTERESTS OF THE  
12 CHILD STANDARD AS THE PRIMARY AND CONTROLLING STANDARD APPLIED  
13 TO JUDICIAL AND CHILDREN, YOUTH AND FAMILIES DEPARTMENT ACTIONS  
14 FOR DECISIONS AND DETERMINATIONS IN ABUSE AND NEGLECT CASES;  
15 AMENDING AND ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT TO  
16 PRIORITIZE CHILD SAFETY AND CLARIFY THE DEFINITION OF  
17 "AGGRAVATED CIRCUMSTANCES"; PROVIDING THAT A COURT SHALL ASSURE  
18 THAT THE CHILD'S GUARDIAN AD LITEM AND THE CHILD'S ATTORNEY  
19 ZEALOUSLY REPRESENT THE BEST INTERESTS OF THE CHILD; AMENDING  
20 THE STATUTORY PURPOSE OF THE CHILDREN'S CODE TO ENSURE THE BEST  
21 INTERESTS OF THE CHILD AS THE PRIMARY CONCERN; PROVIDING FOR  
22 APPLICABILITY; REQUIRING WRITTEN FINDINGS; REQUIRING RULE  
23 ADOPTION.

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

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1                   SECTION 1. Section 32A-1-3 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 12, as amended) is amended to read:

3                   "32A-1-3. PURPOSE OF ACT.--The Children's Code shall be  
4 interpreted and construed to effectuate the following  
5 legislative purposes:

6                   A. first, and of paramount concern, to provide for  
7 the care, protection and wholesome mental and physical  
8 development of children coming within the provisions of the  
9 Children's Code and to ensure that the best interests of the  
10 child are the primary concern by placing the child's health and  
11 safety as superseding any other consideration. Second, to  
12 promote stability and permanence for the child and [then to  
13 preserve] when possible, and if not inconsistent with  
14 prioritizing the child's health and safety, preserving the  
15 unity of the family [whenever possible. A child's health and  
16 safety shall be the paramount concern] when it is in the best  
17 interests of the child. Permanent separation of a child from  
18 the child's family, however, [would especially] may be  
19 considered when the child or another child of the parent has  
20 suffered permanent or severe injury or repeated abuse. It is  
21 the intent of the legislature that, to the maximum extent  
22 possible, children in New Mexico shall be reared as members of  
23 a family unit; provided that "family unit" shall be broadly  
24 construed as not solely meaning a child's family of origin or  
25 biological family;

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1                   B. to provide judicial and other procedures through  
2 which the provisions of the Children's Code are executed and  
3 enforced and in which the parties are assured a fair hearing  
4 and their constitutional and other legal rights are recognized  
5 and enforced;

6                   C. to provide a continuum of services for children  
7 and their families, from prevention to treatment, considering  
8 whenever possible prevention, diversion and early intervention,  
9 particularly in the schools;

10                  D. to provide children with services that are  
11 sensitive to their cultural needs;

12                  E. to reduce overrepresentation of minority  
13 children and families in the juvenile justice, family services  
14 and abuse and neglect systems through early intervention,  
15 linkages to community support services and the elimination of  
16 discrimination;

17                  F. to provide for the cooperation and coordination  
18 of the civil and criminal systems for investigation,  
19 intervention and disposition of cases, to minimize interagency  
20 conflicts and to enhance the coordinated response of all  
21 agencies to achieve the best interests of a child victim; and

22                  G. to provide continuity for children and families  
23 appearing before the children's court by assuring that,  
24 whenever possible, a single judge hears all successive cases or  
25 proceedings involving a child or family."

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

3                   **"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect  
4 Act:**

5                   A. "abandonment" includes instances when the  
6 parent, without justifiable cause:

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

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

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

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

17                   B. "abused child" means a child:

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

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

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

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custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

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

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

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

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

(3) attempted or conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; [or]

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

(5) subjected the child to aggravated physical neglect; or

(6) been convicted of any of the following

(a) murder in the first degree pursuant

to Subsection A of Section 30-2-1 NMSA 1978;  
(b) murder in the second degree pursuant  
to Subsection B of Section 30-2-1 NMSA 1978;  
(c) voluntary manslaughter pursuant to  
Subsection A of Section 30-2-3 NMSA 1978;  
(d) involuntary manslaughter pursuant to  
Subsection B of Section 30-2-3 NMSA 1978;  
(e) aggravated assault pursuant to  
Section 30-3-2 NMSA 1978;  
(f) aggravated battery pursuant to  
Section 30-3-5 NMSA 1978;  
(g) criminal sexual penetration pursuant  
to Section 30-9-11 NMSA 1978; or  
(h) criminal sexual contact of a minor  
pursuant to Section 30-9-13 NMSA 1978;

D. "aggravated physical neglect" means any omission of care by the parent, guardian or custodian of a child that results in a life-threatening condition or seriously impairs the child's functioning;

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

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1                   [E.] F. "fictive kin" means a person not related by  
2 birth, adoption or marriage with whom a child has an  
3 emotionally significant relationship;

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

9                   [G.] H. "neglected child" means a child:

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

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

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

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

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(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

11 [H.] I. "personal identifier information" means a  
12 person's name and contact information, including home or  
13 business address, email address or phone number;

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

19 (1) there is not a justifiable explanation for  
20 the condition or death;

21 (2) the explanation given for the condition is  
22 at variance with the degree or nature of the condition:

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

25 (4) circumstances indicate that the condition

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1 or death may not be the product of an accidental occurrence;

2 [J.] K. "relative" means a person related to  
3 another person by birth, adoption or marriage within the fifth  
4 degree of consanguinity;

5 [K.] L. "sexual abuse" includes criminal sexual  
6 contact, incest or criminal sexual penetration, as those acts  
7 are defined by state law;

8 [L.] M. "sexual exploitation" includes:

9 (1) allowing, permitting or encouraging a  
10 child to engage in prostitution;

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

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

16 [M.] N. "sibling" means a brother or sister having  
17 one or both parents in common by birth or adoption;

18 [N.] O. "strangulation" has the same meaning as set  
19 forth in Section 30-3-11 NMSA 1978;

20 [O.] P. "suffocation" has the same meaning as set  
21 forth in Section 30-3-11 NMSA 1978; and

22 [P.] Q. "transition plan" means an individualized  
23 written plan for a child, based on the unique needs of the  
24 child, that outlines all appropriate services to be provided to  
25 the child to increase independent living skills. The plan

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1 shall also include responsibilities of the child, and any other  
2 party as appropriate, to enable the child to be self-sufficient  
3 upon emancipation."

4 SECTION 3. Section 32A-4-7 NMSA 1978 (being Laws 1993,  
5 Chapter 77, Section 101, as amended) is amended to read:

6 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

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

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

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

20 B. When an alleged neglected or abused child is  
21 delivered to the department, a department caseworker shall  
22 review the need for placing the child in custody and shall  
23 release the child from custody unless custody is appropriate or  
24 has been ordered by the court. When a child is delivered to a  
25 medical facility, a department caseworker shall review the need

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1 for retention of custody within a reasonable time after  
2 delivery of the child to the facility and shall release the  
3 child from custody unless custody is appropriate or has been  
4 ordered by the court.

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

12 D. Reasonable efforts shall be made to prevent or  
13 eliminate the need for removing the child from the child's  
14 home, with the paramount concern being the ~~[child's health and~~  
15 best interests of the child. In all cases when a child  
16 is taken into custody, the child shall be released to the  
17 child's parent, guardian or custodian, unless the department  
18 files a petition within three days from the date that the child  
19 was taken into custody.

20 E. The department may release the child at any time  
21 within the three-day period after the child was taken into  
22 custody if it is determined by the department that release is  
23 ~~[appropriate]~~ in the best interests of the child or if release  
24 has been ordered by the court.

25 F. If a child that has been taken into custody and

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1 released to the child's parent, guardian or custodian is taken  
2 into custody again within one year of having been taken into  
3 custody, the child shall not be released from custody until a  
4 department review is conducted, in consultation with the  
5 children's court managing attorney, to review the child's case  
6 and documents and determine whether the child should be  
7 released to the child's parent, guardian or custodian or if it  
8 is in the best [interest] interests of the child to file a  
9 petition alleging neglect or abuse. The department's review  
10 shall be conducted by a person above the level of supervisor  
11 who has been authorized by the secretary of children, youth and  
12 families to review such cases. If the secretary has not  
13 authorized anyone to review such cases, the department's review  
14 shall be conducted by the director of the protective services  
15 division of the department. The three-day deadline for filing  
16 the petition pursuant to Subsections D and E of this section is  
17 extended to five days when the child's case is reviewed  
18 pursuant to this subsection."

19                   **SECTION 4.** Section 32A-4-8 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 102, as amended) is amended to read:

21                   **"32A-4-8. PLACE OF TEMPORARY CUSTODY.--**

22                   A. Unless a child alleged to be neglected or abused  
23 is also alleged or adjudicated delinquent:

24                   (1) the child shall not be held in a jail or  
25 other facility intended or used for the incarceration of adults

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1 charged with criminal offenses or for the detention of children  
2 alleged to be delinquent children; and

3 (2) there shall be a preference that the child  
4 be placed in the home of a relative of the child when a  
5 relative is available to provide foster care; provided that:

6 (a) placement with a relative is in the  
7 best [interest] interests of the child;

8 (b) the relative signs a sworn statement  
9 that the relative will not return the child to or allow  
10 unsupervised visits with the parent, guardian or custodian who  
11 is alleged to have committed the abuse or neglect, unless  
12 otherwise directed by the department or the court; and

13 (c) within three days of accepting  
14 custody of the child, the relative completes an application  
15 form for licensure to operate a foster home pursuant to the  
16 Children's Code.

17 B. If it is in the best interests of the child, the  
18 department shall make reasonable efforts to locate a relative  
19 of the child to provide foster care. If a relative is not  
20 available to provide foster care, the child may be placed in:

21 (1) a licensed foster home or any home  
22 authorized under the law for the provision of foster care or  
23 group care or use as a protective residence;

24 (2) a facility operated by a licensed child  
25 welfare services agency; or

(3) a facility provided for in the Children's Shelter Care Act."

**SECTION 5.** Section 32A-4-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 104, as amended) is amended to read:

"32A-4-10. BASIC RIGHTS--BEST INTERESTS OF THE CHILD--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. At the inception of an abuse or neglect proceeding, counsel shall be appointed for the parent, guardian or custodian of the child. The appointed counsel shall represent the parent, guardian or custodian who is named as a party until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court's discretion, appointment of counsel is required in the interest of justice.

C. At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed as guardian ad litem of or attorney for the child. Only an attorney with appropriate experience shall be appointed as guardian ad litem of or attorney for the child.

1                   D. When reasonable and appropriate, the court shall  
2 appoint a guardian ad litem or attorney who is knowledgeable  
3 about the child's particular cultural background.

4                   E. When a child reaches fourteen years of age, the  
5 child's guardian ad litem shall continue as the child's  
6 attorney; provided that the court shall appoint a different  
7 attorney for the child if:

8                                   (1) the child requests a different attorney;  
9                                   (2) the guardian ad litem requests to be  
10 removed; or  
11                                   (3) the court determines that the appointment  
12 of a different attorney is appropriate.

13                   F. The court shall assure that the child's guardian  
14 ad litem zealously represents the child's best [~~interest~~]  
15 interests and that the child's attorney zealously represents  
16 the child and the child's best interests.

17                   G. A person afforded rights under the Children's  
18 Code shall be advised of those rights at that person's first  
19 appearance before the court on a petition under the Children's  
20 Code."

21                   SECTION 6. Section 32A-4-18 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 112, as amended) is amended to read:

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

25                   A. When a child alleged to be neglected or abused

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1 has been placed in the legal custody of the department or the  
2 department has petitioned the court for temporary custody, a  
3 custody hearing shall be held within ten days from the date the  
4 petition is filed to determine if the child should remain in or  
5 be placed in the department's custody pending adjudication.

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

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

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

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

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

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

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

25                   (5) the parent, guardian or custodian is not

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1 able or willing to provide adequate supervision and care for  
2 the child.

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

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

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

15                   E. Reasonable efforts shall be made to preserve and  
16 reunify the family only when the court finds that reunification  
efforts are consistent with the best interests of the child,  
17 with the paramount concern being the child's health and safety.  
18 When the department determines that the home of an adult  
19 relative of the child meets all relevant child protection and  
20 licensing standards and placement in the home would be in the  
21 best [interest] interests of the child, the department shall  
22 give a preference to placement of the child in that home. The  
23 department shall make reasonable efforts to conduct home  
24 studies on appropriate relatives who express an interest in  
25

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1 providing placement for the child.

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

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

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

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

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

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

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

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

14                   SECTION 7. Section 32A-4-22 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 116, as amended) is amended to read:

16                   "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED  
17 CHILD--WRITTEN FINDINGS--

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

24                   (1) the interaction and interrelationship of  
25 the child with the child's parent, siblings and any other

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person who may significantly affect the child's best [interest]  
interests;

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

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

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

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

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

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

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

(9) the availability of services recommended

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

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

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

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

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

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

(2) place the child under protective

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supervision of the department; or

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

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

(b) the department.

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

(1) the efforts would be futile; or

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

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

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1                   E. The court may order reasonable visitation  
2 between a child placed in the custody of the department and the  
3 child's siblings or any other person who may significantly  
4 affect the child's best [interest] interests, if the court  
5 finds the visitation to be in the child's best [interest]  
6 interests.

7                   F. In entering a dispositional order, the court  
8 shall enter written findings stating whether reunification is  
9 consistent with the best interests of the child.

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

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

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

25                  [I.] J. When the court determines pursuant to

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

6 **SECTION 8.** Section 32A-4-23 NMSA 1978 (being Laws 1993,  
7 Chapter 77, Section 117, as amended) is amended to read:

8 "32A-4-23. DISPOSITION OF A CHILD WITH A MENTAL DISORDER  
9 OR A DEVELOPMENTAL DISABILITY IN A PROCEEDING UNDER THE ABUSE  
10 AND NEGLECT ACT.--

11 A. If in a hearing, at any stage of a proceeding on  
12 a neglect or abuse petition, the evidence indicates that a  
13 child has a mental disorder or a developmental disability, the  
14 court shall adjudicate the issue of neglect or abuse under the  
15 provisions of the Children's Code.

16 B. When a child in department custody needs  
17 involuntary placement for residential mental health or  
18 developmental disability services as a result of a mental  
19 disorder or developmental disability, the department shall  
20 petition for that child's placement in a manner consistent with  
21 the best interests of the child and pursuant to the provisions  
22 of the Children's Mental Health and Developmental Disabilities  
23 Act.

24 C. Any child in department custody who is placed  
25 for residential treatment or habilitation pursuant to the

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provisions of the Children's Mental Health and Developmental Disabilities Act shall remain in the legal custody of the department while in residential treatment or habilitation or until further order of the court.

D. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Abuse and Neglect Act, may be heard by the court as part of the abuse or neglect proceedings or may be heard in a separate proceeding. All parties to the abuse or neglect proceedings shall be provided with notice of the involuntary placement hearing.

E. A guardian ad litem appointed pursuant to the Abuse and Neglect Act shall serve as a guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older, the child shall be represented by an attorney unless, after consultation between the child and the child's attorney, the child elects to be represented by counsel appointed in the proceedings under the Children's Mental Health and Developmental Disabilities Act.

F. When a child is subject to the provisions of the Abuse and Neglect Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act

1 shall be filed with the court as part of the abuse or neglect  
2 proceeding. A review of the child's placement in a residential  
3 treatment or habilitation program shall occur in the same  
4 manner and within the same time requirements as provided in the  
5 Children's Mental Health and Developmental Disabilities Act.

6 G. The clerk of the court shall maintain a separate  
7 section within an abuse or neglect file for documents  
8 pertaining to actions taken under the Children's Mental Health  
9 and Developmental Disabilities Act.

10 H. A child subject to the provisions of the Abuse  
11 and Neglect Act who receives treatment in a residential  
12 treatment or habilitation program shall enjoy all the  
13 substantive and procedural rights set forth in the Children's  
14 Mental Health and Developmental Disabilities Act."

15 SECTION 9. Section 32A-4-25 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 119, as amended) is amended to read:

17 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL  
18 JUDGMENTS.--

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

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1 treatment plan and the safety of the child. Prior to the  
2 initial judicial review, the department shall submit a copy of  
3 the adjudicatory order, the dispositional order and notice of  
4 the initial judicial review to the council. The staff of the  
5 council, or an entity contracting with the council, shall  
6 review the case. If the staff or contracting entity determines  
7 that the case meets the criteria established in council rules,  
8 the staff or contracting entity shall designate the case for  
9 review by a substitute care review board. A representative of  
10 the substitute care review board, if designated, shall be  
11 permitted to attend and comment to the court.

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

25                   C. Judicial review pursuant to this section may be

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1 carried out by either of the following:

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

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

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

10 (1) all parties, including:

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

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

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

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

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

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

25 E. At any subsequent judicial review hearing held

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

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

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

24                   H. Based on its findings at a judicial review  
25 hearing held pursuant to Subsection B of this section, the

court shall order one of the following dispositions:

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

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

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

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

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

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

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

(5) continue the child in the legal custody of the department with or without any required parental

1 involvement in a treatment plan; provided that reasonable  
2 efforts shall be made to preserve and reunify the family, with  
3 the paramount concern being the child's health and safety  
4 unless the court finds that such efforts are not required. The  
5 court may determine that reasonable efforts are not required to  
6 be made when the court finds that:

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

10 (6) make additional orders regarding the  
11 treatment plan or placement of the child to protect the child's  
12 best interests if the court determines the department has  
13 failed in implementing any material provision of the treatment  
14 plan or abused its discretion in the placement or proposed  
15 placement of the child; or

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

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

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

25 I. Dispositional orders entered pursuant to this

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1 section shall include written findings stating whether  
2 continued reunification efforts are consistent with the best  
3 interests of the child and shall remain in force for a period  
4 of six months, except for orders that provide for transfer of  
5 the child to the child's noncustodial parent or to a permanent  
6 guardian.

7                   J. When the court determines, pursuant to Paragraph  
8 (5) of Subsection H of this section, that no reasonable efforts  
9 at reunification are required, the court shall conduct, within  
10 thirty days, a permanency hearing as described in Section  
11 32A-4-25.1 NMSA 1978. The department shall make reasonable  
12 efforts to place the child in a timely manner in accordance  
13 with the permanency plan and to complete whatever steps are  
14 necessary to finalize the permanent placement of the child."

15                   **SECTION 10.** Section 32A-4-25.1 NMSA 1978 (being Laws  
16 1997, Chapter 34, Section 8, as amended by Laws 2016, Chapter  
17 54, Section 7 and by Laws 2016, Chapter 60, Section 3) is  
18 amended to read:

19                   "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW  
20 HEARINGS.--

21                   A. A permanency hearing shall be commenced within  
22 six months of the initial judicial review of a child's  
23 dispositional order or within twelve months of a child entering  
24 foster care pursuant to Subsection [D] E of this section,  
25 whichever occurs first. Prior to the initial permanency

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1 hearing:

2 (1) the department shall submit a copy of any  
3 continuation of the dispositional order and notice of hearing  
4 to the council or any substitute care review board designated  
5 pursuant to Section 32A-8-5 NMSA 1978;

6 (2) the department shall submit a progress  
7 report to any designated substitute care review board;

8 (3) all parties to the hearing shall attend a  
9 mandatory meeting and attempt to settle issues attendant to the  
10 permanency hearing and develop a proposed [treatment] case plan  
11 that serves the child's best [interest] interests; and

12 (4) any designated substitute care review  
13 board may review the child's case and the department's progress  
14 report and report [its] the substitute care review board's  
15 findings and recommendations to the court.

16 B. At the permanency hearing, the court shall  
17 determine the permanency plan that is consistent with the best  
18 interests of the child, and all parties shall have the  
19 opportunity to present evidence and to cross-examine witnesses.  
20 At the conclusion of the permanency hearing, the court shall  
21 order one of the following permanency plans for the child:

22 (1) reunification;

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

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

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

(5) placement in the legal custody of the department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.

C. If the court adopts a permanency plan of reunification, the court shall adopt a plan for transitioning the child home within a reasonable period depending on the facts and circumstances of the case, but not to exceed six months, and schedule a permanency review hearing within three months. If the child is reunified, the subsequent hearing may be vacated.

D. At the permanency review hearing, all parties and the child's guardian ad litem or attorney shall have the opportunity to present evidence and cross-examine witnesses. Based on the evidence, the court shall:

(1) change the plan from reunification to one of the alternative plans provided in Subsection B of this section;

(2) dismiss the case and return custody of the child to the child's parent, guardian or custodian;

(3) continue legal custody of the child in the department to complete a transition home to the child's parent, guardian or custodian and continue the case plan for not more than six months, after which the case shall be dismissed unless the plan is changed as provided in Paragraph (1) of this subsection; or

(4) return the child to the custody of the child's parent, guardian or custodian, subject to any conditions or limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the case plan for not more than six months, after which the case shall be dismissed. The department may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under Section 32A-4-6 NMSA 1978 during the period of protective supervision if the child's best [interest requires] interests require such action. When a child is removed in this situation, a permanency hearing shall be scheduled within thirty days of the child coming back into the department's legal custody.

E. The court shall hold a permanency hearing and adopt a permanency plan for a child within twelve months of the child entering foster care. Upon disposition at each permanency hearing, the court shall enter written findings explaining why the selected permanency plan is consistent with the best interests of the child. For purposes of this section,

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1 a child shall be considered to have entered foster care on the  
2 earlier of:

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

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

7 F. The court shall hold permanency hearings every  
8 twelve months when a child is in the legal custody of the  
9 department.

10 G. The children's court attorney shall give notice  
11 of the time, place and purpose of any permanency hearing or  
12 permanency review hearing held pursuant to this section to:

13 (1) all parties, including:

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

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

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

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

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

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

H. The Rules of Evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination."

SECTION 11. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

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

A. In proceedings to terminate parental rights, the court shall give primary consideration to the best interests of the child and shall consider the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

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

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

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite

reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

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

(b) the parent has subjected the child to aggravated circumstances; or

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

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

(b) the parent-child relationship has disintegrated;

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

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

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

(f) a presumption of abandonment created

1 by the conditions described in Subparagraphs (a) through (e) of  
2 this paragraph has not been rebutted.

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

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

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

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

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

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1       that the party seeking to adopt the child has satisfied all of  
2       the requirements set forth in the Adoption Act. Unless  
3       otherwise stipulated by all parties, an adoption decree shall  
4       take effect sixty days after the termination of parental  
5       rights, to allow the department sufficient time to provide  
6       counseling for the child and otherwise prepare the child for  
7       the adoption. The adoption decree shall conform to the  
8       requirements of the Adoption Act and shall have the same force  
9       and effect as other adoption decrees entered pursuant to that  
10      act. The court clerk shall assign an adoption case number to  
11      the adoption decree."

12            **SECTION 12.** A new section of the Abuse and Neglect Act is  
13      enacted to read:

14            "[NEW MATERIAL] ESTABLISHING BEST INTERESTS OF THE CHILD  
15      AS PRIMARY AND CONTROLLING STANDARD.--

16            A. In all matters and proceedings pursuant to the  
17      Abuse and Neglect Act, the best interests of the child shall be  
18      the primary concern and controlling standard in all actions of  
19      the department and the court. "Best interests of the child"  
20      means the standard applied to judicial and department actions  
21      that requires the child's health, safety and physical, mental  
22      and emotional well-being to be treated as the paramount and  
23      primary concern and is determined by prioritizing the following  
24      outcomes and ranked by importance in the following order:

25                    (1) ensuring the child's immediate and long-

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1 term protection from all forms of abuse, neglect or harm;

2 (2) securing a safe, stable and permanent

3 living arrangement for the child;

4 (3) providing for the child's ongoing and

5 wholesome mental, physical and emotional development, including

6 access to necessary care, education and cultural resources; and

7 (4) establishing a stable, safe and nurturing

8 family unit that prioritizes the placement that best ensures

9 safety, permanence and wholesome development for the child;

10 provided that "family unit" shall be broadly construed to

11 include the child's family of origin or kinship, adoptive or

12 other suitable permanent caregivers.

13 B. In determining the best interests of the child

14 outcomes as provided in Subsection A of this section, the

15 following factors shall be considered:

16 (1) the child's health and safety, including

17 the risk of future abuse or neglect;

18 (2) the child's age and physical and mental

19 vulnerabilities;

20 (3) the child's physical, emotional and

21 psychological well-being, including trauma exposure and

22 attachment needs;

23 (4) the frequency, nature and length of time

24 of any out-of-home placements for the child and the child's

25 developmental sense of time;

(5) the frequency, magnitude and other circumstances of the harm to the child, including repeated harm;

(6) any fear by the child related to living in or returning to the home from which the child was removed, the child's current placement or a potential placement;

(7) the results of any psychiatric, psychological or developmental evaluations of the child or the child's parents, guardian or other family members;

(8) any history of abuse or neglect by a parent, guardian or custodian of the child, a member of the child's family, fictive kin of the child or another person who has access to the child in the child's home or placement;

(9) any history of substantiated claims of substance abuse or neglect by a parent, guardian or custodian of the child, a member of the child's family, fictive kin of the child or another person who has access to the child in the child's home or placement;

(10) whether a perpetrator of harm to the child is identified;

(11) whether an identified perpetrator of harm to the child has or could have access to the child;

(12) the circumstances under which a parent voluntarily relinquished parental rights to the child, if applicable;

(13) the willingness and ability of the child's parent, guardian or family to, as applicable:

- (a) seek, accept and complete family services, including services that address specific needs of the child or family;
- (b) cooperate with and facilitate close supervision by an appropriate agency;
- (c) complete psychological, domestic violence and substance abuse assessments; and
- (d) effect positive environmental and personal changes within a reasonable period of time;

(14) the demonstration by the child's parent, guardian or family of adequate parenting skills, including providing the child and other children under the family's care with:

- (a) adequate health and nutritional care;
- (b) nurture, care and appropriate discipline consistent with the child's physical and psychological development;
- (c) guidance and supervision consistent with the child's safety;
- (d) a safe home environment;
- (e) protection from exposure to violence in the child's home; and

(f) an understanding of the child's needs and capabilities; and

(15) the availability of an adequate social support system for the child consisting of an extended family and friends.

C. No placement preference shall create a presumption that reunification with a parent, guardian or custodian is in the best interests of the child.

D. At each custody, disposition, judicial review and permanency hearing, the court shall enter written findings identifying the placement selected, the reasons the placement serves the best interests of the child and, if applicable, the reason higher-priority placements were rejected."

**SECTION 13. TEMPORARY PROVISION--RULES.--**The children, youth and families department shall no later than September 30, 2026 adopt and promulgate rules to carry out the provisions of this act.

**SECTION 14. APPLICABILITY.**--Nothing in this act shall be construed to invalidate or reopen a final judgment or an order entered before the effective date of this act. The provisions of this act shall apply to:

A. all matters and proceedings under the Abuse and Neglect Act pending or commenced on or after the effective date of this act and shall govern any hearing, determination, finding, disposition or order made on or after that date.

1                   regardless of when the case was originally filed;

2                   B. all actions performed by the children, youth and

3                   families department under the Abuse and Neglect Act, including

4                   decisions, assessments or recommendations regarding treatment

5                   or service plans, placements, permanency, case plans or any

6                   other function performed by the department, on or after the

7                   effective date of this act, including actions performed in

8                   connection with a case that was pending before that date; and

9                   C. all matters, issues and determinations arising

10                  under the Abuse and Neglect Act on or after the effective date

11                  of this act.

12                   - 45 -

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