SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILDREN; REVISING THE DEFINITION OF "NEGLECTED CHILD"; PROVIDING CERTAIN REQUIREMENTS WHEN A CHILD EXPERIENCING POVERTY IS PLACED IN CUSTODY.

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

SECTION 1. 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 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

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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;

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

(1) attempted, conspired to cause or caused

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great bodily harm to the child or great bodily harm or death to the child's sibling;

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

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

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

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

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

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

G. "neglected child":

(1) means a child:

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[~~(1)~~] (a) who has been abandoned by the child's parent, guardian or custodian;

[~~(2)~~] (b) notwithstanding the provisions of Paragraph (2) of this subsection, who is without [~~proper parental care and control or subsistence, education, medical or other care or control~~] food, shelter, clothing, education, medical or mental health treatment, supervision or other care or support necessary for the child's well-being because of the [~~faults or habits~~] behaviors of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide [~~them~~] such care and control or when offered financial or other reasonable means to enable the parent, guardian or custodian to do so;

[~~(3)~~] (c) who has been [~~physically or sexually~~] neglected or abused, when the child's parent, guardian or custodian knew or should have known of the abuse neglect or and failed to take reasonable steps to protect the child from further harm;

[~~(4)~~] (d) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

[~~(5)~~] (e) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child

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who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code; and

(2) does not mean a child:

(a) whose parent, guardian or custodian is unable to provide food, shelter, clothing, education, medical or mental health treatment, supervision or other care or support necessary for the child's well-being due to the parent's, guardian's or custodian's inadequate financial resources alone;

(b) whose circumstances include any of the following, based on the existence of the circumstance alone: 1) community or family poverty; 2) geographic or social isolation; 3) a parent, guardian or custodian who is single or unmarried; 4) a parent, guardian or custodian who is considered young or advanced in age; 5) housing that is considered crowded or inadequate; or 6) substance abuse or nonconforming social behavior among family or household members; or

(c) who is an Indian child being raised in a manner or in a household that conforms to the cultural or social standards that prevail in the child's Indian community;

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

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

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

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

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

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

J. "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity;

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

L. "sexual exploitation" includes:

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

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

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

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

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

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

P. "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation."

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

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

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

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

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may be appropriate; or

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

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

C. When an alleged neglected child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall:

(1) make reasonable efforts to help the child's parent, guardian or custodian obtain financial and other practical supports needed to provide basic needs for the

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child, including food, shelter, clothing, education, medical or mental health treatment, supervision or other care or support necessary for the child's well-being; and

(2) release the child from the department's custody if the sole reason for placement of the child in custody was the inadequate financial resources of the child's parent, guardian or custodian and if, subsequent to the child's placement in custody, the parent, guardian or custodian has accepted resources that enable the parent, guardian or custodian to meet the child's basic needs.

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

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

[~~E.~~] F. The department may release the child at any

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

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

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

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

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CHILD.--

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

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

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

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

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

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

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

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at the initial judicial review and subsequent periodic review hearings;

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

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

(9) the availability of services recommended in the case plan prepared as a part of the predisposition study in accordance with the provisions of Section 32A-4-21 NMSA 1978;

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

(11) the conditions, other than the inadequate financial resources of the parent, guardian or custodian, that justify continued out-of-home placement;

[~~(11)~~] (12) whether reasonable efforts were made by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were made to attempt reunification of the child with the natural parent; and

[~~(12)~~] (13) whether reasonable efforts were made by the department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any

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siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

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

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

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

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

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

(b) the department.

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

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finds that:

(1) the efforts would be futile; or

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

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

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

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

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

H. Prior to a child being placed in the custody or

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protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

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

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