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HOUSE BILL 377

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CHILDREN; CLARIFYING PROCEDURES FOR THE PLACEMENT
OF CHILDREN ALLEGED TO BE ABUSED OR NEGLECTED; AMENDING
SECTIONS OF THE CHILDREN'S CODE.

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

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

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

A. first to provide for the care, protection and
wholesome mental and physical development of children coming
within the provisions of the Children's Code and then to
preserve the unity of the family whenever possible. The
child's health and safety shall be the paramount concern.

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1 Permanent separation of the child from the family, however,
2 would especially be considered when the child or another child
3 of the parent has suffered permanent or severe injury or
4 repeated abuse. It is the intent of the legislature that, to
5 the maximum extent possible, children in New Mexico shall be
6 reared as members of a family unit;

7 B. to provide judicial and other procedures
8 through which the provisions of the Children's Code are
9 executed and enforced and in which the parties are assured a
10 fair hearing and their constitutional and other legal rights
11 are recognized and enforced;

12 C. to provide a continuum of services for children
13 and their families, from prevention to treatment, considering
14 whenever possible prevention, diversion and early
15 intervention, particularly in the schools;

16 D. to provide children with services that are
17 sensitive to their cultural needs;

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

24 F. to provide continuity for children and families
25 appearing before the children's court by assuring that,

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1 whenever possible, a single judge hears all successive cases
2 or proceedings involving a child or family."

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

5 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

6 A. "adult" means an individual who is eighteen
7 years of age or older;

8 B. "child" means an individual who is less than
9 eighteen years old;

10 C. "court", when used without further
11 qualification, means the children's court division of the
12 district court and includes the judge, special master or
13 commissioner appointed pursuant to the provisions of the
14 Children's Code or supreme court rule;

15 D. "court appointed special advocate" or "CASA"
16 means a person appointed as a CASA, pursuant to the provisions
17 of the Children's Court Rules and Forms, who assists the court
18 in determining the best interests of the child by
19 investigating the case and submitting a report to the court;

20 E. "custodian" means a person, other than a parent
21 or guardian, who exercises physical control, care or custody
22 of the child, including any employee of a residential facility
23 or any persons providing out-of-home care;

24 F. "department" means the children, youth and
25 families department, unless otherwise specified;

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1 G. "foster parent" means a person, including a
2 relative of the child, licensed or certified by the department
3 or a child placement agency to provide care for children in
4 the custody of the department or agency;

5 H. "guardian" means the person having the duty and
6 authority of guardianship;

7 I. "guardianship" means the duty and authority to
8 make important decisions in matters having a permanent effect
9 on the life and development of a child and to be concerned
10 about the child's general welfare and includes [~~but is not~~
11 ~~necessarily limited in either number or kind to~~]:

12 (1) the authority to consent to marriage, to
13 enlistment in the armed forces of the United States or to
14 major medical, psychiatric and surgical treatment;

15 (2) the authority to represent the child in
16 legal actions and to make other decisions of substantial legal
17 significance concerning the child;

18 (3) the authority and duty of reasonable
19 visitation of the child;

20 (4) the rights and responsibilities of legal
21 custody when the physical custody of the child is exercised by
22 the child's parents, except when legal custody has been vested
23 in another person; and

24 (5) when the rights of the child's parents
25 have been terminated as provided for in the laws governing

1 termination of parental rights or when both of the child's
2 parents are deceased, the authority to consent to the adoption
3 of the child and to make any other decision concerning the
4 child that the child's parents could have made;

5 J. "guardian ad litem" means an attorney appointed
6 by the children's court to represent and protect the best
7 interests of the child in a court proceeding; provided that no
8 party or employee or representative of a party to the
9 proceeding shall be appointed to serve as a guardian ad litem;

10 K. "Indian child" means an unmarried person who
11 is:

12 (1) less than eighteen years old;

13 (2) a member of an Indian tribe or is
14 eligible for membership in an Indian tribe; and

15 (3) the biological child of a member of an
16 Indian tribe;

17 L. "Indian child's tribe" means:

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

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

24 M "judge", when used without further
25 qualification, means the judge of the court;

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1 N. "legal custody" means a legal status created by
2 the order of the court or other court of competent
3 jurisdiction that vests in a person, department or agency the
4 right to determine where and with whom a child shall live; the
5 right and duty to protect, train and discipline the child and
6 to provide the child with food, shelter, education and
7 ordinary and emergency medical care; the right to consent to
8 major medical, psychiatric, psychological and surgical
9 treatment and to the administration of legally prescribed
10 psychotropic medications pursuant to the Children's Mental
11 Health and Developmental Disabilities Act; and the right to
12 consent to the child's enlistment in the armed forces of the
13 United States, all subject to the powers, rights, duties and
14 responsibilities of the guardian of the child and subject to
15 any existing parental rights and responsibilities. An
16 individual granted legal custody of a child shall exercise the
17 rights and responsibilities as custodian personally, unless
18 otherwise authorized by the court entering the order;

19 O. "parent" or "parents" includes a biological or
20 adoptive parent if the biological or adoptive parent has a
21 constitutionally protected liberty interest in the care and
22 custody of the child. A parent retains all of the duties and
23 authority of guardianship and legal custody of the child,
24 unless otherwise limited or altered by court order;

25 P. "permanency plan" means a determination by the

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1 court that the child's interest will be served best by:

2 (1) return to the parent;

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

5 (3) placement for adoption after the parents'
6 rights have been relinquished or terminated;

7 (4) placement in the custody of the
8 department until the child reaches the age of majority, unless
9 the child is emancipated, pursuant to the Emancipation of
10 Minors Act; or

11 (5) placement in the custody of the
12 department under a planned permanent living arrangement,
13 including long-term foster care;

14 ~~[P.]~~ Q. "person" means an individual or any other
15 form of entity recognized by law;

16 R. "preadoptive parent" means a person with whom a
17 child has been placed for adoption;

18 ~~[Q.]~~ S. "tribal court" means:

19 (1) a court established and operated pursuant
20 to a code or custom of an Indian tribe; or

21 (2) any administrative body of an Indian
22 tribe that is vested with judicial authority;

23 ~~[R.]~~ T. "tribal court order" means a document
24 issued by a tribal court that is signed by an appropriate
25 authority, including a judge, governor or tribal council

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1 member, and that orders an action that is within the tribal
2 court's jurisdiction; and

3 [S.] U. "tribunal" means any judicial forum other
4 than the court."

5 Section 3. Section 32A-4-2 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 96, as amended) is amended to read:

7 "32A-4-2. DEFINITIONS. --As used in the Abuse and Neglect
8 Act:

9 A. "abandonment" includes [~~but is not limited to~~]
10 instances when the parent, without justifiable cause:

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

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

16 (a) three months if the child was under
17 six years of age at the commencement of the three-month
18 period; or

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

21 B. "abused child" means a child:

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

25 (2) who has suffered physical abuse,

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1 emotional abuse or psychological abuse inflicted or caused by
2 the child's parent, guardian or custodian;

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

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

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

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

14 (1) caused great bodily harm to the child or
15 great bodily harm or death to the child's sibling;

16 (2) caused great bodily harm or death to
17 another parent, guardian or custodian of the child; or

18 (3) has subjected the child to torture,
19 chronic abuse or sexual abuse;

20 D. "great bodily harm" means an injury to a person
21 that creates a high probability of death, that causes serious
22 disfigurement or that results in permanent or protracted loss
23 or impairment of the function of any member or organ of the
24 body;

25 [E.] E. "neglected child" means a child:

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

3 (2) who is without proper parental care and
4 control or subsistence, education, medical or other care or
5 control necessary for the child's well-being because of the
6 faults or habits of the child's parent, guardian or custodian
7 or the ~~neglect~~ failure or refusal of the parent, guardian or
8 custodian, when able to do so, to provide them;

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

13 (4) whose parent, guardian or custodian is
14 unable to discharge his responsibilities to and for the child
15 because of incarceration, hospitalization or ~~other~~ physical
16 or mental disorder or incapacity; or

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

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1 afforded to all children under the Children's Code;

2 ~~[D.]~~ F. "physical abuse" includes [~~but is not~~
3 ~~limited to~~] any case in which the child exhibits evidence of
4 skin bruising, bleeding, malnutrition, failure to thrive,
5 burns, fracture of any bone, subdural hematoma, soft tissue
6 swelling or death and:

7 (1) there is not a justifiable explanation
8 for the condition or death;

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

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

13 (4) circumstances indicate that the condition
14 or death may not be the product of an accidental occurrence;

15 ~~[E.]~~ G. "sexual abuse" includes [~~but is not~~
16 ~~limited to~~] criminal sexual contact, incest or criminal sexual
17 penetration, as those acts are defined by state law; and

18 ~~[F.]~~ H. "sexual exploitation" includes [~~but is not~~
19 ~~limited to~~]:

20 (1) allowing, permitting or encouraging a
21 child to engage in prostitution;

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

24 (3) filming or depicting a child for obscene
25 or pornographic commercial purposes, as those acts are defined

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1 by state law."

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

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

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

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

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

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

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

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

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

19 Section 5. Section 32A-4-18 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 112) is amended to read:

21 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
22 PROBABLE CAUSE.--

23 A. When a child alleged to be neglected or abused
24 has been taken into custody by the department or the
25 department has petitioned the court for temporary custody, a

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

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

11 C. At the custody hearing, the court shall release
12 the child to his parent, guardian or custodian unless probable
13 cause exists to believe that:

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

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

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

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

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

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1 the child.

2 D. At the conclusion of the custody hearing, if
3 the court determines that custody pending adjudication is
4 appropriate, the court may:

5 (1) return the child to his parent, guardian
6 or custodian upon such conditions as will reasonably assure
7 the safety and well-being of the child; or

8 (2) award custody of the child to the
9 department with or without provision for visitation rights for
10 the parent, guardian or custodian of the child.

11 Reasonable efforts shall be made to preserve and reunify
12 the family, with the paramount concern being the child's
13 health and safety.

14 E. 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
17 diagnostic examinations or evaluations. Copies of any
18 diagnostic or evaluation reports ordered by the court shall be
19 provided to the parties at least five days before the
20 adjudicatory hearing is scheduled. The reports shall not be
21 sent to the court.

22 F. The Rules of Evidence shall not apply to
23 custody hearings. "

24 Section 6. Section 32A-4-20 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 114, as amended) is amended to read:

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1 "32A-4-20. CONDUCT OF HEARINGS-- FINDINGS-- DISMISSAL--
2 DISPOSITIONAL MATTERS-- PENALTY. --

3 A. The proceedings shall be recorded by
4 stenographic notes or by electronic, mechanical or other
5 appropriate means.

6 B. All abuse and neglect hearings shall be closed
7 to the general public.

8 C. Only the parties, their counsel, witnesses and
9 other persons approved by the court may be present at a closed
10 hearing. Any foster parent, preadoptive parent or relative
11 providing care for the child shall be given notice and an
12 opportunity to be heard at the dispositional phase of the
13 hearing. Those other persons the court finds to have a proper
14 interest in the case or in the work of the court may be
15 admitted by the court to closed hearings on the condition that
16 they refrain from divulging any information that would
17 identify the child or family involved in the proceedings.

18 D. Accredited representatives of the news media
19 shall be allowed to be present at closed hearings, subject to
20 the condition that they refrain from divulging information
21 that would identify any child involved in the proceedings or
22 the parent, guardian or custodian of that child and subject to
23 enabling regulations as the court finds necessary for the
24 maintenance of order and decorum and for the furtherance of
25 the purposes of the Children's Code.

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1 E. If the court finds that it is in the best
2 interest of the child, the child may be excluded from a
3 neglect or an abuse hearing. Under the same conditions, a
4 child may be excluded by the court during a hearing on
5 dispositional issues.

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

9 G. The court shall determine if the allegations of
10 the petition are admitted or denied. If the allegations are
11 denied, the court shall proceed to hear evidence on the
12 petition. The court after hearing all of the evidence bearing
13 on the allegations of neglect or abuse shall make and record
14 its findings on whether the child is a neglected child, an
15 abused child or both. If the petition alleges that the
16 parent, guardian or custodian has subjected the child to
17 aggravated circumstances, then the court shall also make and
18 record its findings on whether the aggravated circumstances
19 have been proved.

20 H. If the court finds on the basis of a valid
21 admission of the allegations of the petition or on the basis
22 of clear and convincing evidence, competent, material and
23 relevant in nature, that the child is neglected or abused, the
24 court may proceed immediately or at a postponed hearing to
25 make disposition of the case. If the court does not find that

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1 the child is neglected or abused, the court shall dismiss the
2 petition and may refer the family to the department for
3 appropriate services.

4 I. In that part of the hearings held under the
5 Children's Code on dispositional issues, all relevant and
6 material evidence helpful in determining the questions
7 presented, including oral and written reports, may be received
8 by the court and may be relied upon to the extent of its
9 probative value even though not competent had it been offered
10 during the part of the hearings on adjudicatory issues.

11 J. On the court's motion or that of a party, the
12 court may continue the hearing on the petition for a period
13 not to exceed thirty days to receive reports and other
14 evidence in connection with disposition. The court shall
15 continue the hearing pending the receipt of the predisposition
16 study and report if that document has not been prepared and
17 received. During any continuances under this subsection, the
18 court shall make an appropriate order for legal custody. "

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

21 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR
22 NEGLECTED CHILD. --

23 A. If not held in conjunction with the
24 adjudicatory hearing, the dispositional hearing shall be
25 commenced within thirty days after the conclusion of the

1 adjudicatory hearing. At the conclusion of the dispositional
2 hearing, the court shall make and include in the dispositional
3 judgment its findings on the following:

4 (1) the interaction and interrelationship of
5 the child with his parent, siblings and any other person who
6 may significantly affect the child's best interest;

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

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

11 (4) the wishes of the child as to his
12 custodian;

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

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

18 (7) the availability of services recommended
19 in the treatment plan prepared as a part of the predisposition
20 study in accordance with the provisions of Section 32A-4-21
21 NMSA 1978;

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

24 (9) whether reasonable efforts were used by
25 the department to prevent removal of the child from the home

1 prior to placement in substitute care and whether reasonable
2 efforts were used to attempt reunification of the child with
3 the natural parent; and

4 (10) if the child is an Indian child, whether
5 the placement preferences set forth in the federal Indian
6 Child Welfare Act of 1978 or the placement preferences of the
7 child's Indian tribe have been followed and whether the Indian
8 child's treatment plan provides for maintaining the Indian
9 child's cultural ties. When placement preferences have not
10 been followed, good cause for noncompliance shall be clearly
11 stated and supported.

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

15 (1) permit the child to remain with his
16 parent, guardian or custodian, subject to those conditions and
17 limitations the court may prescribe;

18 (2) place the child under protective
19 supervision of the department; or

20 (3) transfer legal custody of the child to
21 any of the following:

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

24 (b) an agency responsible for the care
25 of neglected or abused children; or

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1 (c) a child-placement agency willing
2 and able to assume responsibility for the education, care and
3 maintenance of the child and licensed or otherwise authorized
4 by law to receive and provide care for the child.

5 C. If a child is found to be neglected or abused,
6 in its dispositional judgment the court shall also order the
7 department to implement and the child's parent, guardian or
8 custodian to cooperate with any treatment plan approved by the
9 court. Reasonable efforts shall be made to preserve and
10 reunify the family, with the paramount concern being the
11 child's health and safety. The court may determine that
12 reasonable efforts are not required to be made when the court
13 finds that:

- 14 (1) the efforts would be futile;
- 15 (2) the parent, guardian or custodian has
16 subjected the child to aggravated circumstances; or
- 17 (3) the parental rights of the parent to a
18 sibling have been terminated involuntarily.

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

25 E. The court may order reasonable visitation

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1 between a child placed in the custody of the department and
2 the child's siblings or any other person who may significantly
3 affect the child's best interest, if the court finds the
4 visitation to be in the child's best interest.

5 F. Unless a child found to be neglected or abused
6 is also found to be delinquent, the child shall not be
7 confined in an institution established for the long-term care
8 and rehabilitation of delinquent children.

9 G. When the court vests legal custody in an
10 agency, institution or department, the court shall transmit
11 with the dispositional judgment copies of the clinical
12 reports, the predisposition study and report and any other
13 information it has pertinent to the care and treatment of the
14 child.

15 H. Prior to any child being placed in the custody
16 or protective supervision of the department, the department
17 shall be provided with reasonable oral or written notification
18 and an opportunity to be heard. At any hearing held pursuant
19 to this subsection, the department may appear as a party.

20 I. When a child is placed in the custody of the
21 department, the department shall investigate whether the child
22 is eligible for enrollment as a member of an Indian tribe and,
23 if so, the department shall pursue the enrollment on the
24 child's behalf.

25 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 the permanency plan in a timely manner. "

6 Section 8. Section 32A-4-25 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 119, as amended) is amended to read:

8 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

9 A. The initial judicial review shall be held
10 within sixty days of the disposition. At the initial review,
11 the parties shall demonstrate to the court efforts made to
12 implement the treatment plan approved by the court in its
13 dispositional order. The court shall determine the extent to
14 which the treatment plan has been implemented and make
15 supplemental orders as necessary to assure compliance with the
16 treatment plan and the safety of the child. Prior to the
17 initial judicial review, the department shall submit a copy of
18 the adjudicatory order, the dispositional order and notice of
19 the initial judicial review to the local substitute care
20 review board for that judicial district created under the
21 Citizen Substitute Care Review Act. A representative of the
22 local substitute care review board shall be permitted to
23 attend and comment to the court.

24 B. Subsequent periodic reviews of dispositional
25 orders shall be held within six months of the conclusion of

1 the permanency hearing or, if a motion has been filed for
2 termination of parental rights or permanent guardianship,
3 within six months of the decision on that motion and every six
4 months thereafter. Prior to the review, the department shall
5 submit a progress report to the local substitute care review
6 board for that judicial district created under the Citizen
7 Substitute Care Review Act. Prior to any judicial review by
8 the court pursuant to this section, the local substitute care
9 review board may review the dispositional order or the
10 continuation of the order and the department's progress report
11 and report its findings and recommendations to the court. The
12 review may be carried out by either of the following:

13 (1) a judicial review hearing conducted by
14 the court; or

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

18 C. The children's court attorney shall give notice
19 to all parties, the child's guardian ad litem, the child's
20 CASA, a contractor administering the local substitute care
21 review board and the child's foster parent or substitute care
22 provider of the time, place and purpose of any judicial review
23 hearing held pursuant to [~~Subsections~~] Subsection A or B of
24 this section.

25 D. At any judicial review hearing held pursuant to

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

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

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

25 G. When the child is an Indian child, the court

1 shall determine during review of a dispositional order whether
2 the placement preferences set forth in the federal Indian
3 Child Welfare Act of 1978 or the placement preferences of the
4 child's Indian tribe were followed and whether the child's
5 treatment plan provides for maintaining the child's cultural
6 ties. When placement preferences have not been followed, good
7 cause for noncompliance shall be clearly stated and supported.

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

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

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

19 (3) return the child to his parent and place
20 the child under the protective supervision of the department;

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

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

25 (b) a relative or other individual who,

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1 after study by the department or other agency designated by
2 the court, is found by the court to be qualified to receive
3 and care for the child and is appointed as a permanent
4 guardian of the child; or

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

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

14 (a) the efforts would be futile;

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

17 (c) the parental rights of the parent
18 to a sibling have been terminated involuntarily;

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

25 (7) if during a judicial review the court

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1 finds that the child's parent, guardian or custodian has not
2 complied with the court-ordered treatment plan, the court may
3 order:

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

7 (b) a hearing on the merits of
8 terminating parental rights.

9 I. Dispositional orders entered pursuant to this
10 section shall remain in force for a period of six months,
11 except for orders that provide for transfer of the child to
12 the child's noncustodial parent or to a permanent guardian.

13 J. The report of the local substitute care review
14 board submitted to the court pursuant to Subsection B of this
15 section shall become a part of the child's permanent court
16 record.

17 K. When the court determines, pursuant to
18 Paragraph (5) of Subsection H of this section, that no
19 reasonable efforts at reunification are required, the court
20 shall conduct, within thirty days, a permanency hearing as
21 described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts
22 shall be made to implement the permanency plan in a timely
23 manner. "

24 Section 9. Section 32A-4-27 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 121) is amended to read:

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1 "32A- 4- 27. INTERVENTION- - PERSONS PERMITTED TO

2 INTERVENE. - -

3 A. At any stage of an abuse or neglect proceeding,
4 a person described in this subsection may be permitted to
5 intervene as a party with a motion for affirmative relief:

- 6 (1) a foster parent whom the child has
7 resided with for at least six months;
- 8 (2) a relative within the fifth degree of
9 consanguinity with whom the child has resided;
- 10 (3) a stepparent with whom the child has
11 resided; or
- 12 (4) a person who wishes to become the child's
13 permanent guardian.

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

- 17 (1) the person's rationale for the proposed
18 intervention; and
- 19 (2) whether intervention is in the best
20 interest of the child.

21 C. When the court determines that the child's best
22 interest will be served as a result of intervention by a
23 person described in Subsection A of this section, the court
24 may permit intervention unless the party opposing intervention
25 can demonstrate that a viable plan for reunification with the

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1 respondents is in progress and that intervention could impede
2 the progress of the reunification plan.

3 D. The persons described in this subsection shall
4 be permitted to intervene during any stage of an abuse or
5 neglect proceeding:

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

8 (2) when the child is an Indian child, the
9 child's Indian tribe.

10 E. The child's foster parent shall be permitted to
11 intervene when:

12 (1) the foster parent desires to adopt the
13 child;

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

17 (3) a motion for termination of parental
18 rights has been filed by a person other than the foster
19 parent; and

20 (4) bonding between the child and the child's
21 foster parent is alleged as a reason for terminating parental
22 rights in the motion for termination of parental rights.

23 F. Any foster parent, preadoptive parent or
24 relative providing care for the child shall be given notice
25 of, and an opportunity to be heard in, any review or hearing

1 with respect to the child, except that this subsection shall
2 not be construed to require that any foster parent,
3 preadoptive parent or relative providing care for the child be
4 made a party to such a review or hearing solely on the basis
5 of the notice and opportunity to be heard. "

6 Section 10. Section 32A-4-28 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 122, as amended) is amended to read:

8 "32A-4-28. TERMINATION OF PARENTAL RIGHTS-- ADOPTION
9 DECREE. --

10 A. In proceedings to terminate parental rights,
11 the court shall give primary consideration to the physical,
12 mental and emotional welfare and needs of the child, including
13 the likelihood of the child being adopted if parental rights
14 are terminated.

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

17 (1) there has been an abandonment of the
18 child by his parents;

19 (2) the child has been a neglected or abused
20 child as defined in the Abuse and Neglect Act and the court
21 finds that the conditions and causes of the neglect and abuse
22 are unlikely to change in the foreseeable future despite
23 reasonable efforts by the department or other appropriate
24 agency to assist the parent in adjusting the conditions that
25 render the parent unable to properly care for the child. The

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1 court may find in some cases that efforts by the department or
2 another agency are unnecessary, when:

3 (a) there is a clear showing that the
4 efforts would be futile [~~or when a parent has caused great~~
5 ~~bodily harm to the child or great bodily harm or death to the~~
6 ~~child's sibling; or~~];

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

9 (c) the parental rights of the parent
10 to a sibling have been terminated involuntarily; or

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

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

16 (b) the parent-child relationship has
17 disintegrated;

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

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

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

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

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

D. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

E. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of

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1 parental rights, to allow the department sufficient time to
2 provide counseling for the child and otherwise prepare the
3 child for the adoption. The adoption decree shall conform to
4 the requirements of the Adoption Act and shall have the same
5 force and effect as other adoption decrees entered pursuant to
6 that act. The court clerk shall assign an adoption case
7 number to the adoption decree. "

8 Section 11. Section 32A-4-29 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 123, as amended) is amended to read:

10 "32A-4-29. TERMINATION PROCEDURE. --

11 A. A motion to terminate parental rights may be
12 filed at any stage of the abuse or neglect proceeding. The
13 proceeding may be initiated by any of the following:

- 14 (1) the department;
- 15 (2) a licensed child placement agency; or
- 16 (3) any other person having a legitimate
17 interest in the matter, including the child's guardian ad
18 litem, a petitioner for adoption, a foster parent or a
19 relative of the child.

20 B. The motion for termination of parental rights
21 shall be signed, verified by the moving party and filed with
22 the court. The motion shall set forth:

- 23 (1) the date, place of birth and marital
24 status of the child, if known;
- 25 (2) the grounds for termination and the facts

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1 and circumstances supporting the grounds for termination;

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

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

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

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

11 (7) whether the child is subject to the
12 federal Indian Child Welfare Act of 1978 and, if so:

13 (a) the tribal affiliations of the
14 child's parents;

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

21 (c) what specific efforts were made to
22 comply with the placement preferences set forth in the federal
23 Indian Child Welfare Act of 1978 or the placement preferences
24 of the appropriate Indian tribes.

25 C. A parent who has not previously been a party to

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1 the proceeding shall be named in the motion and shall become a
2 party to the proceeding unless the court determines that the
3 parent has not established a protected liberty interest in his
4 relationship with the child.

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

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1 to Section [~~32A-2-17~~] 32A-4-17 NMSA 1978 and who failed to
2 make an appearance.

3 E. If the identity or whereabouts of a person
4 entitled to service are unknown, the moving party shall file a
5 motion for an order granting service by publication supported
6 by the affidavit of the moving party or his agent or attorney
7 detailing the efforts made to locate the person entitled to
8 service. Upon being satisfied that reasonable efforts to
9 locate the person entitled to service have been made and that
10 information as to the identity or whereabouts of the person is
11 still insufficient to effect service in accordance with the
12 Rules of Civil Procedure for the District Courts, the court
13 shall order service by publication pursuant to the Rules of
14 Civil Procedure for the District Courts.

15 F. After a motion for the termination of parental
16 rights is filed, the parent shall be advised of the right to
17 counsel unless the parent is already represented by counsel.
18 Counsel shall be appointed, upon request, for any parent who
19 is unable to obtain counsel due to financial reasons or, if in
20 the court's discretion, the interests of justice require
21 appointment of counsel.

22 G. The court shall assure that a guardian ad litem
23 represents the child in all proceedings for the termination of
24 parental rights.

25 H. When a motion to terminate parental rights is

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1 filed, the moving party shall request a hearing on the motion.
2 The hearing date shall be at least thirty days, but no more
3 than sixty days, after service is effected upon the parties
4 entitled to service under this section.

5 I. In any action for the termination of parental
6 rights brought by a party other than the department and
7 involving a child in the custody of the department, the
8 department may:

9 (1) litigate a motion for the termination of
10 parental rights that was initially filed by another party; or

11 (2) move that the motion for the termination
12 of parental rights be found premature and denied.

13 J. The grounds for any attempted termination shall
14 be proved by clear and convincing evidence. In any proceeding
15 involving a child subject to the federal Indian Child Welfare
16 Act of 1978, the grounds for any attempted termination shall
17 be proved beyond a reasonable doubt and shall meet the
18 requirements set forth in 25 U.S.C. Section 1912(f).

19 K. When the court terminates parental rights, it
20 shall appoint a custodian for the child and fix responsibility
21 for the child's support.

22 L. In any termination proceeding involving a child
23 subject to the federal Indian Child Welfare Act of 1978, the
24 court shall in any termination order make specific findings
25 that the requirements of that act have been met.

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1 M A judgment of the court terminating parental
2 rights divests the parent of all legal rights and privileges
3 and dispenses with both the necessity for the consent to or
4 receipt of notice of any subsequent adoption proceeding
5 concerning the child. A judgment of the court terminating
6 parental rights shall not affect the child's rights of
7 inheritance from and through the child's biological parents."

8 Section 12. Section 32A-4-32 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 126) is amended to read:

10 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE. --

11 A. A motion for permanent guardianship may be
12 filed by any party.

13 B. Any application for permanent guardianship
14 shall be signed and verified by the petitioner, filed with the
15 court and set forth:

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

18 (2) the facts and circumstances supporting
19 the ground for permanent guardianship;

20 (3) the name and address of the prospective
21 guardian and a statement that the person agrees to accept the
22 duties and responsibilities of guardianship;

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

24 (5) the relationship of the child to the
25 petitioner and the prospective guardian; and

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

3 (a) the tribal affiliations of the
4 child's parents;

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

11 (c) what specific efforts were made to
12 comply with the placement preferences set forth in the federal
13 Indian Child Welfare Act of 1978 or the placement preferences
14 of the appropriate Indian tribes.

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

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

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1 any party, including the child's guardian ad litem, and any
2 other person the court orders provided with notice. Service
3 shall be in accordance with the Rules of Civil Procedure for
4 the District Courts for the service of [~~process~~] motions in a
5 civil action in this state. The notice shall state
6 specifically that the person served [~~must~~] shall file a
7 written response to the application within twenty days if the
8 person intends to contest the guardianship.

9 E. When the child is an Indian child, subject to
10 the federal Indian Child Welfare Act of 1978, notice shall
11 also be served upon the Indian tribes of the child's parents
12 and upon any "Indian custodian" as that term is defined in
13 25 U. S. C. Section 1903(6).

14 F. The grounds for permanent guardianship shall be
15 proved by clear and convincing evidence. The grounds for
16 permanent guardianship [~~must~~] shall be proved beyond a
17 reasonable doubt and meet the requirements of 25 U. S. C.
18 Section 1912(f) in any proceeding involving a child subject to
19 the federal Indian Child Welfare Act of 1978.

20 G. A judgment of the court vesting permanent
21 guardianship with an individual divests the biological or
22 adoptive parent of legal custody or guardianship of the child,
23 but is not a termination of the parent's rights. A child's
24 inheritance rights from and through the child's biological or
25 adoptive parents are not affected by this proceeding.

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1 H. Upon a finding that grounds exist for a
2 permanent guardianship, the court may incorporate into the
3 final order provisions for visitation with the natural
4 parents, siblings or other relatives of the child and any
5 other provision necessary to rehabilitate the child or provide
6 for the child's continuing safety and well being.

7 I. The court shall retain jurisdiction to enforce
8 its judgment of permanent guardianship.

9 J. Any party to the abuse or neglect proceeding,
10 the child or a parent of the child may make a motion for
11 revocation of the order granting guardianship when there is a
12 significant change of circumstances including:

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

15 (2) the child's guardian is unable to
16 properly care for the child.

17 K. The court shall appoint a guardian ad litem for
18 the child in all proceedings for the revocation of permanent
19 guardianship.

20 L. The court may revoke the order granting
21 guardianship when a change of circumstances has been proven by
22 clear and convincing evidence and it is in the child's best
23 interests to revoke the order granting guardianship. "

24 Section 13. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 February 28, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 377

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16 HOUSE JUDICIARY COMMITTEE SUBSTITUTE
17 FOR HOUSE BILL 377

18
19 DO PASS.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/CSHB 377

Page 44

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna

Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 377

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO CHILDREN; CLARIFYING PROCEDURES FOR THE PLACEMENT
OF CHILDREN ALLEGED TO BE ABUSED OR NEGLECTED; AMENDING
SECTIONS OF THE CHILDREN'S CODE.

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

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

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

A. first to provide for the care, protection and
wholesome mental and physical development of children coming
within the provisions of the Children's Code and then to
preserve the unity of the family whenever possible. The
child's health and safety shall be the paramount concern.
Permanent separation of the child from the family, however,
would especially be considered when the child or another child
of the parent has suffered permanent or severe injury or

1 repeated abuse. It is the intent of the legislature that, to
2 the maximum extent possible, children in New Mexico shall be
3 reared as members of a family unit;

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

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

13 D. to provide children with services that are
14 sensitive to their cultural needs;

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

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

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

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

A. "adult" means an individual who is eighteen

1 years of age or older;

2 B. "child" means an individual who is less than
3 eighteen years old;

4 C. "court", when used without further
5 qualification, means the children's court division of the
6 district court and includes the judge, special master or
7 commissioner appointed pursuant to the provisions of the
8 Children's Code or supreme court rule;

9 D. "court appointed special advocate" or "CASA"
10 means a person appointed as a CASA, pursuant to the provisions
11 of the Children's Court Rules and Forms, who assists the court
12 in determining the best interests of the child by
13 investigating the case and submitting a report to the court;

14 E. "custodian" means a person, other than a parent
15 or guardian, who exercises physical control, care or custody
16 of the child, including any employee of a residential facility
17 or any persons providing out-of-home care;

18 F. "department" means the children, youth and
19 families department, unless otherwise specified;

20 G. "foster parent" means a person, including a
21 relative of the child, licensed or certified by the department
22 or a child placement agency to provide care for children in
23 the custody of the department or agency;

24 H. "guardian" means the person having the duty and
25 authority of guardianship;

I. "guardianship" means the duty and authority to
make important decisions in matters having a permanent effect
on the life and development of a child and to be concerned

1 about the child's general welfare and includes [~~but is not~~
2 ~~necessarily limited in either number or kind to~~]:

3 (1) the authority to consent to marriage, to
4 enlistment in the armed forces of the United States or to
5 major medical, psychiatric and surgical treatment;

6 (2) the authority to represent the child in
7 legal actions and to make other decisions of substantial legal
8 significance concerning the child;

9 (3) the authority and duty of reasonable
10 visitation of the child;

11 (4) the rights and responsibilities of legal
12 custody when the physical custody of the child is exercised by
13 the child's parents, except when legal custody has been vested
14 in another person; and

15 (5) when the rights of the child's parents
16 have been terminated as provided for in the laws governing
17 termination of parental rights or when both of the child's
18 parents are deceased, the authority to consent to the adoption
19 of the child and to make any other decision concerning the
20 child that the child's parents could have made;

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

K. "Indian child" means an unmarried person who
is:

(1) less than eighteen years old;

1 (2) a member of an Indian tribe or is
2 eligible for membership in an Indian tribe; and

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

5 L. "Indian child's tribe" means:

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

8 (2) in the case of an Indian child who is a
9 member or eligible for membership in more than one tribe, the
10 Indian tribe with which the Indian child has more significant
11 contacts;

12 M "judge", when used without further
13 qualification, means the judge of the court;

14 N. "legal custody" means a legal status created by
15 the order of the court or other court of competent
16 jurisdiction that vests in a person, department or agency the
17 right to determine where and with whom a child shall live; the
18 right and duty to protect, train and discipline the child and
19 to provide the child with food, shelter, education and
20 ordinary and emergency medical care; the right to consent to
21 major medical, psychiatric, psychological and surgical
22 treatment and to the administration of legally prescribed
23 psychotropic medications pursuant to the Children's Mental
24 Health and Developmental Disabilities Act; and the right to
25 consent to the child's enlistment in the armed forces of the
United States, all subject to the powers, rights, duties and
responsibilities of the guardian of the child and subject to
any existing parental rights and responsibilities. An

1 individual granted legal custody of a child shall exercise the
2 rights and responsibilities as custodian personally, unless
3 otherwise authorized by the court entering the order;

4 0. "parent" or "parents" includes 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. A parent retains all of the duties and
8 authority of guardianship and legal custody of the child,
9 unless otherwise limited or altered by court order;

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

12 (1) return to the parent;

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

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

18 (4) placement in the custody of the
19 department until the child reaches the age of majority, unless
20 the child is emancipated, pursuant to the Emancipation of
21 Minors Act; or

22 (5) placement in the custody of the
23 department under a planned permanent living arrangement that
24 meets the department's definition of long-term foster care;

25 [P.] Q. "person" means an individual or any other
form of entity recognized by law;

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

[Q-] S. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

[R-] T. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

[S-] U. "tribunal" means any judicial forum other than the court."

Section 3. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

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

A. "abandonment" includes [~~but is not limited to~~] instances when the parent, without justifiable cause:

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

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

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

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

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B. "abused child" means a child:

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

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

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or 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" include those circumstances in which the parent, guardian or custodian has:

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

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

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

(4) had his parental rights over a sibling of

1 the child terminated involuntarily;

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

7 [~~E.~~] E. "neglected child" means a child:

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

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

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

20 (4) whose parent, guardian or custodian is
21 unable to discharge his responsibilities to and for the child
22 because of incarceration, hospitalization or [~~other~~] physical
23 or mental disorder or incapacity; or

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

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1 a recognized church or religious denomination, by a duly
2 accredited practitioner thereof is for that reason alone a
3 neglected child within the meaning of the Children's Code; and
4 further provided that no child shall be denied the protection
5 afforded to all children under the Children's Code;

6 ~~[D.]~~ F. "physical abuse" includes but is not
7 limited to any case in which the child exhibits evidence of
8 skin bruising, bleeding, malnutrition, failure to thrive,
9 burns, fracture of any bone, subdural hematoma, soft tissue
swelling or death and:

10 (1) there is not a justifiable explanation
11 for the condition or death;

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

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

16 (4) circumstances indicate that the condition
17 or death may not be the product of an accidental occurrence;

18 ~~[E.]~~ G. "sexual abuse" includes but is not limited
19 to criminal sexual contact, incest or criminal sexual
20 penetration, as those acts are defined by state law; and

21 ~~[F.]~~ H. "sexual exploitation" includes but is not
22 limited to:

23 (1) allowing, permitting or encouraging a
24 child to engage in prostitution;

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

(3) filming or depicting a child for obscene

1 or pornographic commercial purposes, as those acts are defined
2 by state law. "

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

5 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY. --

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

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

11 (2) deliver the child to the department or to
12 an appropriate shelter-care facility [~~and~~] or, in the case of
13 a child who is believed to be suffering from a serious
14 physical or mental condition or illness that requires prompt
15 treatment or diagnosis, deliver the child to a medical
16 facility. If a law enforcement officer delivers a child to a
17 shelter-care facility or a medical facility, the officer shall
18 immediately notify the department that the child has been
19 placed in the department's 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
24 or has been ordered by the court. When a child is delivered
25 to an appropriate shelter-care facility or medical facility, a
department caseworker shall review the need for retention of
custody within a reasonable time after delivery of the child
to the facility and shall release the child from custody

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1 unless custody is appropriate or has been ordered by the
2 court.

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

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

17 Section 5. Section 32A-4-18 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 112) is amended to read:

19 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
20 PROBABLE CAUSE. --

21 A. When a child alleged to be neglected or abused
22 has been taken into custody by the department or the
23 department has petitioned the court for temporary custody, a
24 custody hearing shall be held within ten days from the date
25 the petition is filed to determine if the child should remain
in or be placed in the department's custody pending
adjudication. Upon written request of the respondent, the
hearing may be held earlier, but in no event shall the hearing

1 be held sooner than two days after the date the petition was
2 filed.

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

6 C. At the custody hearing, the court shall release
7 the child to his parent, guardian or custodian unless probable
8 cause exists to believe that:

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

12 (2) the child is in immediate danger from his
13 surroundings and removal from those surroundings is necessary
14 for the child's safety or well-being;

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

17 (4) there has been an abandonment of the
18 child by his parent, guardian or custodian; or

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

22 D. At the conclusion of the custody hearing, if
23 the court determines that custody pending adjudication is
24 appropriate, the court may:

25 (1) return the child to his parent, guardian
or custodian upon such conditions as will reasonably assure
the safety and well-being of the child; or

(2) award custody of the child to the

1 department with or without provision for visitation rights for
2 the parent, guardian or custodian of the child.

3 Reasonable efforts shall be made to preserve and reunify
4 the family, with the paramount concern being the child's
5 health and safety.

6 E. At the conclusion of the custody hearing, the
7 court may order the respondent or the child alleged to be
8 neglected or abused, or both, to undergo appropriate
9 diagnostic examinations or evaluations. Copies of any
10 diagnostic or evaluation reports ordered by the court shall be
11 provided to the parties at least five days before the
12 adjudicatory hearing is scheduled. The reports shall not be
13 sent to the court.

14 F. The Rules of Evidence shall not apply to
15 custody hearings. "

16 Section 6. Section 32A-4-20 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 114, as amended) is amended to read:

18 "32A-4-20. CONDUCT OF HEARINGS-- FINDINGS-- DISMISSAL--
19 DISPOSITIONAL MATTERS-- PENALTY.--

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

23 B. All abuse and neglect hearings shall be closed
24 to the general public.

25 C. Only the parties, their counsel, witnesses and
other persons approved by the court may be present at a closed
hearing. The foster parent, preadoptive parent or relative
providing care for the child shall be given notice and an

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1 opportunity to be heard at the dispositional phase. Those
2 other persons the court finds to have a proper interest in the
3 case or in the work of the court may be admitted by the court
4 to closed hearings on the condition that they refrain from
5 divulging any information that would identify the child or
6 family involved in the proceedings.

7 D. Accredited representatives of the news media
8 shall be allowed to be present at closed hearings, subject to
9 the condition that they refrain from divulging information
10 that would identify any child involved in the proceedings or
11 the parent, guardian or custodian of that child and subject to
12 enabling regulations as the court finds necessary for the
13 maintenance of order and decorum and for the furtherance of
14 the purposes of the Children's Code.

15 E. If the court finds that it is in the best
16 interest of the child, the child may be excluded from a
17 neglect or an abuse hearing. Under the same conditions, a
18 child may be excluded by the court during a hearing on
19 dispositional issues.

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

23 G. The court shall determine if the allegations of
24 the petition are admitted or denied. If the allegations are
25 denied, the court shall proceed to hear evidence on the
petition. The court after hearing all of the evidence bearing
on the allegations of neglect or abuse shall make and record
its findings on whether the child is a neglected child, an

1 abused child or both. If the petition alleges that the
2 parent, guardian or custodian has subjected the child to
3 aggravated circumstances, then the court shall also make and
4 record its findings on whether the aggravated circumstances
5 have been proven.

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

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

22 J. On the court's motion or that of a party, the
23 court may continue the hearing on the petition for a period
24 not to exceed thirty days to receive reports and other
25 evidence in connection with disposition. The court shall
continue the hearing pending the receipt of the predisposition
study and report if that document has not been prepared and
received. During any continuances under this subsection, the

1 court shall make an appropriate order for legal custody."

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

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

6 A. If not held in conjunction with the
7 adjudicatory hearing, the dispositional hearing shall be
8 commenced within thirty days after the conclusion of the
9 adjudicatory hearing. At the conclusion of the dispositional
10 hearing, the court shall make and include in the dispositional
11 judgment its findings on the following:

12 (1) the interaction and interrelationship of
13 the child with his parent, siblings and any other person who
14 may significantly affect the child's best interest;

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

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

19 (4) the wishes of the child as to his
20 custodian;

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

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

(7) the availability of services recommended
in the treatment plan prepared as a part of the predisposition
study in accordance with the provisions of Section 32A-4-21

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1 NMSA 1978;

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

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

9 (10) if the child is an Indian child, whether
10 the placement preferences set forth in the federal Indian
11 Child Welfare Act of 1978 or the placement preferences of the
12 child's Indian tribe have been followed and whether the Indian
13 child's treatment plan provides for maintaining the Indian
14 child's cultural ties. When placement preferences have not
15 been followed, good cause for noncompliance shall be clearly
16 stated and supported.

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

20 (1) permit the child to remain with his
21 parent, guardian or custodian, subject to those conditions and
22 limitations the court may prescribe;

23 (2) place the child under protective
24 supervision of the department; or

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

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

1 (b) an agency responsible for the care
2 of neglected or abused children; or

3 (c) a child-placement agency willing
4 and able to assume responsibility for the education, care and
5 maintenance of the child and licensed or otherwise authorized
6 by law to receive and provide care for the child.

7 C. If a child is found to be neglected or abused,
8 in its dispositional judgment the court shall also order the
9 department to implement and the child's parent, guardian or
10 custodian to cooperate with any treatment plan approved by the
11 court. Reasonable efforts shall be made to preserve and
12 reunify the family, with the paramount concern being the
13 child's health and safety. The court may determine that
14 reasonable efforts are not required to be made when the court
15 finds that:

16 (1) the efforts would be futile;

17 (2) the parent, guardian or custodian has
18 subjected the child to aggravated circumstances; or

19 (3) the parental rights of the parent to a
20 sibling of the child have been terminated involuntarily.

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

E. The court may order reasonable visitation
between a child placed in the custody of the department and

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1 the child's siblings or any other person who may significantly
2 affect the child's best interest, if the court finds the
3 visitation to be in the child's best interest.

4 F. Unless a child found to be neglected or abused
5 is also found to be delinquent, the child shall not be
6 confined in an institution established for the long-term care
and rehabilitation of delinquent children.

7 G. When the court vests legal custody in an
8 agency, institution or department, the court shall transmit
9 with the dispositional judgment copies of the clinical
10 reports, the predisposition study and report and any other
11 information it has pertinent to the care and treatment of the
12 child.

13 H. Prior to any child being placed in the custody
14 or protective supervision of the department, the department
15 shall be provided with reasonable oral or written notification
16 and an opportunity to be heard. At any hearing held pursuant
to this subsection, the department may appear as a party.

17 I. When a child is placed in the custody of the
18 department, the department shall investigate whether the child
19 is eligible for enrollment as a member of an Indian tribe and,
20 if so, the department shall pursue the enrollment on the
child's behalf.

21 J. When the court determines pursuant to
22 Subsection C of this section that no reasonable efforts at
23 reunification are required, the court shall conduct, within
24 thirty days, a permanency hearing as described in Section
25 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to

1 implement and finalize the permanency plan in a timely
2 manner. "

3 Section 8. Section 32A-4-25 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 119, as amended) is amended to read:

5 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

6 A. The initial judicial review shall be held
7 within sixty days of the disposition. At the initial review,
8 the parties shall demonstrate to the court efforts made to
9 implement the treatment plan approved by the court in its
10 dispositional order. The court shall determine the extent to
11 which the treatment plan has been implemented and make
12 supplemental orders as necessary to assure compliance with the
13 treatment plan and the safety of the child. Prior to the
14 initial judicial review, the department shall submit a copy of
15 the adjudicatory order, the dispositional order and notice of
16 the initial judicial review to the local substitute care
17 review board for that judicial district created under the
18 Citizen Substitute Care Review Act. A representative of the
19 local substitute care review board shall be permitted to
20 attend and comment to the court.

21 B. Subsequent periodic reviews of dispositional
22 orders shall be held within six months of the conclusion of
23 the permanency hearing or, if a motion has been filed for
24 termination of parental rights or permanent guardianship,
25 within six months of the decision on that motion and every six
months thereafter. Prior to the review, the department shall
submit a progress report to the local substitute care review
board for that judicial district created under the Citizen

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1 Substitute Care Review Act. Prior to any judicial review by
2 the court pursuant to this section, the local substitute care
3 review board may review the dispositional order or the
4 continuation of the order and the department's progress report
5 and report its findings and recommendations to the court. The
6 review may be carried out by either of the following:

7 (1) a judicial review hearing conducted by
8 the court; or

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

12 C. The children's court attorney shall give notice
13 to all parties, the child's guardian ad litem, the child's
14 CASA, a contractor administering the local substitute care
15 review board and the child's foster parent or substitute care
16 provider of the time, place and purpose of any judicial review
17 hearing held pursuant to [~~Subsections~~] Subsection A or B of
18 this section.

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

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

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

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

14 G. When the child is an Indian child, the court
15 shall determine during review of a dispositional order whether
16 the placement preferences set forth in the federal Indian
17 Child Welfare Act of 1978 or the placement preferences of the
18 child's Indian tribe were followed and whether the child's
19 treatment plan provides for maintaining the child's cultural
20 ties. When placement preferences have not been followed, good
cause for noncompliance shall be clearly stated and supported.

21 H. Based on its findings at a judicial review
22 hearing held pursuant to Subsection B of this section, the
23 court shall order one of the following dispositions:

24 (1) dismiss the action and return the child
25 to his parent without supervision if the court finds that

1 conditions in the home that led to abuse have been corrected
2 and it is now safe for the return of the abused child;

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

7 (3) return the child to his parent and place
8 the child under the protective supervision of the department;

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

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

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

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

20 (5) continue the child in the legal custody
21 of the department with or without any required parental
22 involvement in a treatment plan. Reasonable efforts shall be
23 made to preserve and reunify the family, with the paramount
24 concern being the child's health and safety unless the court
25 finds that such efforts are not required. The court may
determine that reasonable efforts are not required to be made
when the court finds that:

(a) the efforts would be futile;

1 **(b) the parent, guardian or custodian**
2 **has subjected the child to aggravated circumstances; or**

3 **(c) the parental rights of the parent**
4 **to a sibling of the child have been terminated involuntarily;**

5 (6) make additional orders regarding the
6 treatment plan or placement of the child to protect the
7 child's best interests if the court determines the department
8 has failed in implementing any material provision of the
9 treatment plan or abused its discretion in the placement or
proposed placement of the child; or

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

13 (a) the child's parent, guardian or
14 custodian to show cause why he should not be held in contempt
15 of court; or

16 (b) a hearing on the merits of
17 terminating parental rights.

18 I. Dispositional orders entered pursuant to this
19 section shall remain in force for a period of six months,
20 except for orders that provide for transfer of the child to
the child's noncustodial parent or to a permanent guardian.

21 J. The report of the local substitute care review
22 board submitted to the court pursuant to Subsection B of this
23 section shall become a part of the child's permanent court
24 record.

25 **K. When the court determines, pursuant to**

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1 Paragraph (5) of Subsection H of this section, that no
2 reasonable efforts at reunification are required, the court
3 shall conduct, within thirty days, a permanency hearing as
4 described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts
5 shall be made to place the child in a timely manner in
6 accordance with the permanency plan and to complete whatever
7 steps are necessary to finalize the permanent placement of the
8 child."

8 Section 9. Section 32A-4-27 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 121) is amended to read:

10 "32A-4-27. INTERVENTION-- PERSONS PERMITTED TO
11 INTERVENE. --

12 A. At any stage of an abuse or neglect proceeding,
13 a person described in this subsection may be permitted to
14 intervene as a party with a motion for affirmative relief:

- 15 (1) a foster parent whom the child has
16 resided with for at least six months;
17 (2) a relative within the fifth degree of
18 consanguinity with whom the child has resided;
19 (3) a stepparent with whom the child has
20 resided; or
21 (4) a person who wishes to become the child's
22 permanent guardian.

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

- (1) the person's rationale for the purposed
intervention; and

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

3 C. When the court determines that the child's best
4 interest will be served as a result of intervention by a
5 person described in Subsection A of this section, the court
6 may permit intervention unless the party opposing intervention
7 can demonstrate that a viable plan for reunification with the
8 respondents is in progress and that intervention could impede
9 the progress of the reunification plan.

10 D. The persons described in this subsection shall
11 be permitted to intervene during any stage of an abuse or
12 neglect proceeding:

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

15 (2) when the child is an Indian child, the
16 child's Indian tribe.

17 E. The child's foster parent shall be permitted to
18 intervene when:

19 (1) the foster parent desires to adopt the
20 child;

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

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

(4) bonding between the child and the child's
foster parent is alleged as a reason for terminating parental

1 rights in the motion for termination of parental rights.

2 F. The foster parent, preadoptive parent or
3 relative providing care for the child shall be given notice
4 of, and an opportunity to be heard in, any review or hearing
5 with respect to the child, except that this subsection shall
6 not be construed to require that any foster parent,
7 preadoptive parent or relative providing care for the child be
8 made a party to such a review or hearing solely on the basis
9 of the notice and opportunity to be heard. "

10 Section 10. Section 32A-4-28 NMSA 1978 (being Laws 1993,
Chapter 77, Section 122, as amended) is amended to read:

11 "32A-4-28. TERMINATION OF PARENTAL RIGHTS-- ADOPTION
12 DECREE. --

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

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

19 (1) there has been an abandonment of the
20 child by his parents;

21 (2) the child has been a neglected or abused
22 child as defined in the Abuse and Neglect Act and the court
23 finds that the conditions and causes of the neglect and abuse
24 are unlikely to change in the foreseeable future despite
25 reasonable efforts by the department or other appropriate
agency to assist the parent in adjusting the conditions that

1 render the parent unable to properly care for the child. The
2 court may find in some cases that efforts by the department or
3 another agency are unnecessary, when:

4 (a) there is a clear showing that the
5 efforts would be futile [~~or when a parent has caused great~~
6 ~~bodily harm to the child or great bodily harm or death to the~~
7 ~~child's sibling; or~~];

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

10 (c) the parental rights of the parent
11 to a sibling of the child have been terminated involuntarily;
12 or

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

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

18 (b) the parent-child relationship has
19 disintegrated;

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

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

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

(f) a presumption of abandonment

1 created by the conditions described in Subparagraphs (a)
2 through (e) of 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 termination of parental rights involving a
8 child subject to the federal Indian Child Welfare Act of 1978
9 shall comply with the requirements of that act.

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

1 force and effect as other adoption decrees entered pursuant to
2 that act. The court clerk shall assign an adoption case
3 number to the adoption decree."

4 Section 11. Section 32A-4-29 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 123, as amended) is amended to read:

6 "32A-4-29. TERMINATION PROCEDURE. --

7 A. A motion to terminate parental rights may be
8 filed at any stage of the abuse or neglect proceeding. The
9 proceeding may be initiated by any of the following:

- 10 (1) the department;
- 11 (2) a licensed child placement agency; or
- 12 (3) any other person having a legitimate
13 interest in the matter, including the child's guardian ad
14 litem, a petitioner for adoption, a foster parent or a
15 relative of the child.

16 B. The motion for termination of parental rights
17 shall be signed, verified by the moving party and filed with
18 the court. The motion shall set forth:

- 19 (1) the date, place of birth and marital
20 status of the child, if known;
- 21 (2) the grounds for termination and the facts
22 and circumstances supporting the grounds for termination;
- 23 (3) the names and addresses of the persons or
24 authorized agency or agency officer to whom custody might be
25 transferred;
- (4) whether the child resides or has resided
with a foster parent who desires to adopt this child;
- (5) whether the motion is in contemplation of

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1 adoption;

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

4 (7) whether the child is subject to the
5 federal Indian Child Welfare Act of 1978 and, if so:

6 (a) the tribal affiliations of the
7 child's parents;

8 (b) the specific actions taken by the
9 moving party to notify the parents' tribes and the results of
10 the contacts, including the names, addresses, titles and
11 telephone numbers of the persons contacted. Copies of any
12 correspondence with the tribes shall be attached as exhibits
13 to the petition; and

14 (c) what specific efforts were made to
15 comply with the placement preferences set forth in the federal
16 Indian Child Welfare Act of 1978 or the placement preferences
17 of the appropriate Indian tribes.

18 C. A parent who has not previously been a party to
19 the proceeding shall be named in the motion and shall become a
20 party to the proceeding unless the court determines that the
21 parent has not established a protected liberty interest in his
22 relationship with the child.

23 D. Notice of the filing of the motion, accompanied
24 by a copy of the motion, shall be served by the moving party
25 on all other parties, ~~[foster parents]~~ the foster parent,
preadoptive parent or relative providing care for the child
with whom the child is residing, foster parents with whom the
child has resided for six months within the previous twelve

1 months, the custodian of the child, any person appointed to
 2 represent any party and any other person the court orders.
 3 Service shall be in accordance with the Rules of Civil
 4 Procedure for the District Courts for the service of motions
 5 in a civil action in this state, except that foster parents
 6 and attorneys of record in this proceeding shall be served by
 7 certified mail. The notice shall state specifically that the
 8 person served shall file a written response to the motion
 9 within twenty days if the person intends to contest the
 10 termination. In any case involving a child subject to the
 11 federal Indian Child Welfare Act of 1978, notice shall also be
 12 sent by certified mail to the tribes of the child's parents
 13 and upon any "Indian custodian" as that term is defined in 25
 14 U.S.C. Section 1903(6). Further notice shall not be required
 15 on a parent who has been provided notice previously pursuant
 16 to Section [~~32A-2-17~~] 32A-4-17 NMSA 1978 and who failed to
 17 make an appearance.

18 E. If the identity or whereabouts of a person
 19 entitled to service are unknown, the moving party shall file a
 20 motion for an order granting service by publication supported
 21 by the affidavit of the moving party or his agent or attorney
 22 detailing the efforts made to locate the person entitled to
 23 service. Upon being satisfied that reasonable efforts to
 24 locate the person entitled to service have been made and that
 25 information as to the identity or whereabouts of the person is
 still insufficient to effect service in accordance with the
 Rules of Civil Procedure for the District Courts, the court
 shall order service by publication pursuant to the Rules of

1 Civil Procedure for the District Courts.

2 F. After a motion for the termination of parental
3 rights is filed, the parent shall be advised of the right to
4 counsel unless the parent is already represented by counsel.
5 Counsel shall be appointed, upon request, for any parent who
6 is unable to obtain counsel due to financial reasons or, if in
7 the court's discretion, the interests of justice require
8 appointment of counsel.

9 G. The court shall assure that a guardian ad litem
10 represents the child in all proceedings for the termination of
11 parental rights.

12 H. When a motion to terminate parental rights is
13 filed, the moving party shall request a hearing on the motion.
14 The hearing date shall be at least thirty days, but no more
15 than sixty days, after service is effected upon the parties
16 entitled to service under this section.

17 I. In any action for the termination of parental
18 rights brought by a party other than the department and
19 involving a child in the custody of the department, the
20 department may:

21 (1) litigate a motion for the termination of
22 parental rights that was initially filed by another party; or

23 (2) move that the motion for the termination
24 of parental rights be found premature and denied.

25 J. The grounds for any attempted termination shall
be proved by clear and convincing evidence. In any proceeding
involving a child subject to the federal Indian Child Welfare
Act of 1978, the grounds for any attempted termination shall

1 be proved beyond a reasonable doubt and shall meet the
2 requirements set forth in 25 U.S.C. Section 1912(f).

3 K. When the court terminates parental rights, it
4 shall appoint a custodian for the child and fix responsibility
5 for the child's support.

6 L. In any termination proceeding involving a child
7 subject to the federal Indian Child Welfare Act of 1978, the
8 court shall in any termination order make specific findings
9 that the requirements of that act have been met.

10 M A judgment of the court terminating parental
11 rights divests the parent of all legal rights and privileges
12 and dispenses with both the necessity for the consent to or
13 receipt of notice of any subsequent adoption proceeding
14 concerning the child. A judgment of the court terminating
15 parental rights shall not affect the child's rights of
16 inheritance from and through the child's biological parents."

17 Section 12. Section 32A-4-32 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 126) is amended to read:

19 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE. --

20 A. A motion for permanent guardianship may be
21 filed by any party.

22 B. Any application for permanent guardianship
23 shall be signed and verified by the petitioner, filed with the
24 court and set forth:

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

(2) the facts and circumstances supporting
the ground for permanent guardianship;

underscored material = new
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1 (3) the name and address of the prospective
2 guardian and a statement that the person agrees to accept the
3 duties and responsibilities of guardianship;

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

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

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

9 (a) the tribal affiliations of the
10 child's parents;

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

17 (c) what specific efforts were made to
18 comply with the placement preferences set forth in the federal
19 Indian Child Welfare Act of 1978 or the placement preferences
20 of the appropriate Indian tribes.

21 C. If the petition is not filed by the prospective
22 guardian, the petition shall be verified by the prospective
23 guardian.

24 D. Notice of the filing of the motion, accompanied
25 by a copy of the motion, shall be served by the moving party
on any parent who has not previously been made a party to the
proceeding, the parents of the child, foster parents with whom
the child is residing, [~~foster parents~~] the foster parent,

1 preadoptive parent or relative providing care for the child
 2 with whom the child has resided for six months, the child's
 3 custodian, the department, any person appointed to represent
 4 any party, including the child's guardian ad litem, and any
 5 other person the court orders provided with notice. Service
 6 shall be in accordance with the Rules of Civil Procedure for
 7 the District Courts for the service of [~~process~~] motions in a
 8 civil action in this state. The notice shall state
 9 specifically that the person served [~~must~~] shall file a
 10 written response to the application within twenty days if the
 person intends to contest the guardianship.

11 E. When the child is an Indian child, subject to
 12 the federal Indian Child Welfare Act of 1978, notice shall
 13 also be served upon the Indian tribes of the child's parents
 14 and upon any "Indian custodian" as that term is defined in
 25 U.S.C. Section 1903(6).

15 F. The grounds for permanent guardianship shall be
 16 proved by clear and convincing evidence. The grounds for
 17 permanent guardianship [~~must~~] shall be proved beyond a
 18 reasonable doubt and meet the requirements of 25 U.S.C.
 19 Section 1912(f) in any proceeding involving a child subject to
 20 the federal Indian Child Welfare Act of 1978.

21 G. A judgment of the court vesting permanent
 22 guardianship with an individual divests the biological or
 23 adoptive parent of legal custody or guardianship of the child,
 24 but is not a termination of the parent's rights. A child's
 25 inheritance rights from and through the child's biological or
 adoptive parents are not affected by this proceeding.

1 H. Upon a finding that grounds exist for a
2 permanent guardianship, the court may incorporate into the
3 final order provisions for visitation with the natural
4 parents, siblings or other relatives of the child and any
5 other provision necessary to rehabilitate the child or provide
6 for the child's continuing safety and well being.

7 I. The court shall retain jurisdiction to enforce
8 its judgment of permanent guardianship.

9 J. Any party to the abuse or neglect proceeding,
10 the child or a parent of the child may make a motion for
11 revocation of the order granting guardianship when there is a
12 significant change of circumstances including:

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

15 (2) the child's guardian is unable to
16 properly care for the child.

17 K. The court shall appoint a guardian ad litem for
18 the child in all proceedings for the revocation of permanent
19 guardianship.

20 L. The court may revoke the order granting
21 guardianship when a change of circumstances has been proven by
22 clear and convincing evidence and it is in the child's best
23 interests to revoke the order granting guardianship. "

24 Section 13. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1999.

underscored material = new
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