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HOUSE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILDREN; ENACTING THE STATE INDIAN CHILD WELFARE ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE STATE INDIAN CHILD WELFARE ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; CREATING THE OFFICE OF TRIBAL AFFAIRS WITHIN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REQUIRING A CULTURAL COMPONENT IN CASE PLANS IN ABUSE AND NEGLECT PROCEEDINGS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 29 of this act may be cited as the "State Indian Child Welfare Act"."

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

3 "[NEW MATERIAL] DEFINITIONS.--As used in the State Indian
4 Child Welfare Act:

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

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

11 C. "child custody proceeding" means an action for
12 foster care placement, termination of parental rights,
13 guardianship, preadoptive placement or adoptive placement or an
14 action pursuant to Section 32A-3A-8 NMSA 1978 or the Family in
15 Need of Court-Ordered Services Act and includes investigations
16 and other preliminary activities preceding the formal
17 initiation of an action, but does not include an action based
18 upon an act that, if committed by an adult, would be deemed a
19 crime or upon award, in a divorce proceeding, of custody to one
20 of the parents;

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

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

4 (2) the Indian child's tribe;

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

12 F. "fictive kin" means a person:

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

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

21 (3) chosen by an Indian child who is fourteen
22 years of age or older, regardless of when the relationship
23 between the person and the Indian child was established, when
24 it is in the best interest of the child to identify that person
25 as fictive kin;

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1 G. "foster care placement" means:

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

9 (2) the temporary placement of an Indian child
10 in foster care pursuant to a voluntary agreement entered into
11 between a parent, guardian or Indian custodian and the
12 department pursuant to the Family Services Act;

13 H. "Indian" means a person who is a member of or
14 eligible for membership in an Indian tribe, or who is an Alaska
15 Native and a member of or eligible for membership in a regional
16 corporation as defined in 43 U.S.C. Section 1606;

17 I. "Indian child" means an unmarried person who is
18 under eighteen years of age and who is either:

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

20 (2) eligible for membership in an Indian
21 tribe;

22 J. "Indian child's tribe" means:

23 (1) an Indian tribe in which an Indian child
24 is a member or eligible for membership; or

25 (2) in the case of an Indian child who is a

1 member of or eligible for membership in more than one tribe,
2 the Indian tribe with which the child has more significant
3 contacts;

4 K. "Indian custodian" means an Indian:

5 (1) who has legal custody of an Indian child
6 pursuant to tribal law or custom or pursuant to state law; or

7 (2) to whom temporary physical care, custody
8 and control has been transferred by the parent of the child;

9 L. "Indian organization" means a group,
10 association, partnership, corporation or other legal entity
11 owned or controlled by Indians, or a majority of whose members
12 are Indians;

13 M. "Indian tribe" means an Indian tribe, band,
14 nation or other organized group or community of Indians
15 recognized as eligible for the services provided to Indians by
16 the secretary because of their status as Indians, including an
17 Alaska native village as defined in 43 U.S.C. Section 1602(c).
18 For the purposes of notification to and communication with a
19 tribe as required in the State Indian Child Welfare Act,
20 "Indian tribe" also means those tribal officials and staff who
21 are responsible for child welfare and social services matters;

22 N. "member" or "membership" means a determination
23 made by an Indian tribe that a child is a member of or eligible
24 for membership in that Indian tribe;

25 O. "parent" or "parents" means a biological or

1 adoptive parent if the biological or adoptive parent has a
2 constitutionally protected liberty interest in the care and
3 custody of the child or a person who has lawfully adopted an
4 Indian child pursuant to state law or tribal law or tribal
5 custom;

6 P. "preadoptive placement" means a temporary
7 placement of an Indian child in a foster home or institution
8 after the termination of parental rights but prior to or in
9 lieu of an adoptive placement;

10 Q. "relative" means a person related to another
11 person:

12 (1) by blood within the fifth degree of
13 consanguinity or through marriage by the fifth degree of
14 affinity; or

15 (2) with respect to an Indian child, as
16 established or defined by the Indian child's tribe's custom or
17 law;

18 R. "reservation" means "Indian country" as defined
19 in 18 U.S.C. Section 1151 and any lands, not covered by that
20 section, title to which is either held by the United States in
21 trust for the benefit of an Indian tribe or individual or held
22 by an Indian tribe or individual subject to a restriction by
23 the United States against alienation;

24 S. "secretary" means the United States secretary of
25 the interior; and

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1 T. "tribal court" means a court with jurisdiction
2 over child custody proceedings and that is either a court of
3 Indian offenses, a court established and operated under the law
4 or custom of an Indian tribe or any other administrative body
5 of an Indian tribe that is vested with authority over child
6 custody proceedings."

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

9 "[NEW MATERIAL] INDIAN CHILD'S DOMICILE--DETERMINATION OF
10 DOMICILE AND RESIDENCE.--

11 A. In a child custody proceeding involving an
12 Indian child, the court shall determine and make an order of
13 the domicile and residence of the Indian child and whether the
14 Indian child is a ward of a tribal court. The department shall
15 communicate with any Indian tribe as necessary to make a
16 determination pursuant to this section.

17 B. For the purposes of the State Indian Child
18 Welfare Act, an Indian child's domicile is, in order of
19 priority, the domicile of the child's:

20 (1) parents, or, if the parents do not have
21 the same domicile, the parent who has physical custody of the
22 Indian child;

23 (2) Indian custodian; or

24 (3) guardian."

25 SECTION 4. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] ACTIVE EFFORTS REQUIRED IN INVESTIGATIONS
3 AND CHILD CUSTODY PROCEEDINGS.--In an investigation or a child
4 custody proceeding involving an Indian child:

5 A. active efforts shall be made to maintain or
6 reunite an Indian child with the Indian child's family and
7 shall:

8 (1) be documented in detail in writing
9 demonstrating the quality and quantity of services and
10 assistance provided, on the court record;

11 (2) include assisting the Indian child's
12 parent or parents, guardian or Indian custodian through the
13 steps of a department case plan and with accessing or
14 developing the resources necessary to satisfy the department
15 case plan;

16 (3) include providing assistance in a manner
17 consistent with the prevailing social and cultural standards
18 and way of life of the Indian child's tribe;

19 (4) include conducting a comprehensive
20 assessment of the circumstances of an Indian child's family
21 with a goal of reunification;

22 (5) be conducted in cooperation with the
23 Indian child and the Indian child's parents, extended family
24 members, guardian, Indian custodian and Indian tribe; and

25 (6) be tailored to the facts and circumstances

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1 of the case; and

2 B. active efforts to maintain or reunite an Indian
3 child with the Indian child's family may include:

4 (1) identifying and establishing appropriate
5 services and assisting the Indian child's parents to overcome
6 barriers to reunification, including actively assisting the
7 parents in obtaining those services;

8 (2) identifying, notifying and inviting
9 representatives of the Indian child's tribe to participate in
10 providing support and services to the Indian child's family;

11 (3) conducting or causing to be conducted a
12 diligent search for the Indian child's extended family members
13 and contacting and consulting with the Indian child's extended
14 family members and adult relatives to provide family structure
15 and support for the Indian child and the Indian child's
16 parents;

17 (4) offering and employing culturally
18 appropriate family preservation strategies and facilitating the
19 use of remedial and rehabilitative services provided by the
20 Indian child's tribe;

21 (5) taking steps to keep the Indian child and
22 the Indian child's siblings together whenever possible;

23 (6) supporting regular visits with the Indian
24 child's parent, guardian or Indian custodian, as well as trial
25 home visits during a period of removal, consistent with the

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1 need to ensure the health, safety and welfare of the Indian
2 child;

3 (7) identifying community resources, including
4 housing, financial assistance, employment training,
5 transportation, mental health, health care, substance abuse
6 prevention and treatment, parent training and peer support
7 services and actively assisting the Indian child's parents or,
8 when appropriate, the Indian child's extended family members,
9 in using and accessing those resources;

10 (8) monitoring progress and participation of
11 the Indian child's parents, guardian, Indian custodian or
12 extended family members if the services described in Paragraphs
13 (1), (2), (4) and (7) of this subsection are not available;

14 (9) providing post-reunification services and
15 monitoring for the duration of the court's jurisdiction;

16 (10) allowing the Indian child to participate
17 in customs and traditions, including attending and
18 participating in traditional ceremonies centered around the
19 Indian child and the Indian child's family; and

20 (11) any other efforts that are appropriate to
21 the Indian child's circumstances."

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

24 "[NEW MATERIAL] DETERMINATION OF WHETHER A CHILD IS AN
25 INDIAN CHILD--TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--

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1 A. If a child is taken into custody by the
2 department, the department shall make active efforts to
3 determine whether the child is an Indian child.

4 B. When an Indian child or a child who the
5 department has reason to know is an Indian child is placed in
6 the custody of the department, the department shall provide
7 records to the parent, guardian, Indian custodian or Indian
8 tribe to assist, if necessary, at the request of the parent,
9 guardian, Indian custodian or Indian tribe. The Indian tribe
10 shall determine membership and membership eligibility, as
11 defined by the Indian tribe's law, custom, tradition and
12 practice.

13 C. If the department has reason to know that a
14 child is a member of or eligible for membership in an Indian
15 tribe, the department shall make active efforts, and document
16 that active efforts were made, to:

17 (1) identify the Indian tribe;
18 (2) work with the Indian tribe to verify
19 whether the child is a member of or is eligible for membership
20 in the Indian tribe or is a biological child of a parent who is
21 a member of or is eligible for membership in the Indian tribe;

22 (3) treat the child as an Indian child, until
23 it is determined that the child is not an Indian child; and

24 (4) conduct any additional investigations into
25 whether there is a reason to know the child is an Indian

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1 child."

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

4 "[NEW MATERIAL] INDIAN CHILD CUSTODY PROCEEDINGS--
5 JURISDICTION--TRANSFER.--

6 A. Except as otherwise provided in the State Indian
7 Child Welfare Act, a court's jurisdiction in a child custody
8 proceeding involving an Indian child is concurrent with the
9 jurisdiction of the Indian child's tribe.

10 B. An Indian tribe has exclusive jurisdiction over
11 a child custody proceeding involving an Indian child who
12 resides or is domiciled within the reservation of the Indian
13 tribe, except when jurisdiction is otherwise vested in the
14 state by federal law or pursuant to a tribal-state agreement.
15 When an Indian child is a ward of the tribal court, the Indian
16 tribe shall retain exclusive jurisdiction, notwithstanding the
17 residence or domicile of the child.

18 C. In a court proceeding for the foster care
19 placement, preadoptive placement, guardianship placement,
20 adoptive placement or termination of parental rights involving
21 an Indian child not domiciled or residing within the
22 reservation of the Indian child's tribe, the court, in the
23 absence of good cause to the contrary, shall transfer that
24 proceeding to the jurisdiction of the Indian tribe, absent
25 objection by either parent, upon the motion of either parent,

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1 the guardian, the Indian custodian or the Indian child's tribe;
2 provided that the transfer shall be subject to declination by
3 the tribal court of that Indian tribe. If the court believes,
4 or any party asserts, that good cause to deny the transfer
5 exists, the reasons for that belief or assertion shall be
6 stated orally on the record or in writing on the record and to
7 the parties of the child custody proceeding. The burden to
8 establish good cause is on the party opposing the transfer.
9 Good cause shall be established by clear and convincing
10 evidence. If the court denies the transfer, the basis for the
11 decision shall be stated orally on the record or in a written
12 order. For the purpose of transferring a case, a finding of
13 good cause shall not be based on:

14 (1) the advanced stage of a child custody
15 proceeding if the parent, guardian, Indian custodian or Indian
16 child's tribe did not receive notice of the proceeding until an
17 advanced stage;

18 (2) whether there have been prior proceedings
19 involving the Indian child for which no petition to transfer
20 was filed;

21 (3) predictions of whether the transfer could
22 result in a change in the placement of the Indian child;

23 (4) the Indian child's perceived cultural
24 connections with the Indian tribe or reservation;

25 (5) consideration of any perceived inadequacy

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1 of judicial systems; or

2 (6) consideration of the perceived
3 socioeconomic conditions within an Indian tribe or reservation.

4 D. If a court declines to exercise jurisdiction in
5 accordance with this section or a tribal-state agreement, the
6 court shall coordinate with the appropriate tribal court to
7 facilitate the tribal court's assumption of jurisdiction.

8 E. A court shall:

9 (1) hold a hearing on record;

10 (2) allow each parent of the Indian child, the
11 guardian, the Indian child's custodian and the Indian child's
12 tribe to participate in any communications pertaining to
13 jurisdiction with a tribal court or, if that person is unable
14 to participate in a communication, provide the person with an
15 opportunity to represent facts and legal arguments supporting
16 the person's position before the court makes a decision
17 regarding jurisdiction;

18 (3) create and maintain a record of any
19 communications made pursuant to this subsection;

20 (4) notify each parent of the Indian child,
21 the guardian, the Indian child's custodian or the Indian
22 child's tribe in advance of each communication; and

23 (5) provide each parent of the Indian child,
24 the guardian, the Indian child's custodian or the Indian
25 child's tribe with access to the record of the communication.

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1 F. Upon granting a transfer motion for a child
2 custody proceeding involving an Indian child pursuant to
3 Subsection C of this section, a court shall expeditiously:

4 (1) notify the tribal court of the pending
5 dismissal of the child custody proceeding;

6 (2) transfer all information regarding the
7 child custody proceeding, including pleadings and court
8 records, to the tribal court;

9 (3) direct the department to:

10 (a) coordinate with the tribal court and
11 the Indian child's tribe to ensure that the transfer of the
12 child custody proceeding is accomplished with minimal
13 disruption of services to the Indian child and the Indian
14 child's family;

15 (b) provide the Indian child's tribe
16 with documentation related to the Indian child's eligibility
17 for state and federal assistance and information related to the
18 Indian child's social history, treatment diagnosis and services
19 and other relevant case- and service-related data; and

20 (c) provide the Indian child's tribe
21 with original documents in the department's possession,
22 including a birth certificate, social security card,
23 certificate of Indian birth and similar documents; and

24 (4) dismiss the proceeding upon confirmation
25 from the tribal court that the tribal court received the

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1 transferred information."

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

4 "[NEW MATERIAL] TRIBAL-STATE AGREEMENTS.--

5 A. The department shall make a good faith effort to
6 enter into a tribal-state agreement for the coordination of
7 care and custody of Indian children with each Indian tribe
8 within the borders of this state.

9 B. The department may enter into a tribal-state
10 agreement with any Indian tribe outside of this state if that
11 Indian tribe has a significant number of children residing in
12 this state who are members of or are eligible to become members
13 of that Indian tribe.

14 C. Any state services requiring a tribal-state
15 agreement based on a funding source shall be negotiated and
16 entered into based on good faith to meet the provisions of this
17 section.

18 D. A tribal-state agreement may include an
19 agreement regarding:

20 (1) default jurisdiction over cases in which
21 the court and tribal court have concurrent jurisdiction;

22 (2) the transfer of cases between a court and
23 tribal court;

24 (3) the assessment, removal, placement and
25 custody of Indian children; and

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1 (4) any other child welfare services provided
2 to Indian children.

3 E. A tribal-state agreement shall:

4 (1) provide for cooperative delivery of child
5 welfare services to Indian children in this state, including
6 the use, to the extent available, of services provided by the
7 Indian tribe; and

8 (2) if services provided by the Indian tribe
9 are unavailable, provide for the department's use of community
10 services and resources developed specifically for Indian
11 families and that have demonstrated experience and capacity to
12 provide culturally relevant and effective services to
13 children."

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

16 "[NEW MATERIAL] FULL FAITH AND CREDIT--RIGHT TO
17 SERVICES.--

18 A. Every agency and court of the state or political
19 subdivision of the state shall give full faith and credit to
20 the public acts, records and judicial proceedings of an Indian
21 tribe applicable to an Indian child custody proceeding to the
22 same extent that agency or court gives full faith and credit to
23 the public acts, records and judicial proceedings of any other
24 entity.

25 B. A tribal court order pertaining to an Indian

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1 child in an action under the Children's Code shall be
2 recognized and enforced by all state district courts.

3 C. A tribal court order pertaining to an Indian
4 child that accesses state resources shall be recognized and
5 enforced. An Indian child residing on or off a reservation, as
6 a resident of this state, shall have the same right to services
7 that are available to other children of this state. The cost
8 of the services provided to an Indian child shall be determined
9 and provided for in the same manner as services are made to
10 other children of the state, using tribal, state and federal
11 funds."

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

14 "[NEW MATERIAL] IMPROPER REMOVAL OF A CHILD FROM CUSTODY--
15 DECLINATION OF JURISDICTION--RETURN OF A CHILD--DANGER
16 EXCEPTION--EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD--
17 APPROPRIATE ACTION.--

18 A. When a petitioner in an Indian child custody
19 proceeding before a court has improperly removed the child from
20 custody of the parent, guardian or Indian custodian or has
21 improperly retained custody after a visit or other temporary
22 relinquishment of custody, the court shall decline jurisdiction
23 over that petition and shall return the child to the child's
24 parent, guardian or Indian custodian unless returning the child
25 to the child's parent, guardian or Indian custodian could

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1 subject the child to a substantial and immediate danger or
2 threat of that danger.

3 B. Nothing in the State Indian Child Welfare Act
4 shall be construed to prevent the emergency removal of an
5 Indian child who is a resident of or is domiciled on a
6 reservation, but temporarily located off the reservation, from
7 the Indian child's parent, guardian or Indian custodian or the
8 emergency placement of that Indian child in a foster home or
9 institution, pursuant to Sections 32A-1-10, 32A-3B-4 and
10 32A-4-16 NMSA 1978, to prevent imminent physical danger or harm
11 to the Indian child. The department shall expeditiously
12 initiate a child custody proceeding subject to the provisions
13 of the State Indian Child Welfare Act and the federal Indian
14 Child Welfare Act of 1978, transfer the Indian child to the
15 jurisdiction of the appropriate Indian tribe or restore the
16 child to the parent, guardian or Indian custodian, as may be
17 appropriate."

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

20 "[NEW MATERIAL] INVESTIGATIONS--PENDING COURT
21 PROCEEDINGS--NOTICE--STANDARDS OF EVIDENCE--DOCUMENTATION OF
22 APPLICABILITY AND COMPLIANCE.--

23 A. Within forty-eight hours of initiating an
24 investigation that involves an Indian child, or a child who the
25 department knows or has reason to know is an Indian child, the

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1 department shall notify the Indian child's tribe of:

2 (1) the investigation;

3 (2) the involvement of the Indian child or a
4 child who the department has reason to know is an Indian child;

5 (3) the department's obligation to collaborate
6 with the Indian child's tribe to identify a qualified expert
7 witness to participate in the proceeding if the investigation
8 results in a child custody proceeding; and

9 (4) the department's obligation to identify a
10 qualified expert witness no later than thirty days prior to a
11 child custody or termination proceeding.

12 B. During an investigation that involves an Indian
13 child or a child who the department knows or has reason to know
14 is an Indian child, the department shall:

15 (1) coordinate services with the Indian
16 child's tribe to prevent taking the child into custody;

17 (2) provide culturally appropriate remedial
18 services to the parents; and

19 (3) make active efforts to identify extended
20 family members and fictive kin able to be alternative care
21 providers or to ensure the safety of the child.

22 C. The department's active efforts to coordinate
23 services to prevent taking the Indian child, or a child who the
24 department knows or has reason to know may be an Indian child,
25 into custody shall be documented in any subsequent action

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1 resulting in the child coming into the department's custody.

2 D. At the beginning of every proceeding under the
3 Family Services Act, Family in Need of Court-Ordered Services
4 Act, Abuse and Neglect Act and Adoption Act, the court shall
5 make a written determination as to whether the federal Indian
6 Child Welfare Act of 1978 and the State Indian Child Welfare
7 Act apply to the case.

8 E. Upon initiating a child custody proceeding
9 related to an Indian child, or a child who the department knows
10 or has reason to know is an Indian child, the department shall
11 notify the Indian child's tribe of:

12 (1) the investigation;

13 (2) the involvement of the Indian child;

14 (3) active efforts that have been made to
15 provide remedial services and rehabilitative programs designed
16 to prevent the breakup of the Indian family and that these
17 efforts have proved unsuccessful;

18 (4) the department's obligation to collaborate
19 with the Indian child's tribe to identify a qualified expert
20 witness to participate in the proceeding if the investigation
21 results in an adjudication or termination of parental rights
22 proceeding; and

23 (5) the department's obligation to identify a
24 qualified expert witness no later than thirty days prior to an
25 adjudication or termination proceeding.

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1 F. At the conclusion of every proceeding pursuant
2 to the State Indian Child Welfare Act, the court shall make a
3 written determination as to whether the department has made
4 active efforts to provide services and support to preserve and
5 reunify the family.

6 G. With respect to those proceedings to which the
7 federal Indian Child Welfare Act of 1978 and the State Indian
8 Child Welfare Act apply, the record shall include written
9 statements of compliance with those acts regarding notice,
10 evidentiary and other requirements.

11 H. In a child custody proceeding when the court
12 knows or has reason to know that an Indian child is involved,
13 the department shall notify the parent, guardian or Indian
14 custodian and the Indian child's tribe, by certified mail, with
15 return receipt requested, of:

16 (1) the pending proceedings;

17 (2) the right of the Indian child's parent,
18 guardian, Indian custodian and Indian child's tribe to:

19 (a) intervention; and

20 (b) petition the court to transfer the
21 proceeding to the tribal court;

22 (3) the right of the Indian child's parent,
23 guardian or Indian custodian to court-appointed counsel if the
24 court determines that person is unable to afford counsel; and

25 (4) the right of the Indian child's tribe to

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1 participate in a child custody proceeding whether or not the
2 Indian child's tribe intervenes.

3 I. The standards of evidence of the following child
4 custody proceedings are as follows:

5 (1) the court shall not order a foster care
6 placement of an Indian child unless clear and convincing
7 evidence is presented, including the testimony of one or more
8 qualified expert witnesses, demonstrating that the child's
9 continued custody by the child's parent, guardian or Indian
10 custodian is likely to result in serious emotional or physical
11 damage to the child;

12 (2) the court shall not order a termination of
13 parental rights for an Indian child unless evidence beyond a
14 reasonable doubt is presented, including the testimony of one
15 or more qualified expert witnesses, demonstrating that the
16 child's continued custody by the child's parent, guardian or
17 Indian custodian is likely to result in serious emotional or
18 physical damage to the child;

19 (3) for a foster care placement or termination
20 of parental rights, the evidence shall show a causal
21 relationship between the particular conditions in the home and
22 the likelihood that continued custody of the child will result
23 in serious emotional or physical damage to the particular child
24 who is the subject of the child custody proceeding; and

25 (4) without a causal relationship identified

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1 in Paragraph (3) of this subsection, evidence that shows only
2 the existence of community or family poverty, isolation, single
3 parenthood, custodian age, crowded or inadequate housing,
4 substance abuse or nonconforming social behavior shall not by
5 itself constitute clear and convincing evidence or evidence
6 beyond a reasonable doubt that continued custody is likely to
7 result in serious emotional or physical damage to the child.

8 J. If there is a reason to know that the Indian
9 child's parent, guardian or Indian custodian has limited
10 English proficiency and may not understand the contents of the
11 notice pursuant to Subsection H of this section, the court
12 shall provide language access services as required by Title 6
13 of the federal Civil Rights Act of 1964 and other applicable
14 federal and state laws. If the court is unable to secure
15 translation or interpretation support, the court shall contact
16 or direct a party to contact the Indian child's tribe or the
17 local office of the United States department of the interior
18 bureau of Indian affairs for assistance identifying a qualified
19 translator or interpreter.

20 K. If the identity or location of the parent,
21 guardian or Indian custodian and the Indian tribe cannot be
22 determined, a notice shall be given to the secretary in the
23 same manner as provided in Subsection H of this section. The
24 secretary shall have fifteen days after receipt of the notice
25 to provide the same notice to the parent, guardian or Indian

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1 custodian and the Indian tribe.

2 L. A foster care placement or termination of
3 parental rights proceeding shall not be held until at least ten
4 days after receipt of notice by the parent, guardian or Indian
5 custodian and the Indian tribe or the secretary pursuant to
6 this section; provided that the parent, guardian or Indian
7 custodian or the Indian tribe shall, upon request, be granted
8 up to twenty additional days to prepare for that proceeding.

9 M. Nothing in this section prevents a court from
10 reviewing a removal of an Indian child from the child's parent,
11 guardian or Indian custodian at an emergency custody proceeding
12 before the expiration of the waiting periods provided in
13 Subsections K and L of this section to determine the
14 appropriateness of the removal and potential return of the
15 child."

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

18 "[NEW MATERIAL] INTERVENTION.--

19 A. An Indian child's tribe has the right to
20 intervene at any point in a child custody proceeding.

21 B. In a court proceeding for the foster care
22 placement, preadoptive placement, guardianship placement,
23 adoptive placement of or termination of parental rights to an
24 Indian child, the Indian child's relative or extended family
25 member, the guardian or the Indian custodian may intervene at

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1 any point in the proceeding.

2 C. When determining whether a person described in
3 Subsection B of this section should be permitted to intervene,
4 the court shall consider:

5 (1) the person's rationale for the proposed
6 intervention; and

7 (2) whether intervention is in the best
8 interest of the Indian child."

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

11 "[NEW MATERIAL] PETITION--FORM AND CONTENT.--

12 A. A petition initiating a child custody proceeding
13 shall include a statement as to whether the child who is the
14 subject of the child custody proceeding is an Indian child or a
15 child the department has reason to know is an Indian child.

16 B. A party that files a petition, motion or other
17 document in a court that seeks to effect a child custody
18 proceeding of an Indian child shall include in that petition,
19 motion or document:

20 (1) the Indian child's tribe or that the
21 department has reason to know that the child is an Indian
22 child;

23 (2) the tribal affiliations of the Indian
24 child's parents;

25 (3) the active efforts made by the petitioner

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1 to notify the Indian child's tribe pursuant to the State Indian
2 Child Welfare Act and the federal Indian Child Welfare Act of
3 1978;

4 (4) a statement of and clear and convincing
5 evidence that active efforts have been made to provide remedial
6 services and rehabilitative programs designed to prevent the
7 breakup of the Indian family and that these efforts have proved
8 unsuccessful and the reasons these efforts were unsuccessful,
9 if known;

10 (5) the active efforts that were made to
11 comply with the notice requirements pursuant to the State
12 Indian Child Welfare Act and the federal Indian Child Welfare
13 Act of 1978, including results of the contact and the names,
14 addresses, titles and telephone numbers of the persons
15 contacted. Copies of any correspondence with the Indian
16 child's tribe shall be attached as exhibits to the petition;
17 and

18 (6) the active efforts that were made to
19 comply with the placement preferences set forth in the State
20 Indian Child Welfare Act or the federal Indian Child Welfare
21 Act of 1978 or the placement preferences of the Indian child's
22 tribe."

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

25 "[NEW MATERIAL] COURT RECORD OF INDIAN CHILD'S TRIBE.--

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1 A. Solely for the purposes of a child custody
2 proceeding involving an Indian child or a child that there is
3 reason to know is an Indian child, a court shall make a record
4 of:

5 (1) an Indian tribe of which the Indian child
6 is a member or eligible for membership, as determined by the
7 Indian child's tribe;

8 (2) an Indian tribe of which an Indian child
9 is a member if the Indian child is a member of one Indian tribe
10 but is eligible for membership in one or more other Indian
11 tribes;

12 (3) the Indian tribe designated by agreement
13 between one or more Indian tribes if the Indian child is not a
14 member of each of those Indian tribes but is eligible for
15 membership in each of those Indian tribes; or

16 (4) the Indian tribe recorded by the court
17 pursuant to Subsection B of this section if the Indian child is
18 eligible for membership in each of those Indian tribes and the
19 Indian tribes cannot agree on the designation of the Indian
20 child's tribe.

21 B. When recording an Indian child's tribe pursuant
22 to Paragraph (4) of Subsection A of this section, a court
23 shall, after a hearing, record the Indian tribe with which the
24 Indian child has more significant contacts, taking into
25 consideration:

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- 1 (1) the preference of each of the Indian
- 2 child's parents;
- 3 (2) the duration of the Indian child's current
- 4 or prior domicile or residence on or near the reservation of
- 5 each Indian tribe;
- 6 (3) the tribal membership of the Indian
- 7 child's custodial parent or Indian custodian;
- 8 (4) the interests asserted by each Indian
- 9 tribe;
- 10 (5) whether the Indian tribe has previously
- 11 adjudicated a case involving an Indian child;
- 12 (6) the Indian tribe's custom and tradition;
- 13 and
- 14 (7) if the court determines that the Indian
- 15 child is of sufficient age and capacity to meaningfully self-
- 16 identify the Indian child's tribe, the self-identification of
- 17 the Indian child.

18 C. If an Indian child is a member of or is eligible
19 for membership in more than one Indian tribe, the court shall
20 permit an Indian tribe, in addition to the Indian child's tribe
21 as determined pursuant to Subsection A of this section, to
22 participate in the child custody proceeding in an advisory
23 capacity or as a party."

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

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1 "[NEW MATERIAL] CHILD CUSTODY HEARINGS--REQUIREMENTS--
2 RIGHT TO COUNSEL.--

3 A. At the commencement of any hearing in a child
4 custody proceeding, the court shall determine whether the child
5 is an Indian child by asking, on the record, each individual
6 present on the matter whether the individual knows or has
7 reason to know that the child is an Indian child. If no
8 individual present at the hearing knows or has reason to know
9 that the child is an Indian child, the court shall instruct
10 each party to inform the court immediately if the individual
11 later receives information that provides reason to know that
12 the child is an Indian child.

13 B. A court has reason to know that a child is an
14 Indian child if:

15 (1) an individual present in the proceeding,
16 officer of the court involved in the proceeding, Indian tribe,
17 Indian organization or agency informs the court that the child
18 is an Indian child;

19 (2) an individual present at the hearing,
20 officer of the court present at the hearing, Indian tribe or
21 Indian organization or agency informs the court that
22 information has been discovered indicating that the child is an
23 Indian child;

24 (3) the child indicates to the court that the
25 child is an Indian child;

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1 (4) the court is informed that the domicile or
2 residence of the child, the child's parent, the child's
3 guardian or the child's Indian custodian is on a reservation or
4 in an Alaska native village;

5 (5) the court is informed that the child is or
6 has been a ward of a tribal court;

7 (6) the court is informed that the child or
8 the child's parent possesses an identification card or other
9 record indicating membership in an Indian tribe;

10 (7) testimony or documents presented to the
11 court indicate that the child may be an Indian child; or

12 (8) any other indicia provided to the court or
13 within the court's knowledge indicate that the child is an
14 Indian child.

15 C. If a court has reason to know that a child is an
16 Indian child but does not have sufficient evidence to determine
17 whether the child is an Indian child, the court shall:

18 (1) treat the child as an Indian child until
19 the court determines, on the record, that the child is not an
20 Indian child; and

21 (2) require the department or another party to
22 submit a report, declaration or testimony on the record that
23 the department or other party made active efforts to identify
24 and work with all of the Indian tribes of which there is reason
25 to know the child may be a member or be eligible for membership

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1 to verify whether the child is an Indian child.

2 D. In a case in which a court determines indigency,
3 the parent, guardian or Indian custodian shall have the right
4 to court-appointed counsel in any removal, placement or
5 termination proceeding. The court may appoint counsel for the
6 child upon a finding that the appointment is in the best
7 interest of the child. To the extent appropriations from the
8 state are insufficient to provide for the appointment of
9 counsel in the proceeding, the court shall promptly notify the
10 secretary upon appointment of counsel so that the secretary may
11 pay for reasonable fees and expenses as provided pursuant to 25
12 U.S.C. Section 1912 upon certification of the presiding judge.

13 E. Each party, including the Indian child's tribe,
14 whether or not the Indian child's tribe has intervened, in a
15 foster care placement or termination of parental rights
16 proceeding pursuant to the Abuse and Neglect Act or the
17 Adoption Act involving an Indian child shall have the right to
18 examine all reports or other documents filed with the court
19 upon which a decision with respect to the action may be based.

20 F. In a child custody proceeding involving an
21 Indian child or a child who the court or the department has
22 reason to know is an Indian child, the Indian child's tribe may
23 be present and may participate at a closed hearing, regardless
24 of whether the Indian child's tribe has intervened."

25 SECTION 15. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] QUALIFIED EXPERT WITNESS.--

3 A. The court shall receive testimony from one or
4 more qualified expert witnesses in all adjudicatory hearings
5 pursuant to the Abuse and Neglect Act and all hearings to
6 terminate parental rights. The court shall receive testimony
7 from a qualified expert witness regardless of whether the
8 parties to the proceeding have stipulated to a finding of abuse
9 or neglect.

10 B. A person may be qualified by the court to serve
11 as a qualified expert witness if the court finds that the
12 person is:

13 (1) familiar with the Indian child's case and
14 has communicated with the Indian child's tribe about the case;

15 (2) knowledgeable about the prevailing social
16 and cultural standards of the tribe and is familiar with the
17 family and child-rearing practices of the Indian child's tribe;
18 and

19 (3) a member of the Indian child's tribe; or

20 (4) a person recommended by the Indian child's
21 tribe.

22 C. When the department notifies an Indian child's
23 tribe of the pendency of an investigation involving an Indian
24 child from that Indian tribe, the department shall request in
25 writing that the Indian child's tribe designate a qualified

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1 expert witness to testify in any child custody or termination
2 proceedings that result from the investigation. The department
3 shall make active efforts to collaborate with the Indian tribe
4 to identify a person to serve as a qualified expert witness.

5 D. If, after active efforts and in no case later
6 than forty-five days after requesting a designation in writing
7 from the Indian child's tribe, the department does not receive
8 a designation from the Indian tribe or if the department, after
9 good faith efforts, is unable to retain the Indian tribe's
10 designated qualified expert witness, the department may
11 identify a qualified expert witness who meets the requirements
12 provided in Paragraphs (1) and (2) of Subsection B of this
13 section from a list of qualified expert witnesses compiled
14 through cooperation among the Indian tribes in the state and
15 the department.

16 E. If, sixty days following the initiation of an
17 investigation, the department has not identified a qualified
18 expert witness to testify as required by the State Indian Child
19 Welfare Act and the federal Indian Child Welfare Act of 1978,
20 in considering a motion by the department for a continuance,
21 the court shall consider whether it is in the best interest of
22 the Indian child to remain in the department's custody for
23 additional time.

24 F. At least thirty days prior to an adjudicatory
25 hearing pursuant to the Abuse and Neglect Act and a hearing to

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1 terminate parental rights, the department shall disclose to the
2 Indian child's tribe the name of the qualified expert witness
3 designated by the department to testify at the hearing.

4 G. An Indian child's tribe shall have the
5 opportunity to question a qualified expert witness in all
6 hearings involving an Indian child in which the qualified
7 expert witness testifies, regardless of whether the Indian
8 child's tribe has intervened. An Indian child's tribe may
9 designate a qualified expert witness to testify in addition to
10 any qualified expert witness designated by the department.

11 H. An employee of the department shall not serve as
12 a qualified expert witness pursuant to this section."

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

15 "[NEW MATERIAL] PARENTAL RIGHTS--VOLUNTARY TERMINATION--
16 CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

17 A. When a parent, guardian or Indian custodian
18 voluntarily consents to a foster care placement or to
19 termination of parental rights, that consent is not valid
20 unless executed in writing and recorded before a judge of
21 competent jurisdiction and accompanied by the presiding judge's
22 certificate that the terms and consequences of the consent were
23 fully explained in detail and were fully understood by the
24 parent, guardian or Indian custodian. The court shall also
25 certify either that the parent, the guardian or the Indian

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1 custodian fully understood the explanation in English or that
2 it was interpreted into a language that the parent, guardian or
3 Indian custodian understood. Any consent to a foster care
4 placement or termination of parental rights that is given prior
5 to or within ten days after birth of an Indian child is not
6 valid.

7 B. A parent, guardian or Indian custodian may
8 withdraw consent to a voluntary foster care placement of an
9 Indian child pursuant to the Children's Code at any time and,
10 upon receipt of the request to withdraw, the Indian child shall
11 be immediately returned to the parent, guardian or Indian
12 custodian.

13 C. In a voluntary proceeding for termination of
14 parental rights or adoptive placement of an Indian child
15 pursuant to the Children's Code, the consent of the parent may
16 be withdrawn for any reason at any time prior to the entry of a
17 final decree of termination or adoption as the case may be, and
18 the Indian child shall be returned to the parent.

19 D. After the entry of a final decree of adoption of
20 an Indian child in a court that is made pursuant to the
21 Adoption Act, the parent may withdraw consent to the adoption
22 upon the grounds that consent was obtained through fraud or
23 duress and may petition the court to vacate the decree. Upon a
24 finding that the consent was obtained through fraud or duress,
25 the court shall vacate the decree and return the child to the

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1 parent. An adoption that has been in effect for at least two
2 years shall not be invalidated except as otherwise provided by
3 law.

4 E. In any voluntary foster care placement or
5 termination of parental rights proceeding in court, when the
6 court knows or has reason to know that an Indian child is
7 involved, the party seeking to effectuate the foster care
8 placement or termination of parental rights shall notify the
9 Indian child's tribe, by certified mail, with return receipt
10 requested, of the pending proceedings and of its right of
11 intervention."

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

14 "[NEW MATERIAL] PETITION TO COURT OF COMPETENT
15 JURISDICTION TO INVALIDATE ACTION.--An Indian child who is the
16 subject of an action for foster care placement, preadoptive
17 placement, guardianship, adoptive placement or termination of
18 parental rights pursuant to the Children's Code, a parent,
19 guardian or Indian custodian from whose custody the child was
20 removed or the Indian child's tribe may petition any court of
21 competent jurisdiction to invalidate that action upon a showing
22 that the action violated any provision of Section 6, 10, 11,
23 14, 15, 16, 18, 19 or 22 of the State Indian Child Welfare
24 Act."

25 SECTION 18. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] PLACEMENT PREFERENCES--ADOPTION--PLACEMENT
3 OF INDIAN CHILDREN.--

4 A. In the case of a foster care placement,
5 preadoptive placement, adoptive placement or guardianship of an
6 Indian child or a child the court knows or has reason to know
7 is an Indian child, except as provided in Subsection C of this
8 section, the child shall be placed in the least restrictive
9 setting that:

10 (1) most closely approximates a family, taking
11 into consideration the Indian child's sibling attachment;

12 (2) allows the Indian child's special needs,
13 if any, to be met;

14 (3) is in reasonable geographic proximity to
15 the Indian child's home, extended family members or siblings;
16 and

17 (4) is in accordance with the order of
18 preference established by the Indian child's tribe by any
19 means, or, if that Indian tribe has not established placement
20 preferences, is in accordance with the following order of
21 preference:

22 (a) an extended family member of the
23 Indian child;

24 (b) a foster home licensed, approved or
25 specified by the Indian child's tribe; or

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1 (c) a foster home licensed or approved
2 by a licensing authority in New Mexico and in which one or more
3 of the licensed or approved foster parents is an Indian.

4 B. A placement shall not depart from the
5 preferences based on:

6 (1) the socioeconomic status of the placement;

7 (2) a home environment that does not impact
8 the safety and well-being of the Indian child; or

9 (3) ordinary bonding or attachment that
10 occurred from time spent in a non-preferred placement that was
11 made in violation of the State Indian Child Welfare Act or the
12 federal Indian Child Welfare Act of 1978.

13 C. If an Indian child is placed in a placement that
14 is contrary to the placement preferences provided in this
15 section, a secondary permanency plan shall not be
16 simultaneously permitted, and the department shall:

17 (1) conduct monitoring at least every thirty
18 days to determine whether a placement that comports with the
19 placement preferences provided in this section is available;

20 (2) make active efforts to identify a
21 placement that aligns with the placement preferences as soon as
22 practicable; and

23 (3) document all active efforts made to
24 identify a placement that aligns with the placement
25 preferences. At minimum, this shall include:

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- 1 (a) contacting the Indian child's tribe;
2 (b) conducting a relative search;
3 (c) interviewing relatives throughout
4 the case;
5 (d) making ongoing active efforts to
6 search for and identify relatives to the Indian child
7 throughout the case;
8 (e) providing the Indian child's tribe
9 with all information regarding family members;
10 (f) offering relatives an expedited
11 foster care license;
12 (g) assisting relatives through the
13 licensing process and making the licensing process more
14 accessible;
15 (h) conducting timely home studies when
16 identifying a placement that aligns with the placement
17 preference;
18 (i) providing continued contact,
19 including visitation; and
20 (j) providing culturally appropriate
21 interventions.

22 D. In the case of a foster care placement,
23 preadoptive placement, adoptive placement or guardianship of an
24 Indian child pursuant to the Children's Code, if the Indian
25 child's tribe establishes a different order of preference, the

1 adoption agency or court effecting the placement shall follow
2 that order of preference so long as the placement is the least
3 restrictive setting appropriate to the particular needs of the
4 Indian child, as provided in Subsection A of this section.

5 When appropriate, the preference of the Indian child or parent
6 may be considered; provided that the court has not terminated
7 the parental rights of the Indian child's parent.

8 E. In the case of a child who is an Indian child or
9 a child who the department or the court has reason to know is
10 an Indian child, the court-ordered mediation pursuant to
11 Section 32A-4-29 NMSA 1978 shall not be waived and the Indian
12 child's tribe shall be allowed to participate, whether or not
13 the Indian child's tribe intervenes.

14 F. An Indian child shall be placed in accordance
15 with the placement preferences unless there is good cause to
16 the contrary; provided that:

17 (1) if any party asserts that good cause not
18 to follow the placement preferences exists, the reasons for
19 this belief or assertion shall be stated orally on the record
20 or provided in writing to the parties to the child custody
21 proceeding and the court;

22 (2) the party seeking the departure from the
23 placement preferences has the burden of proving by clear and
24 convincing evidence that there is good cause to depart from the
25 preferences; and

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1 (3) a court's determination of good cause to
2 depart from the placement preferences shall be made on the
3 record or in writing and may be based on the considerations set
4 forth by the State Indian Child Welfare Act and the federal
5 Indian Child Welfare Act of 1978."

6 SECTION 19. A new section of the Children's Code is
7 enacted to read:

8 "[NEW MATERIAL] FOSTER PLACEMENT CONTRARY TO PREFERENCES--
9 DEPARTMENT DUTIES.--If an Indian child is placed in a foster
10 placement that was contrary to the placement preferences
11 provided in Section 18 of the State Indian Child Welfare Act,
12 regardless of the length of time that the child was in the
13 foster placement, the department shall conduct a reassessment
14 of placement preferences for the child, in accordance with
15 Section 18 of that act, before the child's placement may be
16 changed to an adoptive or other permanent placement. The
17 reassessment shall include consultation with the Indian child's
18 tribe."

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

21 "[NEW MATERIAL] CULTURAL TRAINING.--

22 A. A person who serves as a judge, prosecutor,
23 child's attorney, guardian ad litem, treatment guardian, court-
24 appointed attorney, court-appointed special advocate, foster
25 parent, mental health commissioner or mental health treatment

1 service provider for an Indian child subject to an abuse or
2 neglect petition, a family in need of services petition or a
3 mental health placement shall receive periodic training, to the
4 extent of available resources, in order to develop the person's
5 knowledge about the Indian child's Indian tribe to support the
6 physical, psychological and emotional growth of the Indian
7 child and to recognize how the culture, history, traditions and
8 customs of the Indian tribe support the Indian child's needs,
9 identity and sense of belonging. Institutions that serve
10 Indian children and their families shall, considering available
11 resources, provide similar training to institutional staff.

12 The training shall include study of:

- 13 (1) cross-cultural dynamics and sensitivity;
- 14 (2) child development;
- 15 (3) family composition and dynamics;
- 16 (4) parenting skills and practices;
- 17 (5) culturally appropriate treatment plans;

18 and

- 19 (6) alternative health practices.

20 B. If an Indian child is placed in a household that
21 does not include a parent or guardian who is a member of the
22 Indian child's tribe, upon placement and at least annually
23 thereafter, the department shall provide mandatory training to
24 the foster or preadoptive parent that includes information on
25 the Indian child's tribal culture and language, created in

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1 conjunction with, and at the discretion of, the Indian tribe,
2 tribal experts and relatives. Training shall also address
3 conditions on foster care placements under federal, state and
4 tribal law.

5 C. The administrative office of the courts in
6 collaboration with the department shall develop and deliver
7 annual mandatory training to all children's court judges,
8 district court judges, attorneys, guardians ad litem and youth
9 attorneys who are court appointed. The training shall include
10 information on:

11 (1) the federal Indian Child Welfare Act of
12 1978;

13 (2) the State Indian Child Welfare Act,
14 including cultural compacts; and

15 (3) the Indian tribes geographically located
16 within the state.

17 D. A judge, attorney, guardian ad litem or youth
18 attorney required to be trained in accordance with Subsection C
19 of this section shall attend the required training at least
20 once every twelve months."

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

23 "[NEW MATERIAL] PREADOPTIVE, ADOPTIVE AND GUARDIANSHIP
24 PLACEMENTS--MAINTENANCE OF CULTURE--CULTURAL COMPACTS.--To
25 ensure that the federal Indian Child Welfare Act of 1978 and

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1 the State Indian Child Welfare Act are fully implemented and
2 that all Indian children have the opportunity to maintain
3 strong connections to their culture, if the household into
4 which an Indian child is placed for pre-adoption, adoption or
5 guardianship does not include a parent who is a member of the
6 Indian child's tribe, the court shall require the parties to
7 the adoption to enter a cultural compact, at the discretion of
8 the Indian child's tribe, that documents the parties' agreement
9 regarding how the Indian child will continue to actively
10 participate in the Indian child's cultural learning and
11 activities and engagement with family members. Each cultural
12 compact shall be specific to the Indian child and shall
13 articulate the Indian child's understanding as the Indian child
14 grows and matures. The cultural compact shall become part of
15 the court record, shall be enforced by the court and shall be
16 included in the adoption decree."

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

19 "[NEW MATERIAL] DISPOSITIONAL JUDGMENTS--COURT FINDINGS.--

20 A. At the conclusion of a dispositional hearing in
21 a child custody proceeding involving an Indian child, in
22 addition to other requirements for a court's findings pursuant
23 to the Children's Code, a court shall include:

24 (1) when the judgment is made in a child
25 custody proceeding held pursuant to the Family in Need of

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1 Court-Ordered Services Act or the Abuse and Neglect Act,
2 findings of:

3 (a) whether the placement preferences
4 set forth in the State Indian Child Welfare Act and the federal
5 Indian Child Welfare Act of 1978 have been incorporated into a
6 plan for family services made pursuant to Section 32A-3B-15
7 NMSA 1978 or in a case plan as described in Section 32A-4-21
8 NMSA 1978; provided that if those placement preferences are not
9 incorporated into the plan for family services or the case
10 plan, good cause for noncompliance shall be clearly stated and
11 supported by clear and convincing evidence;

12 (b) whether the plan for family services
13 or the case plan provides for maintenance of the Indian child's
14 cultural ties; and

15 (c) how the Indian child's cultural
16 needs are considered and how, when reasonable, access to
17 cultural practices and traditional treatment will be provided
18 to the child; and

19 (2) in a termination of parental rights
20 proceeding pursuant to the Abuse and Neglect Act or the
21 Adoption Act, findings that the requirements of the State
22 Indian Child Welfare Act and the federal Indian Child Welfare
23 Act of 1978 have been met.

24 B. The court shall determine during a review of a
25 dispositional judgment involving an Indian child pursuant to

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1 Section 32A-4-25 NMSA 1978 whether the judgment complies with
2 the placement preferences set forth in the State Indian Child
3 Welfare Act and the federal Indian Child Welfare Act of 1978 or
4 the placement preferences of the Indian child's tribe and
5 whether the child's case plan as described in Section 32A-4-21
6 NMSA 1978 provides for maintaining the Indian child's cultural
7 ties. When placement preferences are not followed, good cause
8 for noncompliance shall be clearly stated and supported by
9 clear and convincing evidence. A court's determination of good
10 cause shall be made on the record or in writing and shall be
11 based on the considerations set forth in the federal
12 regulations or other factors authorized by federal and state
13 law."

14 SECTION 23. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] RETURN OF CUSTODY.--

17 A. Whenever a final decree of adoption of an Indian
18 child has been vacated or set aside or the adoptive parents
19 voluntarily consent to the termination of their parental rights
20 to the child, a biological parent, guardian or prior Indian
21 custodian may petition for return of custody, and the court
22 shall grant that petition unless there is a showing, in a
23 proceeding subject to the provisions of Section 10 of the State
24 Indian Child Welfare Act, that the return of custody is not in
25 the best interests of the Indian child.

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1 B. Whenever an Indian child is removed from a
2 foster home or institution for the purpose of further foster
3 care or preadoptive or adoptive placement, that placement shall
4 be in accordance with the provisions of the State Indian Child
5 Welfare Act and the federal Indian Child Welfare Act of 1978,
6 except when an Indian child is being returned to the parent,
7 guardian or Indian custodian from whose custody the child was
8 originally removed."

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

11 "[NEW MATERIAL] BEST INTERESTS OF INDIAN CHILD.--When
12 making a determination regarding the best interests of an
13 Indian child pursuant to the State Indian Child Welfare Act and
14 the federal Indian Child Welfare Act of 1978, a court shall, in
15 consultation with the Indian child's tribe, consider the
16 following relevant factors:

17 A. the protection, safety and well-being of the
18 Indian child;

19 B. the prevention of unnecessary out-of-home
20 placement of the Indian child;

21 C. the prioritization of placement of the Indian
22 child in accordance with the placement preferences provided
23 pursuant to Section 18 of the State Indian Child Welfare Act
24 and the federal Indian Child Welfare Act of 1978;

25 D. the critical importance to the Indian child of

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1 establishing, developing or maintaining a political, cultural,
2 social and spiritual relationship with the Indian child's tribe
3 and tribal community and with familial ties such as clanship
4 and family with unique cultural characteristics; and

5 E. the importance to the Indian child of the
6 ability of the Indian child's tribe to maintain its existence
7 and integrity in promotion of the stability and security of
8 Indian children and families."

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

11 "[NEW MATERIAL] ACCESS TO POST-DECREE ADOPTION RECORDS--
12 TRIBAL AFFILIATION AND OTHER INFORMATION.--

13 A. Upon application by an Indian individual who has
14 reached the age of eighteen and who was the subject of an
15 adoptive placement, the court that entered the final decree
16 shall inform that individual of the tribal affiliation, if any,
17 of the individual's biological parents and provide any other
18 information necessary to protect any rights flowing from the
19 individual's tribal relationship.

20 B. An individual adopted pursuant to the Adoption
21 Act shall have the right, for the purpose of obtaining
22 information or membership in that individual's Indian tribe of
23 origin, to access information kept by the department.
24 Information needed by that individual to obtain membership in
25 that individual's Indian tribe of origin may be requested from

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1 the department. Information needed by an individual to obtain
2 membership in the individual's Indian tribe of origin shall be
3 provided to the following:

4 (1) the individual, after the individual
5 reaches eighteen years of age;

6 (2) when the individual is a child, the
7 individual's adoptive parent or guardian;

8 (3) the individual's descendant or, if the
9 individual's descendant is a child, an adult representative for
10 the descendant; or

11 (4) the individual's tribe or tribes of
12 origin.

13 C. When the department receives a request for
14 information regarding an individual's Indian tribe of origin
15 when that individual was adopted pursuant to the Adoption Act,
16 the department shall:

17 (1) provide the requester with the tribal
18 affiliation of the individual's biological parents;

19 (2) provide the requester any additional
20 information necessary to establish tribal membership for the
21 individual and to protect any rights flowing from the
22 individual's tribal relationship, pursuant to the
23 confidentiality provisions of the Children's Code; and

24 (3) provide notice to the requester of the
25 department's submission of information to the individual's

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1 tribe."

2 **SECTION 26.** A new section of the Children's Code is
3 enacted to read:

4 "[NEW MATERIAL] ADOPTION DECREES--INFORMATION
5 AVAILABILITY.--

6 A. The clerk of a court entering a final decree or
7 order in an adoptive placement of an Indian child shall provide
8 the secretary with a copy of that decree, adoptive placement
9 order and any other information necessary to show:

10 (1) the name and tribal membership or
11 eligibility of membership of the child;

12 (2) the names and addresses of the biological
13 parents; and

14 (3) the identity of any agency having files or
15 information relating to the adoptive placement.

16 B. The attorney for the petitioner shall provide to
17 the clerk of the court a copy of the decree of adoption, an
18 adoptive placement order or any other information required by
19 the State Indian Child Welfare Act or the federal Indian Child
20 Welfare Act of 1978 and a stamped envelope addressed to the
21 secretary."

22 **SECTION 27.** A new section of the Children's Code is
23 enacted to read:

24 "[NEW MATERIAL] STATE INDIAN CHILD WELFARE ACT
25 SUPPLEMENTAL TO OTHER PROVISIONS OF LAW--CONFLICT OF LAWS.--

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1 A. The provisions of the State Indian Child Welfare
2 Act govern child custody proceedings involving Indian children.
3 The provisions of the Children's Code and the Kinship
4 Guardianship Act are in addition to the State Indian Child
5 Welfare Act. To the extent the provisions of those acts or any
6 provision of New Mexico state law conflicts with the provisions
7 of the State Indian Child Welfare Act, the provisions of the
8 State Indian Child Welfare Act shall apply.

9 B. To the extent a provision of the State Indian
10 Child Welfare Act conflicts with a provision of the federal
11 Indian Child Welfare Act of 1978, the provision of law that
12 provides the most protection to the interests of a parent,
13 guardian or Indian custodian shall be deemed to apply, as
14 required pursuant to 25 U.S.C. 1921. Regardless of whether
15 state or federal law is applied, the best interests of the
16 Indian child shall be considered."

17 **SECTION 28.** A new section of the Children's Code is
18 enacted to read:

19 "[NEW MATERIAL] OFFICE OF TRIBAL AFFAIRS--CREATION.--The
20 "office of tribal affairs" is created in the department. The
21 office shall be dedicated to ensuring the department's
22 compliance with and full implementation of the federal Indian
23 Child Welfare Act of 1978 and the State Indian Child Welfare
24 Act."

25 **SECTION 29.** A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] INDIAN CHILD WELFARE RULES.--The
3 department, through meaningful consultation with the Indian
4 nations, tribes and pueblos of the state, shall promulgate
5 rules to implement the provisions of the State Indian Child
6 Welfare Act pursuant to the State-Tribal Collaboration Act and
7 other applicable law and policy. The department shall also
8 consult with the Indian nations, tribes and pueblos of the
9 state to recommend court rules for potential adoption by the
10 courts of the state."

11 SECTION 30. Section 32A-1-4 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 13, as amended) is amended to read:

13 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

14 A. "active efforts" means efforts that are
15 affirmative, active, thorough and timely and that represent a
16 higher standard of conduct than reasonable efforts;

17 [~~A.~~] B. "adult" means a person who is eighteen
18 years of age or older;

19 [~~B.~~] C. "child" means a person who is less than
20 eighteen years old;

21 [~~C.~~] D. "council" means the substitute care
22 advisory council established pursuant to Section 32A-8-4 NMSA
23 1978;

24 [~~D.~~] E. "court", when used without further
25 qualification, means the children's court division of the

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1 district court and includes the judge, special master or
2 commissioner appointed pursuant to the provisions of the
3 Children's Code or supreme court rule;

4 ~~[E.]~~ F. "court-appointed special advocate" means a
5 person appointed pursuant to the provisions of the Children's
6 Court Rules to assist the court in determining the best
7 interests of the child by investigating the case and submitting
8 a report to the court;

9 ~~[F.]~~ G. "custodian" means an adult with whom the
10 child lives who is not a parent or guardian of the child;

11 ~~[G.]~~ H. "department" means the children, youth and
12 families department, unless otherwise specified;

13 ~~[H.]~~ I. "disproportionate minority contact" means
14 the involvement of a racial or ethnic group with the criminal
15 or juvenile justice system at a proportion either higher or
16 lower than that group's proportion in the general population;

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

20 ~~[I.]~~ K. "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 the
23 custody of the department or agency;

24 ~~[J.]~~ L. "guardian" means a person appointed as a
25 guardian by a court or Indian tribal authority or a person

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1 authorized to care for the child by a parental power of
2 attorney as permitted by law;

3 ~~[K.]~~ M. "guardian ad litem" means an attorney
4 appointed by the children's court to represent and protect the
5 best interests of the child in a case; provided that no party
6 or employee or representative of a party to the case shall be
7 appointed to serve as a guardian ad litem;

8 ~~[L.]~~ N. "Indian child" means an unmarried person
9 who is

10 ~~[(1) less than eighteen years old;~~

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

13 ~~(3) the biological child of a member of an
14 Indian tribe]~~ under age eighteen and who is either:

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

16 (2) eligible for membership in an Indian
17 tribe;

18 ~~[M.]~~ O. "Indian child's tribe" means:

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

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

25 P. "Indian custodian" means an Indian:

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1 (1) who has legal custody of an Indian child
2 pursuant to tribal law or custom or pursuant to state law; or

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

5 [~~N-~~] Q. "Indian tribe" means a federally recognized
6 Indian tribe, community or group pursuant to 25 U.S.C. Section
7 1903(1);

8 [~~Θ-~~] R. "judge", when used without further
9 qualification, means the judge of the court;

10 [~~P-~~] S. "legal custody" means a legal status
11 created by order of the court or other court of competent
12 jurisdiction or by operation of statute that vests in a person,
13 department or agency the right to determine where and with whom
14 a child shall live; the right and duty to protect, train and
15 discipline the child and to provide the child with food,
16 shelter, personal care, education and ordinary and emergency
17 medical care; the right to consent to major medical,
18 psychiatric, psychological and surgical treatment and to the
19 administration of legally prescribed psychotropic medications
20 pursuant to the Children's Mental Health and Developmental
21 Disabilities Act; and the right to consent to the child's
22 enlistment in the armed forces of the United States;

23 [~~Q-~~] T. "parent" or "parents" [~~includes~~] means a
24 biological or adoptive parent if the biological or adoptive
25 parent has a constitutionally protected liberty interest in the

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1 care and custody of the child or a person who has lawfully
2 adopted an Indian child pursuant to state law or tribal law or
3 tribal custom;

4 [R-] U. "permanency plan" means a determination by
5 the court that the child's interest will be served best by:

6 (1) reunification;

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

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

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

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

17 [S-] V. "person" means an individual or any other
18 form of entity recognized by law;

19 [T-] W. "plan of care" means a plan created by a
20 health care professional intended to ensure the safety and
21 well-being of a substance-exposed newborn by addressing the
22 treatment needs of the child and any of the child's parents,
23 relatives, guardians, family members or caregivers to the
24 extent those treatment needs are relevant to the safety of the
25 child;

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1 ~~[U.]~~ X. "preadoptive parent" means a person with
2 whom a child has been placed for adoption;

3 ~~[V.]~~ Y. "protective supervision" means the right to
4 visit the child in the home where the child is residing,
5 inspect the home, transport the child to court-ordered
6 diagnostic examinations and evaluations and obtain information
7 and records concerning the child;

8 ~~[W.]~~ Z. "relative" means a person related to
9 another person by blood within the fifth degree of
10 consanguinity or through marriage by the fifth degree of
11 affinity;

12 ~~[X.]~~ AA. "reunification" means either a return of
13 the child to the parent or to the home from which the child was
14 removed or a return to the noncustodial parent;

15 ~~[Y.]~~ BB. "tribal court" means:
16 (1) a court established and operated pursuant
17 to a code or custom of an Indian tribe; or
18 (2) any administrative body of an Indian tribe
19 that is vested with judicial authority;

20 ~~[Z.]~~ CC. "tribal court order" means a document
21 issued by a tribal court that is signed by an appropriate
22 authority, including a judge, governor or tribal council
23 member, and that orders an action that is within the tribal
24 court's jurisdiction; and

25 ~~[AA.]~~ DD. "tribunal" means any judicial forum other

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1 than the court."

2 SECTION 31. Section 32A-1-8 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 17, as amended) is amended to read:

4 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
5 JURISDICTION.--

6 A. The court has exclusive original jurisdiction of
7 all proceedings under the Children's Code in which a person is
8 eighteen years of age or older and was a child at the time the
9 alleged act in question was committed or is a child alleged to
10 be:

- 11 (1) a delinquent child;
- 12 (2) a child of a family in need of
13 court-ordered services or a child in need of services pursuant
14 to the Family in Need of Court-Ordered Services Act;
- 15 (3) a neglected child;
- 16 (4) an abused child;
- 17 (5) a child subject to adoption; or
- 18 (6) a child subject to placement for a
19 developmental disability or a mental disorder.

20 B. The court has exclusive original jurisdiction to
21 emancipate a minor.

22 C. During abuse or neglect proceedings in which New
23 Mexico is the home state, pursuant to the provisions of the
24 Uniform Child-Custody Jurisdiction and Enforcement Act, the
25 court shall have jurisdiction over both parents to determine

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1 the best interest of the child and to decide all matters
2 incident to the court proceedings.

3 D. Nothing in this section shall be construed to in
4 any way abridge the rights of any Indian tribe to exercise
5 jurisdiction over child custody matters as defined by and in
6 accordance with the federal Indian Child Welfare Act of 1978
7 and the State Indian Child Welfare Act.

8 ~~[E. A tribal court order pertaining to an Indian~~
9 ~~child in an action under the Children's Code shall be~~
10 ~~recognized and enforced by the district court for the judicial~~
11 ~~district in which the tribal court is located. A tribal court~~
12 ~~order pertaining to an Indian child that accesses state~~
13 ~~resources shall be recognized and enforced pursuant to the~~
14 ~~provisions of intergovernmental agreements entered into by the~~
15 ~~Indian child's tribe and the department or another state~~
16 ~~agency. An Indian child residing on or off a reservation, as a~~
17 ~~citizen of this state, shall have the same right to services~~
18 ~~that are available to other children of the state, pursuant to~~
19 ~~intergovernmental agreements. The cost of the services~~
20 ~~provided to an Indian child shall be determined and provided~~
21 ~~for in the same manner as services are made available to other~~
22 ~~children of the state, utilizing tribal, state and federal~~
23 ~~funds and pursuant to intergovernmental agreements. The tribal~~
24 ~~court, as the court of original jurisdiction, shall retain~~
25 ~~jurisdiction and authority over the Indian child.~~

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1 F-] E. The court may acquire jurisdiction over a
2 Motor Vehicle Code or municipal traffic code violation as set
3 forth in Section 32A-2-29 NMSA 1978."

4 **SECTION 32.** Section 32A-1-11 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 20, as amended) is amended to read:

6 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
7 initiating proceedings pursuant to the provisions of Chapter
8 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the
9 Matter of, a child", and shall set forth with
10 specificity:

11 A. the facts necessary to invoke the jurisdiction
12 of the court;

13 B. if violation of a criminal statute or other law
14 or ordinance is alleged, the citation to the appropriate law;

15 C. the name, birth date and residence address of
16 the child;

17 D. the name and residence address of the parents,
18 guardian, custodian or spouse, if any, of the child; and if no
19 parent, guardian, custodian or spouse, if any, resides or can
20 be found within the state or if a residence address is unknown,
21 the name of any known adult relative residing within the state
22 or, if there be none, the known adult relative residing nearest
23 to the court;

24 E. whether the child is in custody or detention
25 pursuant to the Delinquency Act and, if so, the place of

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1 custody or detention and the time the child was taken into
2 custody;

3 F. whether the child is an Indian child and, if so,
4 any additional information required pursuant to the State
5 Indian Child Welfare Act and the federal Indian Child Welfare
6 Act of 1978; and

7 G. if any of the matters required to be set forth
8 by this section are not known, a statement of those matters and
9 the fact that they are not known."

10 SECTION 33. Section 32A-3B-16 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 88, as amended) is amended to read:

12 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

13 A. At the conclusion of the dispositional hearing,
14 the court shall set forth its findings on the following issues
15 in the dispositional judgment:

16 (1) the ability of the parent and child to
17 share a residence;

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

21 (3) the child's adjustment to home, school and
22 community;

23 (4) whether the child's educational needs are
24 being met;

25 (5) the mental and physical health of all

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1 individuals involved;

2 (6) the wishes of the child as to the child's
3 custodian;

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

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

10 (9) the availability of services recommended
11 in the treatment plan;

12 (10) the department's efforts to work with the
13 parent and child in the home and a description of the in-home
14 treatment programs that the department has considered and
15 rejected;

16 ~~[(11) whether the placement preferences set~~
17 ~~forth in the federal Indian Child Welfare Act of 1978 or the~~
18 ~~placement preferences of the child's Indian tribe have been~~
19 ~~incorporated into the plan. When placement preferences have~~
20 ~~not been incorporated into the plan, an explanation shall be~~
21 ~~clearly stated and supported;~~

22 ~~(12) when the child is an Indian child,~~
23 ~~whether the plan provides for maintaining the Indian child's~~
24 ~~cultural ties]~~

25 (11) if the child is an Indian child or there

1 is reason to know the child is an Indian child, any other
2 findings required for a dispositional judgment pursuant to the
3 State Indian Child Welfare Act and the federal Indian Child
4 Welfare Act of 1978; and

5 [~~(13)~~] (12) when the child is an undocumented
6 immigrant child, whether the family services plan included
7 referral to nongovernmental agencies that may be able to assist
8 the child, and family when appropriate, in addressing
9 immigration status.

10 B. When there is an adjudication regarding a family
11 in need of court-ordered services, the court shall enter
12 judgment and make any of the following dispositions:

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

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

18 (3) transfer legal custody of the child to:

19 (a) the department;

20 (b) an agency responsible for the care
21 of neglected or abused children; or

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

24 (4) if the evidence indicates that the child's
25 educational needs are not being met, the local education agency

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1 may be joined as a party and directed to assess the child's
2 needs within forty-five days, attempt to meet the child's
3 educational needs and document its efforts to meet the child's
4 educational needs.

5 C. Unless a child of an adjudicated family in need
6 of court-ordered services is also found to be a delinquent
7 child, the child shall not be confined in an institution
8 established for the long-term care and rehabilitation of
9 delinquent children or in a facility for the detention of
10 alleged delinquent children.

11 ~~[D. When the child is an Indian child, the child's~~
12 ~~cultural needs shall be considered during dispositional~~
13 ~~judgment and, when reasonable, access to cultural practices and~~
14 ~~traditional treatment shall be provided to the Indian child.]"~~

15 SECTION 34. Section 32A-4-6 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 100, as amended) is amended to read:

17 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

18 A. A child may be held or taken into custody:

19 (1) by a law enforcement officer when the
20 officer has evidence giving rise to reasonable grounds to
21 believe that the child is abused or neglected and that there is
22 an immediate threat to the child's safety; provided that the
23 law enforcement officer contacts the department to enable the
24 department to conduct an on-site safety assessment to determine
25 whether it is appropriate to take the child into immediate

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1 custody, except that a child may be taken into custody by a law
2 enforcement officer without a protective services assessment
3 being conducted if:

4 (a) the child's parent, guardian or
5 custodian has attempted, conspired to cause or caused great
6 bodily harm to the child or great bodily harm or death to the
7 child's sibling;

8 (b) the child's parent, guardian or
9 custodian has attempted, conspired to cause or caused great
10 bodily harm or death to another parent, guardian or custodian
11 of the child;

12 (c) the child has been abandoned;

13 (d) the child is in need of emergency
14 medical care;

15 (e) the department is not available to
16 conduct a safety assessment in a timely manner; or

17 (f) the child is in imminent risk of
18 abuse; or

19 (2) by medical personnel when there are
20 reasonable grounds to believe that the child has been injured
21 as a result of abuse or neglect and that the child may be at
22 risk of further injury if returned to the child's parent,
23 guardian or custodian. The medical personnel shall hold the
24 child until a law enforcement officer is available to take
25 custody of the child pursuant to Paragraph (1) of this

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1 subsection.

2 B. A child shall not be taken into protective
3 custody solely on the grounds that the child's parent, guardian
4 or custodian refuses to consent to the administration of a
5 psychotropic medication to the child.

6 C. When a child is taken into custody by law
7 enforcement, the department is not compelled to place the child
8 in an out-of-home placement and may release the child to the
9 child's parent, guardian or custodian.

10 D. When a child is taken into custody, the
11 department shall make [~~reasonable~~] active efforts to determine
12 whether the child is an Indian child as required pursuant to
13 the State Indian Child Welfare Act and the federal Indian Child
14 Welfare Act of 1978.

15 E. If a child taken into custody is an Indian child
16 and is alleged to be neglected or abused, the department shall
17 give notice to the [~~agent of the Indian child's tribe~~]
18 appropriate parties in accordance with the federal Indian Child
19 Welfare Act of 1978 and the State Indian Child Welfare Act.

20 F. Any person who intentionally interferes with
21 protection of a child, as provided by Subsection A of this
22 section, is guilty of a petty misdemeanor."

23 SECTION 35. Section 32A-4-18 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 112, as amended) is amended to read:

25 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
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1 PROBABLE CAUSE.--

2 A. When a child alleged to be neglected or abused
3 has been placed in the legal custody of the department or the
4 department has petitioned the court for temporary custody, a
5 custody hearing shall be held within ten days from the date the
6 petition is filed to determine if the child should remain in or
7 be placed in the department's custody pending adjudication.
8 Upon written request of the respondent, the hearing may be held
9 earlier, but in no event shall the hearing be held sooner than
10 two days after the date the petition was filed.

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

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

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

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

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

25 (4) there has been an abandonment of the child

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1 by the child's parent, guardian or custodian; or

2 (5) the parent, guardian or custodian is not
3 able or willing to provide adequate supervision and care for
4 the child.

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

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

15 (2) award legal custody of the child to the
16 department.

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

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1 providing placement for the child. If the child is an Indian
2 child, the person shall meet the standards set forth in the
3 federal Indian Child Welfare Act of 1978 and the State Indian
4 Child Welfare Act.

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

8 (1) retain jurisdiction and, unless the court
9 permits otherwise, order that the respondent and child remain
10 in the jurisdiction of the court pending the adjudication;

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

14 (3) order that the child's parent, guardian or
15 custodian allow the child necessary contact with the child's
16 guardian ad litem or attorney.

17 G. At the conclusion of the custody hearing, the
18 court may order the respondent or the child alleged to be
19 neglected or abused, or both, to undergo appropriate diagnostic
20 examinations or evaluations. If the court determines that
21 probable cause does not exist, the court may order the
22 respondent or the child alleged to be neglected or abused, or
23 both, to undergo appropriate diagnostic examinations or
24 evaluations as necessary to protect the child's best interests,
25 based upon the allegations in the petition and the evidence

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1 presented at the custody hearing. Copies of any diagnostic or
2 evaluation reports ordered by the court shall be provided to
3 the parties at least five days before the adjudicatory hearing
4 is scheduled. The reports shall not be sent to the court.

5 H. The Rules of Evidence shall not apply to custody
6 hearings.

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

17 J. Nothing in this section shall be construed to
18 [~~abridge the rights of Indian children pursuant to~~] allow a
19 child custody proceeding to go forward without complying with
20 all of the requirements of the federal Indian Child Welfare Act
21 of 1978 and the State Indian Child Welfare Act."

22 SECTION 36. Section 32A-4-20 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 114, as amended) is amended to read:

24 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
25 DISPOSITIONAL MATTERS--PENALTY.--

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

4 B. All abuse and neglect hearings shall be closed
5 to the general public.

6 C. Only the parties, their counsel, witnesses and
7 other persons approved by the court may be present at a closed
8 hearing. The foster parent, preadoptive parent or relative
9 providing care for the child, and an Indian child's tribe,
10 pursuant to the State Indian Child Welfare Act and the federal
11 Indian Child Welfare Act of 1978, if applicable, shall be given
12 notice and an opportunity to be heard at the dispositional
13 phase. 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 identify
17 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 that
21 would identify any child involved in the proceedings or the
22 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 the
25 purposes of the Children's Code. A child who is the subject of

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1 an abuse and neglect proceeding and is present at a hearing may
2 object to the presence of the media. The court may exclude the
3 media if it finds that the presence of the media is contrary to
4 the best interests of the child.

5 E. If the court finds that it is in the best
6 interest of a child under fourteen years of age, the child may
7 be excluded from a hearing under the Abuse and Neglect Act. A
8 child fourteen years of age or older may be excluded from a
9 hearing only if the court makes a finding that there is a
10 compelling reason to exclude the child and states the factual
11 basis for the finding.

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

15 G. The court shall determine if the allegations of
16 the petition are admitted or denied. If the allegations are
17 denied, the court shall proceed to hear evidence on the
18 petition. The court, after hearing all of the evidence bearing
19 on the allegations of neglect or abuse, shall make and record
20 its findings on whether the child is a neglected child, an
21 abused child or both. Except in the case of a petition that
22 relates to an Indian child, if the petition alleges that the
23 parent, guardian or custodian has subjected the child to
24 aggravated circumstances, then the court shall also make and
25 record its findings on whether the aggravated circumstances

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1 have been proven. If the petition relates to an Indian child,
2 aggravated circumstances shall not be considered by the court
3 and shall not be recorded in the court's findings on the
4 petition, pursuant to the State Indian Child Welfare Act.

5 H. If the court finds on the basis of a valid
6 admission of the allegations of the petition or on the basis of
7 clear and convincing evidence, competent, material and relevant
8 in nature, that the child is neglected or abused, the court
9 shall enter an order finding that the child is neglected or
10 abused and 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. A party aggrieved by an order entered pursuant
16 to Subsection H of this section may file an immediate appeal to
17 the court of appeals.

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

25 K. On the court's motion or that of a party, the

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1 court may continue the hearing on the petition for a period not
2 to exceed thirty days to receive reports and other evidence in
3 connection with disposition. The court shall continue the
4 hearing pending the receipt of the predisposition study and
5 report if that document has not been prepared and received.
6 During any continuances under this subsection, the court shall
7 make an appropriate order for legal custody.

8 L. Any foster care placement of an Indian child
9 shall comply with the requirements of the federal Indian Child
10 Welfare Act of 1978 and the State Indian Child Welfare Act."

11 SECTION 37. Section 32A-4-21 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 115, as amended) is amended to read:

13 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
14 REPORTS AND EXAMINATIONS.--

15 A. Prior to holding a dispositional hearing, the
16 court shall direct that a predisposition study and report be
17 submitted in writing to the court by the department.

18 B. The predisposition study required pursuant to
19 Subsection A of this section shall contain the following
20 information:

21 (1) a statement of the specific reasons for
22 intervention by the department or for placing the child in the
23 department's custody and a statement of the parent's ability to
24 care for the child in the parent's home without causing harm to
25 the child;

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1 (2) a statement of how an intervention plan is
2 designed to achieve placement of the child in the least
3 restrictive setting available, consistent with the best
4 interests and special needs of the child, including a statement
5 of the likely harm the child may suffer as a result of being
6 removed from the parent's home, including emotional harm that
7 may result due to separation from the child's parents, and a
8 statement of how the intervention plan is designed to place the
9 child in close proximity to the parent's home without causing
10 harm to the child due to separation from parents, siblings or
11 any other person who may significantly affect the child's best
12 interest;

13 (3) the wishes of the child as to the child's
14 custodian;

15 (4) a statement of the efforts the department
16 has made to identify and locate all grandparents and other
17 relatives and to conduct home studies on any appropriate
18 relative expressing an interest in providing care for the
19 child, and a statement as to whether the child has a family
20 member who, subsequent to study by the department, is
21 determined to be qualified to care for the child;

22 (5) a description of services offered to the
23 child, the child's family and the child's foster care family
24 and a summary of reasonable efforts made to prevent removal of
25 the child from the child's family or reasonable efforts made to

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1 reunite the child with the child's family;

2 (6) a description of the home or facility in
3 which the child is placed and the appropriateness of the
4 child's placement;

5 (7) the results of any diagnostic examination
6 or evaluation ordered at the custody hearing;

7 (8) a statement of the child's medical and
8 educational background;

9 (9) if the child is an Indian child, whether
10 the placement preferences set forth in the federal Indian Child
11 Welfare Act of 1978 and the State Indian Child Welfare Act or
12 the placement preferences of the child's Indian tribe were
13 followed, [~~and~~] whether the child's case plan provides for
14 maintaining the child's cultural ties and whether the
15 department has provided notification to the Indian child's
16 tribe consistent with the requirements of the State Indian
17 Child Welfare Act;

18 (10) a case plan that sets forth steps to
19 ensure that the child's physical, medical, cultural,
20 psychological and educational needs are met and that sets forth
21 services to be provided to the child and the child's parents to
22 facilitate permanent placement of the child in the parent's
23 home;

24 (11) for children sixteen years of age and
25 older, a plan for developing the specific skills the child

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1 requires for successful transition into independent living as
2 an adult, regardless of whether the child is returned to the
3 child's parent's home;

4 (12) a case plan that sets forth steps to
5 ensure that the child's educational needs are met and, for a
6 child fourteen years of age or older, a case plan that
7 specifically sets forth the child's educational and post-
8 secondary goals; and

9 (13) a description of the child's foster care
10 placement and whether it is appropriate in terms of the
11 educational setting and proximity to the school the child was
12 enrolled in at the time of the placement, including plans for
13 travel for the child to remain in the school in which the child
14 was enrolled at the time of placement, if reasonable and in the
15 child's best interest.

16 C. A copy of the predisposition report shall be
17 provided by the department to counsel for all parties five days
18 before the dispositional hearing.

19 D. If the child is an adjudicated abused child, any
20 temporary custody orders shall remain in effect until the court
21 has received and considered the predispositional study at the
22 dispositional hearing."

23 **SECTION 38.** Section 32A-4-22 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 116, as amended) is amended to read:

25 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED

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1 CHILD.--

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

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

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

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

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

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

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

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1 at the initial judicial review and subsequent periodic review
2 hearings. In the case of an Indian child or a child who the
3 department knows or has reason to know is an Indian child, the
4 department shall meet the standards set forth in the federal
5 Indian Child Welfare Act of 1978 and the State Indian Child
6 Welfare Act;

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

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

12 (9) the availability of services recommended
13 in the case plan prepared as a part of the predisposition study
14 in accordance with the provisions of Section 32A-4-21 NMSA
15 1978;

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

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

23 (12) whether reasonable efforts were made by
24 the department to place siblings in custody together, unless
25 such joint placement would be contrary to the safety or well-

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1 being of any of the siblings in custody, and whether any
2 siblings not jointly placed have been provided reasonable
3 visitation or other ongoing interaction, unless visitation or
4 other ongoing interaction would be contrary to the safety or
5 well-being of any of the siblings; and

6 (13) if the child is an Indian child [~~whether~~
7 ~~the placement preferences set forth in the federal Indian Child~~
8 ~~Welfare Act of 1978 or the placement preferences of the child's~~
9 ~~Indian tribe have been followed and whether the Indian child's~~
10 ~~case plan provides for maintaining the Indian child's cultural~~
11 ~~ties. When placement preferences have not been followed, good~~
12 ~~cause for noncompliance shall be clearly stated and supported]~~
13 or there is reason to know the child is an Indian child, any
14 other information required for a dispositional judgment
15 pursuant to the State Indian Child Welfare Act and the federal
16 Indian Child Welfare Act of 1978.

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 the
21 child's parent, guardian or custodian, subject to those
22 conditions and 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 one

1 of the following:

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

4 (b) the department.

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 case 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; or

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

17 D. If a child is an Indian child or there is reason
18 to know that the child is an Indian child, active efforts to
19 maintain or reunite an Indian child with the Indian child's
20 family shall be made pursuant to the State Indian Child Welfare
21 Act regardless of whether the following apply:

22 (1) the efforts would be futile; or

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

25 [~~D.~~] E. Any parent, guardian or custodian of a

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1 child who is placed in the legal custody of the department or
2 other person pursuant to Subsection B of this section shall
3 have reasonable rights of visitation with the child as
4 determined by the court, unless the court finds that the best
5 interests of the child preclude any visitation.

6 ~~[E-]~~ F. The court may order reasonable visitation
7 between a child placed in the custody of the department and the
8 child's siblings or any other person who may significantly
9 affect the child's best interest, if the court finds the
10 visitation to be in the child's best interest.

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

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

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

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1 ~~[F.]~~ J. As required pursuant to the State Indian
2 Child Welfare Act, when a child is placed in the custody of the
3 department, ~~[the department shall investigate whether the child~~
4 ~~is eligible for enrollment as a member of an Indian tribe and,~~
5 ~~if so]~~ the department shall ~~[pursue the enrollment on the~~
6 ~~child's behalf]~~ work with the parent, the guardian or the
7 child's Indian tribe to establish membership, at the discretion
8 of the parent or the Indian tribe. An Indian tribe shall have
9 the sole right to determine membership and membership
10 eligibility, as defined by the Indian tribe's law, custom,
11 tradition and practice. The department shall provide records
12 to assist at the request of the parent or the Indian child's
13 tribe.

14 ~~[J.]~~ K. When the court determines pursuant to
15 Subsection C of this section that no reasonable efforts at
16 reunification are required, the court shall conduct, within
17 thirty days, a permanency hearing as described in Section
18 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
19 implement and finalize the permanency plan in a timely manner,
20 unless the case involves an Indian child, which is governed by
21 the federal Indian Child Welfare Act of 1978 and the State
22 Indian Child Welfare Act."

23 **SECTION 39.** Section 32A-4-25 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 119, as amended) is amended to read:

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

A. The initial judicial review shall be held within sixty days of the disposition. At the initial judicial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the council. The staff of the council, or an entity contracting with the council, shall review the case. If the staff or contracting entity determines that the case meets the criteria established in council rules, the staff or contracting entity shall designate the case for review by a substitute care review board. A representative of the substitute care review board, if designated, shall be permitted to attend and comment to the court.

B. The court shall conduct subsequent periodic judicial reviews of the dispositional order within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to a subsequent

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1 periodic judicial review, the department shall submit a
2 progress report to the council or any designated substitute
3 care review board. Prior to any judicial review by the court
4 pursuant to this section, the substitute care review board may
5 review the dispositional order or the continuation of the order
6 and the department's progress report and report its findings
7 and recommendations to the court.

8 C. Judicial review pursuant to this section may be
9 carried out by either of the following:

10 (1) a judicial review hearing conducted by the
11 court; or

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

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

18 (1) all parties, including:

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

22 (b) the child's parent, guardian or
23 custodian, who has allegedly neglected or abused the child or
24 is in need of court-ordered services; ~~and~~

25 (c) any other person made a party by the

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1 court; and

2 (d) if the child is an Indian child or
3 there is reason to know the child is an Indian child, the
4 Indian child's tribe pursuant to the federal Indian Child
5 Welfare Act of 1978 and the State Indian Child Welfare Act;

6 (2) the child's foster parent or substitute
7 care provider;

8 (3) the child's court-appointed special
9 advocate; and

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

12 E. At any subsequent judicial review hearing held
13 pursuant to Subsection B of this section, the department and
14 all parties given notice pursuant to Subsection D of this
15 section shall have the opportunity to present evidence and to
16 cross-examine witnesses. At the hearing, the department shall
17 show that it has made reasonable effort to implement any
18 treatment plan approved by the court in its dispositional order
19 and shall present a treatment plan consistent with the purposes
20 of the Children's Code for any period of extension of the
21 dispositional order. The respondent shall demonstrate to the
22 court that efforts to comply with the treatment plan approved
23 by the court in its dispositional order and efforts to maintain
24 contact with the child were diligent and made in good faith.

25 The court shall determine the extent of compliance with the

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1 treatment plan and whether progress is being made toward
2 establishing a stable and permanent placement for the child.

3 F. The Rules of Evidence shall not apply to
4 hearings held pursuant to this section. The court may admit
5 testimony by any person given notice of the hearing who has
6 information about the status of the child or the status of the
7 treatment plan.

8 G. At the conclusion of any hearing held pursuant
9 to this section, the court shall make findings of fact and
10 conclusions of law.

11 H. When the child is an Indian child or there is
12 reason to know the child is an Indian child, the court shall
13 determine during review of a dispositional order whether the
14 placement preferences set forth in the federal Indian Child
15 Welfare Act of 1978 and the State Indian Child Welfare Act or
16 the placement preferences of the Indian child's [~~Indian~~] tribe
17 were followed and whether the [~~child's treatment plan provides~~
18 ~~for maintaining the child's cultural ties. When placement~~
19 ~~preferences have not been followed, good cause for~~
20 ~~noncompliance shall be clearly stated and supported~~] department
21 has made active efforts pursuant to the State Indian Child
22 Welfare Act to implement the Indian child's treatment plan and
23 reunify the Indian family. When placement preferences have not
24 been followed, good cause for noncompliance shall be clearly
25 stated and supported by clear and convincing evidence and the

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1 department shall identify steps taken to identify placement in
2 compliance with the State Indian Child Welfare Act or the
3 placement preferences of the Indian child's tribe.

4 I. Based on its findings at a judicial review
5 hearing held pursuant to Subsection B of this section, the
6 court shall order one of the following dispositions:

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

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

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

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

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

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

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1 the child; or

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

4 (5) continue the child in the legal custody of
5 the department with or without any required parental
6 involvement in a treatment plan; provided that:

7 (a) reasonable efforts shall be made to
8 preserve and reunify the family, with the paramount concern
9 being the child's health and safety unless the court finds that
10 such efforts are not required. The court may determine that
11 reasonable efforts are not required to be made when the court
12 finds that: [~~a~~] 1) the efforts would be futile; or [~~b~~] 2)
13 the parent, guardian or custodian has subjected the child to
14 aggravated circumstances; and

15 (b) if a child is an Indian child or
16 there is reason to know that the child is an Indian child,
17 active efforts, as required by the State Indian Child Welfare
18 Act, shall be made to preserve and reunify the family
19 regardless of whether: 1) the efforts would be futile; or 2)
20 the parent, guardian or Indian custodian has subjected the
21 child to aggravated circumstances;

22 (6) make additional orders regarding the
23 treatment plan or placement of the child to protect the child's
24 best interests if the court determines the department has
25 failed in implementing any material provision of the treatment

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1 plan or abused its discretion in the placement or proposed
2 placement of the child; ~~[or]~~

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

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

10 (b) a hearing on the merits of
11 terminating parental rights; or

12 (8) continue the Indian child in the legal
13 custody of the department with or without any required parental
14 involvement in a treatment plan. Active efforts shall be made
15 to maintain or reunite an Indian child with the Indian child's
16 family, with the paramount concern being the Indian child's
17 health and safety, pursuant to the State Indian Child Welfare
18 Act.

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

23 K. When the court determines, pursuant to Paragraph
24 (5) of Subsection I of this section, that no reasonable efforts
25 at reunification are required, the court shall conduct, within

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1 thirty days, a permanency hearing as described in Section
2 32A-4-25.1 NMSA 1978. The department shall make reasonable
3 efforts to place the child in a timely manner in accordance
4 with the permanency plan and to complete whatever steps are
5 necessary to finalize the permanent placement of the child.
6 This subsection does not apply when the child is an Indian
7 child or there is reason to know the child is an Indian child."

8 SECTION 40. Section 32A-4-25.2 NMSA 1978 (being Laws
9 2009, Chapter 239, Section 47) is amended to read:

10 "32A-4-25.2. TRANSITION SERVICES.--

11 A. Prior to a child's reaching seventeen years of
12 age, the department shall meet with the child, the child's
13 attorney and others of the child's choosing, including
14 biological family members, to develop a transition plan. The
15 department shall assist the child in identifying and planning
16 to meet the child's needs after the child's eighteenth
17 birthday, including housing, education, employment or income,
18 health and mental health, local opportunities for mentors and
19 continuing support services.

20 B. The department shall present the child's
21 proposed transition plan to the court at the first hearing
22 scheduled after the child's seventeenth birthday.

23 C. The court shall order a transition plan for the
24 child. The transition plan approved by the court shall be
25 reviewed at every subsequent review and permanency hearing.

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1 D. If the child is an Indian child, the Indian
2 child's tribe shall be included in developing the transition
3 plan and shall be provided a copy of the transition plan prior
4 to the presentation of the plan to the court."

5 SECTION 41. Section 32A-4-25.3 NMSA 1978 (being Laws
6 2009, Chapter 239, Section 48) is amended to read:

7 "32A-4-25.3. DISCHARGE HEARING.--

8 A. At the last review or permanency hearing held
9 prior to the child's eighteenth birthday, the court shall
10 review the transition plan and shall determine whether the
11 department has made reasonable efforts to implement the
12 requirements of Subsection B of this section.

13 B. The court shall determine:

14 (1) whether written information concerning the
15 child's family history, the whereabouts of any sibling if
16 appropriate and education and health records have been provided
17 to the child;

18 (2) whether the child's social security card,
19 certified birth certificate, state-issued identification card,
20 death certificate of a parent and proof of citizenship or
21 residence have been provided to the child;

22 (3) whether assistance in obtaining medicaid
23 has been provided to the child, unless the child is ineligible
24 for medicaid; and

25 (4) whether referral for a guardianship or

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1 limited guardianship if the child is incapacitated has been
2 made.

3 C. If the court finds that the department has not
4 made reasonable efforts to meet all the requirements of
5 Subsection B of this section and that termination of
6 jurisdiction would be harmful to the young adult, the court may
7 continue to exercise its jurisdiction for a period not to
8 exceed one year from the child's eighteenth birthday. The
9 young adult must consent to continued jurisdiction of the
10 court. The court may dismiss the case at any time after the
11 child's eighteenth birthday for good cause.

12 D. If the child is an Indian child, the department
13 shall provide documentation of the Indian child's tribal
14 membership and information regarding all other tribes with
15 which the Indian child may have a connection or family and any
16 benefits to which the Indian child may be entitled. The court
17 shall make findings determining that the department made active
18 efforts pursuant to the State Indian Child Welfare Act to meet
19 the requirements of this section and may continue to exercise
20 its jurisdiction for a period not to exceed one year from the
21 child's eighteenth birthday. The young adult must consent to
22 continued jurisdiction of the court. Additionally, the Indian
23 child may volunteer to participate in the fostering connections
24 program through the department. The court may dismiss the case
25 at any time after the child's eighteenth birthday for good

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1 cause."

2 SECTION 42. Section 32A-4-27 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 121, as amended) is amended to read:

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

6 A. At any stage of an abuse or neglect proceeding
7 that does not involve an Indian child, a person described in
8 this subsection may be permitted to intervene as a party with a
9 motion for affirmative relief:

10 (1) a foster parent with whom the child has
11 resided [~~with~~] for at least six months;

12 (2) a relative within the fifth degree of
13 consanguinity with whom the child has resided;

14 (3) a stepparent with whom the child has
15 resided; or

16 (4) a person who wishes to become the child's
17 permanent guardian.

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

21 (1) the person's rationale for the [~~purpose~~]
22 proposed intervention; and

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

25 C. When the court determines that the child's best

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1 interest will be served as a result of intervention by a person
2 described in Subsection A of this section, the court may permit
3 intervention unless the party opposing intervention can
4 demonstrate that a viable plan for reunification with the
5 respondents is in progress and that intervention could impede
6 the progress of the reunification plan.

7 D. The persons described in this subsection shall
8 be permitted to intervene during any stage of an abuse or
9 neglect proceeding:

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

12 (2) when the child is an Indian child, the
13 child's Indian tribe, the child's guardian, the Indian
14 custodian, the Indian child's relative or the Indian child's
15 extended family member as provided by the State Indian Child
16 Welfare Act.

17 E. The [~~child's~~] foster parent of a child that is
18 not an Indian child shall be permitted to 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;

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1 and

2 (4) bonding between the child and the child's
3 foster parent is alleged as a reason for terminating parental
4 rights in the motion for termination of parental rights. If
5 the child is an Indian child, bonding between the Indian child
6 and the Indian child's foster parent shall not be considered as
7 a factor in terminating parental rights.

8 F. The foster parent, preadoptive parent or
9 relative providing care for the child shall be given notice of,
10 and an opportunity to be heard in, any review or hearing with
11 respect to the child, except that this subsection shall not be
12 construed to require that any foster parent, preadoptive parent
13 or relative providing care for the child be made a party to
14 such a review or hearing solely on the basis of the notice and
15 opportunity to be heard."

16 SECTION 43. Section 32A-4-28 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 122, as amended) is amended to read:

18 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
19 DECREE.--

20 A. In proceedings to terminate parental rights, the
21 court shall [~~give primary consideration to~~] make the
22 determination based on the physical, mental and emotional
23 welfare and needs of the child, including the likelihood of the
24 child being adopted if parental rights are terminated. If the
25 child is an Indian child, the court shall also make all

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1 required determinations pursuant to the federal Indian Child
2 Welfare Act of 1978 and the State Indian Child Welfare Act and
3 include in its determination the importance of maintaining
4 connections between the Indian child and the child's Indian
5 tribe and tribal culture. In proceedings to terminate parental
6 rights with respect to an Indian child, the court shall
7 consider in its determination whether an alternative to
8 termination of parental rights, including permanent
9 guardianship of the child, would best support the Indian child
10 pursuant to the State Indian Child Welfare Act and the federal
11 Indian Child Welfare Act of 1978.

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

14 (1) there has been an abandonment of the child
15 by [~~his~~] the child's parents;

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

25 (a) there is a clear showing that the

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1 efforts would be futile; or

2 (b) notwithstanding the provisions of
3 Subsection G of Section 32A-4-20 NMSA 1978, the parent has
4 subjected the child to aggravated circumstances; aggravated
5 circumstances do not apply to child custody proceedings
6 involving an Indian child; or

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

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

12 (b) the parent-child relationship has
13 disintegrated;

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

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

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

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

25 C. A finding by the court that all of the

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1 conditions set forth in Subparagraphs (a) through (f) of
2 Paragraph (3) of Subsection B of this section exist shall
3 create a rebuttable presumption of abandonment.

4 D. The department shall not file a motion, and
5 shall not join a motion filed by another party, to terminate
6 parental rights:

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

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

12 E. The termination of parental rights involving [~~a~~
13 ~~child~~] an Indian child or a child the state has reason to know
14 is an Indian child subject to the federal Indian Child Welfare
15 Act of 1978 or the State Indian Child Welfare Act shall:

16 (1) comply with the requirements of [~~that act~~]
17 those respective acts;

18 (2) not be ordered unless the Indian child's
19 tribe was provided timely notice of the proceeding in
20 accordance with the State Indian Child Welfare Act and provided
21 an opportunity to state whether it opposes the termination; and

22 (3) not be ordered if the Indian child's tribe
23 proposes an alternate permanency plan, unless the department
24 can show good cause supported by clear and convincing evidence
25 why the alternate permanency plan should not be ordered.

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1 F. If the court finds that parental rights should
2 be terminated; that the requirements for the adoption of a
3 child have been satisfied; that the prospective adoptive parent
4 is a party to the action; and that good cause exists to waive
5 the filing of a separate petition for adoption, the court may
6 proceed to grant adoption of the child, absent an appeal of the
7 termination of parental rights. The court shall not waive any
8 time requirements set forth in the Adoption Act unless the
9 termination of parental rights occurred pursuant to the
10 provisions of Paragraph (3) of Subsection B of this section.
11 The court may enter a decree of adoption only after finding
12 that the party seeking to adopt the child has satisfied all of
13 the requirements set forth in the Adoption Act. The court
14 shall not waive any time requirements set forth in the Adoption
15 Act, the federal Indian Child Welfare Act of 1978 and the State
16 Indian Child Welfare Act. Unless otherwise stipulated by all
17 parties, including Indian tribes when applicable regardless of
18 whether the Indian tribe is a party, an adoption decree shall
19 take effect sixty days after the termination of parental
20 rights, to allow the department sufficient time to provide
21 counseling for the child and otherwise prepare the child for
22 the adoption. The adoption decree shall conform to the
23 requirements of the Adoption Act, the federal Indian Child
24 Welfare Act of 1978 and the State Indian Child Welfare Act and
25 shall have the same force and effect as other adoption decrees

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1 entered pursuant to [~~that act~~] those acts. The court clerk
2 shall assign an adoption case number to the adoption decree."

3 SECTION 44. Section 32A-4-29 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 123, as amended) is amended to read:

5 "32A-4-29. TERMINATION PROCEDURE.--

6 A. A motion to terminate parental rights may be
7 filed at any stage of the abuse or neglect proceeding by a
8 party to the proceeding.

9 B. The motion for termination of parental rights
10 shall set forth:

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

13 (2) the grounds for termination and the facts
14 and circumstances supporting the grounds for termination;

15 (3) the names and addresses of the persons or
16 authorized agency or agency officer to whom legal custody might
17 be transferred;

18 (4) whether the child resides or has resided
19 with a foster parent who desires to adopt [~~this~~] the child;

20 (5) whether the motion is in contemplation of
21 adoption;

22 (6) the relationship or legitimate interest of
23 the moving party to the child; and

24 (7) whether the child is subject to the
25 federal Indian Child Welfare Act of 1978 or the State Indian

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1 Child Welfare Act and, if so:

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

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

11 (c) what [~~specific~~] active efforts were
12 made to comply with the placement preferences set forth in the
13 federal Indian Child Welfare Act of 1978 [~~or the placement~~
14 ~~preferences of the appropriate Indian tribes~~], the State Indian
15 Child Welfare Act or the placement preferences of the Indian
16 child's tribe; and

17 (d) what active efforts were made to
18 provide remedial services and rehabilitative programs designed
19 to prevent the breakup of the Indian family and that these
20 efforts have proved unsuccessful pursuant to the State Indian
21 Child Welfare Act and the federal Indian Child Welfare Act of
22 1978.

23 C. Notice of the filing of the motion, accompanied
24 by a copy of the motion, shall be served by the moving party on
25 all other parties, the foster parent, preadoptive parent or

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1 relative providing care for the child with whom the child is
2 residing, foster parents with whom the child has resided for
3 six months within the previous twelve months, the custodian of
4 the child, any person appointed to represent any party and any
5 other person the court orders. Service shall be in accordance
6 with the Children's Court Rules for the service of motions,
7 except that foster parents and attorneys of record in this
8 proceeding shall be served by certified mail. The notice shall
9 state specifically that the person served shall file a written
10 response to the motion within twenty days if the person intends
11 to contest the termination. In any case involving a child
12 subject to the federal Indian Child Welfare Act of 1978 or the
13 State Indian Child Welfare Act, notice shall also be sent by
14 certified mail, with return receipt requested, to the [~~tribes~~
15 ~~of the child's parents~~] Indian child's tribe and upon any
16 "Indian custodian" as that term is defined in 25 U.S.C. Section
17 1903(6) and the State Indian Child Welfare Act. Further notice
18 shall not be required on a parent who has been provided notice
19 previously pursuant to Section 32A-4-17 NMSA 1978 and who
20 failed to make an appearance. If the child is an Indian child,
21 the notice shall meet the standards set forth in the federal
22 Indian Child Welfare Act of 1978 and the State Indian Child
23 Welfare Act.

24 D. When a motion to terminate parental rights is
25 filed, the moving party shall request a hearing on the motion.

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1 The hearing date shall be at least thirty days, but no more
2 than sixty days, after service is effected upon the parties
3 entitled to service under this section. The moving party shall
4 also file a motion for court-ordered mediation between the
5 parent and any prospective adoptive parent to discuss an open
6 adoption agreement. If an open adoption agreement is reached
7 at any time before termination of parental rights, it shall be
8 made a part of the court record.

9 E. In any action for the termination of parental
10 rights brought by a party other than the department and
11 involving a child in the legal custody of the department, the
12 department may:

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

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

17 F. When a motion to terminate parental rights is
18 filed, the department shall perform concurrent planning.

19 G. When a child has been in foster care for not
20 less than fifteen of the previous twenty-two months, and this
21 time was not incurred during voluntary placement agreements,
22 the department shall file a motion to terminate parental
23 rights, unless:

24 (1) a parent has made substantial progress
25 toward eliminating the problem that caused the child's

1 placement in foster care; it is likely that the child will be
2 able to safely return to the parent's home within three months;
3 and the child's return to the parent's home will be in the
4 child's best interests;

5 (2) the child has a close and positive
6 relationship with a parent and a permanent plan that does not
7 include termination of parental rights will provide the most
8 secure and appropriate placement for the child;

9 (3) the child is fourteen years of age or
10 older, is firmly opposed to termination of parental rights and
11 is likely to disrupt an attempt to place the child with an
12 adoptive family;

13 (4) a parent is terminally ill, but in
14 remission, and does not want parental rights to be terminated;
15 provided that the parent has designated a guardian for the
16 child;

17 (5) the child is not capable of functioning if
18 placed in a family setting. In such a case, the court shall
19 reevaluate the status of the child every ninety days unless
20 there is a final court determination that the child cannot be
21 placed in a family setting;

22 (6) grounds do not exist for termination of
23 parental rights;

24 (7) the child is an unaccompanied, refugee
25 minor and the situation regarding the child involves

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1 international legal issues or compelling foreign policy issues;

2 (8) adoption is not an appropriate plan for
3 the child; or

4 (9) the parent's incarceration or
5 participation in a court-ordered residential substance abuse
6 treatment program constitutes the primary factor in the child's
7 placement in substitute care and termination of parental rights
8 is not in the child's best interest.

9 H. In the case of an Indian child or a child who
10 the department knows or has reason to know is an Indian child,
11 the department shall prove beyond a reasonable doubt that the
12 department has complied with the active efforts to give notice,
13 prevent removal, work toward reunification and comply with
14 placement preferences pursuant to the Abuse and Neglect Act,
15 the federal Indian Child Welfare Act of 1978 and the State
16 Indian Child Welfare Act. No termination of parental rights
17 for an Indian child may be ordered in the absence of a
18 determination, supported by evidence beyond a reasonable doubt,
19 including testimony of qualified expert witnesses, that the
20 continued custody of the child by the parent, guardian or
21 Indian custodian is likely to result in serious emotional or
22 physical damage to the child.

23 [H-] I. For purposes of this section, a child shall
24 be considered to have entered foster care on the earlier of:

25 (1) the date of the first judicial finding

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1 that the child has been abused or neglected; or

2 (2) the date that is sixty days after the date
3 on which the child was removed from the home.

4 [~~F.~~] J. The grounds for any attempted termination
5 shall be proved by clear and convincing evidence. In any
6 proceeding involving a child subject to the federal Indian
7 Child Welfare Act of 1978 or the State Indian Child Welfare
8 Act, the grounds for any attempted termination shall be proved
9 beyond a reasonable doubt and shall meet the requirements set
10 forth in [~~25 U.S.C. Section 1912(f)~~] those acts.

11 [~~J.~~] K. When the court terminates parental rights,
12 it shall appoint a custodian for the child and fix
13 responsibility for the child's support.

14 [~~K.~~] L. In any termination proceeding involving a
15 child subject to the federal Indian Child Welfare Act of 1978
16 or the State Indian Child Welfare Act, the court shall in any
17 termination order make specific findings of all active efforts
18 and that all of the requirements of [~~that act~~] those acts have
19 been met.

20 [~~L.~~] M. A judgment of the court terminating
21 parental rights divests the parent of all legal rights and
22 privileges and dispenses with both the necessity for the
23 consent to or receipt of notice of any subsequent adoption
24 proceeding concerning the child. A judgment of the court
25 terminating parental rights shall not affect the child's rights

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1 of inheritance from and through the child's biological parents.

2 [M-] N. When the court denies a motion to terminate
3 parental rights, the court shall issue appropriate orders
4 immediately. The court shall direct the parties to file a
5 stipulated order and interim plan or a request for hearing
6 within thirty days of the date of the hearing denying the
7 termination of parental rights."

8 SECTION 45. Section 32A-4-32 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 126, as amended) is amended to read:

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

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

13 B. A motion for permanent guardianship shall set
14 forth:

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

17 (2) the facts and circumstances supporting the
18 grounds for permanent guardianship;

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

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

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

25 (6) whether the child is subject to the

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1 federal Indian Child Welfare Act of 1978 or the State Indian
2 Child Welfare Act 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 correspondence~~
9 ~~with the tribes shall be attached as exhibits to the petition;~~
10 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] any additional requirements~~
15 for that motion as provided pursuant to the federal Indian
16 Child Welfare Act of 1978 and the State Indian Child Welfare
17 Act.

18 C. If the motion is not filed by the prospective
19 guardian, the motion shall be verified by the prospective
20 guardian.

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

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1 relative providing care for the child with whom the child has
2 resided for six months, the child's custodian, the department,
3 any person appointed to represent any party, including the
4 child's guardian ad litem, and any other person the court
5 orders provided with notice. Service shall be in accordance
6 with the Children's Court Rules for the service of motions. In
7 a case involving ~~[a]~~ an Indian child, ~~[subject to the federal~~
8 ~~Indian Child Welfare Act of 1978, notice shall also be sent by~~
9 ~~certified mail to the Indian tribes of the child's parents and~~
10 ~~to any "Indian custodian" as that term is defined in 25 U.S.C.~~
11 ~~Section 1903(6)]~~ notice shall be sent by certified mail, with
12 return receipt requested, to the Indian child's tribe and to
13 any Indian custodian pursuant to the State Indian Child Welfare
14 Act and the federal Indian Child Welfare Act of 1978. Further
15 notice shall not be required to a parent who has been provided
16 notice previously pursuant to Section 32A-4-17 NMSA 1978 and
17 who failed to make an appearance, unless the child is an Indian
18 child, in which case notice shall always be made pursuant to
19 the State Indian Child Welfare Act.

20 E. The grounds for permanent guardianship shall be
21 proved by clear and convincing evidence. The grounds for
22 permanent guardianship shall be proved beyond a reasonable
23 doubt and meet the requirements of:

24 (1) 25 U.S.C. Section 1912(f) in ~~[any]~~ a
25 proceeding involving a child subject to the federal Indian

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1 Child Welfare Act of 1978; and
2 (2) the State Indian Child Welfare Act in a
3 proceeding involving a child subject to that act or a child the
4 department or the court knows or has reason to know is subject
5 to that act.

6 F. A judgment of the court vesting permanent
7 guardianship with an individual divests the biological or
8 adoptive parent of legal custody or guardianship of the child,
9 but is not a termination of the parent's rights. A child's
10 inheritance rights from and through the child's biological or
11 adoptive parents are not affected by this proceeding.

12 G. Upon a finding that grounds exist for a
13 permanent guardianship, the court may incorporate into the
14 final order provisions for visitation with the natural parents,
15 siblings or other relatives of the child and any other
16 provision necessary to rehabilitate the child or provide for
17 the child's continuing safety and well-being.

18 H. The court shall retain jurisdiction to enforce
19 its judgment of permanent guardianship.

20 I. Any party may make a motion for revocation of
21 the order granting guardianship when there is a significant
22 change of circumstances, including:

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

25 (2) the child's guardian is unable to properly

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1 care for the child.

2 J. The court shall appoint a guardian ad litem for
3 the child in all proceedings for the revocation of permanent
4 guardianship if the child is under the age of fourteen. The
5 court shall appoint an attorney for the child in all
6 proceedings for the revocation of permanent guardianship if the
7 child is fourteen years of age or older at the inception of the
8 proceedings.

9 K. The court may revoke the order granting
10 guardianship when a significant change of circumstances has
11 been proven by clear and convincing evidence and it is in the
12 child's best interests to revoke the order granting
13 guardianship."

14 SECTION 46. Section 32A-4-33 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 127, as amended) is amended to read:

16 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

17 A. All records or information concerning a party to
18 a neglect or abuse proceeding, including social records,
19 diagnostic evaluations, psychiatric or psychological reports,
20 videotapes, transcripts and audio recordings of a child's
21 statement of abuse or medical reports incident to or obtained
22 as a result of a neglect or abuse proceeding or that were
23 produced or obtained during an investigation in anticipation of
24 or incident to a neglect or abuse proceeding shall be
25 confidential and closed to the public.

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

3 (1) court personnel and persons or entities
4 authorized by contract with the court to review, inspect or
5 otherwise have access to records or information in the court's
6 possession;

7 (2) court-appointed special advocates
8 appointed to the neglect or abuse proceeding;

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

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

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

17 (6) any local substitute care review board or
18 any agency contracted to implement local substitute care review
19 boards;

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

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

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

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

3 (10) those persons or entities of an Indian
4 tribe specifically authorized to inspect the records pursuant
5 to the State Indian Child Welfare Act, the federal Indian Child
6 Welfare Act of 1978 or any regulations promulgated [~~thereunder~~]
7 under those acts;

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

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

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

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

25 (15) protection and advocacy representatives

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1 pursuant to the federal Developmental Disabilities Assistance
2 and Bill of Rights Act and the federal Protection and Advocacy
3 for Mentally Ill Individuals Amendments Act of 1991;

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

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

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

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

20 C. A parent, guardian or legal custodian whose
21 child has been the subject of an investigation of abuse or
22 neglect where no petition has been filed shall have the right
23 to inspect any medical report, psychological evaluation, law
24 enforcement reports or other investigative or diagnostic
25 evaluation; provided that any identifying information related

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1 to the reporting party or any other party providing information
2 shall be deleted. The parent, guardian or legal custodian
3 shall also have the right to the results of the investigation
4 and the right to petition the court for full access to all
5 department records and information except those records and
6 information the department finds would be likely to endanger
7 the life or safety of any person providing information to the
8 department.

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

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

19 SECTION 47. Section 32A-5-4 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 131) is amended to read:

21 "32A-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE
22 ACT OF 1978 AND THE STATE INDIAN CHILD WELFARE ACT.--The
23 protections set forth in the federal Indian Child Welfare Act
24 of 1978 and the State Indian Child Welfare Act, including
25 provisions concerning notice to the Indian child's tribe,

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1 transfer to tribal court and placement preferences, apply to
2 all proceedings involving an Indian child under the Adoption
3 Act."

4 SECTION 48. Section 32A-5-7 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 134, as amended) is amended to read:

6 "32A-5-7. CLERK OF THE COURT--DUTIES.--

7 A. The clerk of the court shall file pleadings
8 captioned pursuant to the provisions of Section 32A-5-9 NMSA
9 1978. The clerk of the court shall not file incorrectly
10 captioned pleadings.

11 B. The clerk of the court shall mail a copy of the
12 request for placement to the department within one working day
13 of the request for placement being filed with the court. The
14 attorney for the person requesting placement shall provide to
15 the clerk of the court a copy of the request for placement and
16 a stamped envelope addressed to the department as specified in
17 department [~~regulation~~] rules.

18 C. The clerk of the court shall mail a copy of the
19 petition for adoption within one working day of the petition
20 for adoption being filed with the court. The attorney for the
21 petitioner shall provide to the clerk of the court a copy of
22 the petition for adoption and a stamped envelope addressed to
23 the department as specified in department [~~regulation~~] rules.

24 D. The clerk of the court shall mail a copy of the
25 decree of adoption to the department within one working day of

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1 the entry of the decree of adoption. The attorney for the
2 petitioner shall provide to the clerk of the court a copy of
3 the decree of adoption and a stamped envelope addressed to the
4 department as specified in department [~~regulation~~] rules.

5 E. In any adoption involving an Indian child, the
6 clerk of the court shall provide the secretary of the interior
7 with a copy of any decree of adoption or adoptive placement
8 order and other information as required by the federal Indian
9 Child Welfare Act of 1978. The attorney for the petitioner
10 shall provide to the clerk of the court a copy of an adoption
11 decree, an adoptive placement order, any other information
12 required by the federal Indian Child Welfare Act of 1978 and a
13 stamped envelope addressed to the secretary of the interior.

14 F. The clerk of the court shall provide a
15 certificate of adoption with an adoptee's new name.

16 G. The attorney for the petitioner shall forward
17 the certificate of adoption provided for in Subsection F of
18 this section as follows:

19 (1) for a person born in the United States, to
20 the appropriate vital statistics office of the place, if known,
21 where the adoptee was born; or

22 (2) for all other persons, to the state
23 registrar of vital statistics."

24 **SECTION 49.** Section 32A-5-13 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 140, as amended) is amended to read:

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1 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
2 PLACEMENT ORDER--CERTIFICATION.--

3 A. When a placement order is required, the
4 petitioner shall file a request with the court to allow the
5 placement. An order permitting the placement shall be obtained
6 prior to actual placement.

7 B. Only a pre-placement study that has been
8 prepared or updated within one year immediately prior to the
9 date of placement, approving the petitioner as an appropriate
10 adoptive parent, shall be filed with the court prior to
11 issuance of a placement order, except as provided in Subsection
12 C of Section 32A-5-12 NMSA 1978.

13 C. In order for a person to be certified to conduct
14 pre-placement studies, the person shall meet the standards
15 promulgated by the department. If the child is an Indian
16 child, the person shall meet the standards set forth in the
17 federal Indian Child Welfare Act of 1978 and the State Indian
18 Child Welfare Act.

19 D. The pre-placement study shall be conducted by an
20 agency or a person certified by the department to conduct the
21 study. A person or agency that wants to be certified to
22 perform pre-placement studies shall file documents verifying
23 their qualifications with the department. The department shall
24 publish a list of persons or agencies certified to conduct a
25 pre-placement study. If necessary to defray additional costs

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1 associated with compiling the list, the department may assess
2 and charge a reasonable administrative fee to the person or
3 agency listed.

4 E. When a person or agency that wants to be
5 certified to perform pre-placement studies files false
6 documentation with the department, the person or agency shall
7 be subject to the provisions of Section 32A-5-42 NMSA 1978.

8 F. A request for placement shall be filed and
9 verified by the petitioner and shall allege:

10 (1) the full name, age and place and duration
11 of residence of the petitioner and, if married, the place and
12 date of marriage;

13 (2) the date and place of birth of the
14 adoptee, if known, or the anticipated date and place of birth
15 of the adoptee;

16 (3) a detailed statement of the circumstances
17 and persons involved in the proposed placement;

18 (4) if the adoptee has been born, the address
19 where the adoptee is residing at the time of the request for
20 placement;

21 (5) if the adoptee has been born, the places
22 where the adoptee has lived within the past three years and the
23 names and addresses of the persons with whom the adoptee has
24 lived. If the adoptee is in the custody of an agency or the
25 department, the address shall be the address of the agency or

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1 the county office of the department from which the child was
2 placed;

3 (6) the existence of any court orders that are
4 known to the petitioner and that regulate custody, visitation
5 or access to the adoptee, copies of which shall be attached to
6 the request for placement as exhibits; if copies of any such
7 court orders are unavailable at the time of filing the request
8 for placement, the copies shall be filed prior to the issuance
9 of the order of placement;

10 (7) that the petitioner desires to establish a
11 parent and child relationship between the petitioner and the
12 adoptee and that the petitioner is a fit and proper person able
13 to care and provide for the adoptee's welfare;

14 (8) the relationship, if any, of the
15 petitioner to the adoptee;

16 (9) whether the adoptee is subject to the
17 federal Indian Child Welfare Act of 1978 or the State Indian
18 Child Welfare Act, and, if so, the petition shall allege the
19 actions taken to comply with the federal Indian Child Welfare
20 Act of 1978 and the State Indian Child Welfare Act and all
21 other allegations required pursuant to ~~[that act]~~ those acts;

22 (10) whether the adoption is subject to the
23 Interstate Compact on the Placement of Children and what
24 specific actions have been taken to comply with the Interstate
25 Compact on the Placement of Children; and

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1 (11) the name, address and telephone number of
2 the agency or investigator who has agreed to do the
3 pre-placement study.

4 G. The request for placement shall be served on all
5 parties entitled to receive notice of the filing of a petition
6 for adoption, as provided in Section 32A-5-27 NMSA 1978. An
7 order allowing placement may be entered prior to service of the
8 request for placement.

9 H. A hearing and the court decision on the request
10 for placement shall occur within thirty days of the filing of
11 the request.

12 I. As part of any court order authorizing placement
13 under this section, the court shall find whether the pre-
14 placement study complies with Section 32A-5-14 NMSA 1978 and
15 that the time requirements concerning placement set forth in
16 this section have been met."

17 **SECTION 50.** Section 32A-5-15 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 142, as amended) is amended to read:

19 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

20 A. The physical, mental and emotional welfare and
21 needs of the child shall be the primary consideration for the
22 termination of parental rights. The court may terminate the
23 rights of the child's parents as provided by the Adoption Act.

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

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1 (1) the child has been abandoned by the
2 parents;

3 (2) the child has been a neglected or abused
4 child and the court finds that the conditions and causes of the
5 neglect and abuse are unlikely to change in the foreseeable
6 future; or

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

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

12 (b) the parent-child relationship has
13 disintegrated;

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

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

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

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

25 C. A finding by the court that all of the

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1 conditions set forth in [~~Subparagraph~~] Subparagraphs (a)
2 through (e) of Paragraph (3) of Subsection B of this section
3 exist shall create a rebuttable presumption of abandonment.

4 D. The termination of parental rights involving an
5 Indian child shall comply with the requirements of the federal
6 Indian Child Welfare Act of 1978 and the State Indian Child
7 Welfare Act."

8 SECTION 51. Section 32A-5-16 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 143, as amended) is amended to read:

10 "32A-5-16. TERMINATION PROCEDURES.--

11 A. A proceeding to terminate parental rights may be
12 initiated in connection with or prior to an adoption
13 proceeding. Venue shall be in the court for the county in
14 which the child is physically present or in the county from
15 which the child was placed. The proceeding may be initiated by
16 any of the following:

17 (1) the department;

18 (2) an agency; or

19 (3) any other person having a legitimate
20 interest in the matter, including a petitioner for adoption,
21 the child's guardian, the child's guardian ad litem or attorney
22 in another action, a foster parent, a relative of the child or
23 the child.

24 B. A petition for termination of parental rights
25 shall be signed and verified by the petitioner, be filed with

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1 the court and set forth:

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

4 (2) the grounds for termination and the facts
5 and circumstances supporting the grounds for termination;

6 (3) the names and addresses of the person,
7 authorized agency or agency officer to whom custody might be
8 transferred;

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

10 (5) that the petition is in contemplation of
11 adoption;

12 (6) the relationship or legitimate interest of
13 the applicant to the child; and

14 (7) whether the child is an Indian child and,
15 if so,

16 ~~[(a) the tribal affiliations of the
17 child's parents;~~

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

24 ~~(c) what specific efforts were made to
25 comply with the placement preferences set forth in the federal~~

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1 ~~Indian Child Welfare Act of 1978 or the placement preferences~~
2 ~~of the appropriate Indian tribes]~~ any additional information as
3 required pursuant to the State Indian Child Welfare Act and the
4 federal Indian Child Welfare Act of 1978 for a petition to
5 terminate parental rights.

6 C. Notice of the filing of the petition,
7 accompanied by a copy of the petition, shall be served by the
8 petitioner on the parents of the child, the child's guardian,
9 the legal custodian of the child, the person with whom the
10 child is residing, the individuals with whom the child has
11 resided within the past six months and the department. Service
12 shall be in accordance with the Rules of Civil Procedure for
13 the District Courts for the service of process in a civil
14 action in this state, with the exception that the department
15 may be served by certified mail. The notice shall state
16 specifically that the person served shall file a written
17 response to the petition within twenty days if the person
18 intends to contest the termination. In any case involving an
19 Indian child, notice shall also be served on the child's Indian
20 tribe pursuant to the federal Indian Child Welfare Act of 1978
21 and the State Indian Child Welfare Act.

22 D. If the identification or whereabouts of a parent
23 is unknown, the petitioner shall file a motion for an order
24 granting service by publication or an order stating that
25 service by publication is not required. A motion for an order

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1 granting service by publication shall be supported by the
2 affidavit of the petitioner, the agency or the petitioner's
3 attorney detailing the efforts made to locate the parent. Upon
4 being satisfied that reasonable efforts to locate the parent
5 have been made and that information as to the identity or
6 whereabouts of the parent is still insufficient to effect
7 service in accordance with SCRA, Rule 1-004, the court shall
8 order service by publication or order that publication is not
9 required because the parent's consent is not required pursuant
10 to the provisions of Section 32A-5-19 NMSA 1978.

11 E. The court shall, upon request, appoint counsel
12 for an indigent parent who is unable to obtain counsel or if,
13 in the court's discretion, appointment of counsel for an
14 indigent parent is required in the interest of justice.
15 Payment for the appointed counsel shall be made by the
16 petitioner pursuant to the rate determined by the supreme court
17 of New Mexico for court-appointed attorneys.

18 F. The court shall appoint a guardian ad litem for
19 the child in all contested proceedings for termination of
20 parental rights. If the child is fourteen years of age or
21 older and in the custody of the department, the child's
22 attorney appointed pursuant to the Abuse and Neglect Act shall
23 represent the child in any proceedings for termination of
24 parental rights under this section.

25 G. Within thirty days after the filing of a

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1 petition to terminate parental rights, the petitioner shall
2 request a hearing on the petition. The hearing date shall be
3 at least thirty days after service is effected upon the parent
4 of the child or completion of publication.

5 H. The grounds for any attempted termination shall
6 be proved by clear and convincing evidence. In any proceeding
7 involving an Indian child, the grounds for any attempted
8 termination shall be proved beyond a reasonable doubt and meet
9 the requirements set forth in the federal Indian Child Welfare
10 Act of 1978 and the State Indian Child Welfare Act.

11 I. If the court terminates parental rights, it
12 shall appoint a custodian for the child. Upon entering an
13 order terminating the parental rights of a parent, the court
14 may commit the child to the custody of the department, the
15 petitioner or an agency willing to accept custody for the
16 purpose of placing the child for adoption. In any termination
17 proceeding involving an Indian child, the court shall, in any
18 termination order, make specific findings that the requirements
19 of the federal Indian Child Welfare Act of 1978 and the State
20 Indian Child Welfare Act were met.

21 J. A judgment of the court terminating parental
22 rights divests the parent of all legal rights. Termination of
23 parental rights shall not affect the child's right of
24 inheritance through the former parent."

25 SECTION 52. Section 32A-5-17 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 144, as amended) is amended to read:

2 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
3 REQUIRED.--

4 A. Consent to adoption or relinquishment of
5 parental rights to the department or an agency licensed by the
6 state of New Mexico shall be required of the following:

7 (1) the adoptee, if fourteen years of age or
8 older, except when the court finds that the adoptee does not
9 have the mental capacity to give consent;

10 (2) the adoptee's mother;

11 (3) the adoptee's proposed adoptive parent;

12 (4) the presumed father of the adoptee;

13 (5) the adoptee's acknowledged father;

14 (6) the department or the agency to whom the
15 adoptee has been relinquished that has placed the adoptee for
16 adoption or the department or the agency that has custody of
17 the adoptee; provided, however, that the court may grant the
18 adoption without the consent of the department or the agency if
19 the court finds the adoption is in the best interests of the
20 adoptee and that the withholding of consent by the department
21 or the agency is unreasonable; and

22 (7) the guardian of the adoptee's parent when,
23 pursuant to provisions of the Uniform Probate Code, that
24 guardian has express authority to consent to adoption.

25 B. In any adoption involving an Indian child,

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1 consent to adoption by the petitioner or relinquishment of
2 parental rights shall be obtained from an "Indian custodian",
3 as required pursuant to the provisions of the federal Indian
4 Child Welfare Act of 1978 and the State Indian Child Welfare
5 Act.

6 C. A consent or relinquishment executed by a parent
7 who is a minor shall not be subject to avoidance or revocation
8 solely by reason of the parent's minority."

9 SECTION 53. Section 32A-5-21 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 148, as amended) is amended to read:

11 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

12 A. Except when consent or relinquishment is
13 implied, a consent or relinquishment by a parent shall be in
14 writing, signed by the parent consenting or relinquishing and
15 shall state the following:

- 16 (1) the date, place and time of execution;
- 17 (2) the date and place of birth of the adoptee
18 and any names by which the adoptee has been known;
- 19 (3) if a consent to adoption is being
20 executed, the identity of the petitioner, if known, or when the
21 adoption is an independent adoption and the identity of the
22 petitioner is unknown, how the petitioner was selected by the
23 consenting parent;
- 24 (4) if a relinquishment of parental rights is
25 being executed, the name and address of the agency or the

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1 department;

2 (5) that the person executing the consent or
3 relinquishment has been counseled, as provided in Section
4 32A-5-22 NMSA 1978, by a certified counselor of the person's
5 choice and with this knowledge the person is voluntarily and
6 unequivocally consenting to the adoption of the named adoptee;

7 (6) that the consenting party has been advised
8 of the legal consequences of the relinquishment or consent
9 either by independent legal counsel or a judge;

10 (7) if the adoption is closed, that all
11 parties understand that the court will not enforce any contact,
12 regardless of any informal agreements that have made between
13 the parties;

14 (8) that the consent to or relinquishment for
15 adoption cannot be withdrawn;

16 (9) that the person executing the consent or
17 relinquishment has received or been offered a copy of the
18 consent or relinquishment;

19 (10) that a counseling narrative has been
20 prepared pursuant to department [~~regulations~~] rules and is
21 attached to the consent or relinquishment;

22 (11) that the person who performed the
23 counseling meets the requirements set forth in the Adoption
24 Act; and

25 (12) that the person executing the consent or

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1 relinquishment waives further notice of the adoption
2 proceedings.

3 B. The consent of an adoptee, if fourteen years of
4 age or older, shall be in writing, signed by the adoptee,
5 consenting to the adoption and shall state the following:

- 6 (1) the date, place and time of execution;
7 (2) the date and place of birth of the adoptee
8 and any names by which the adoptee has been known;
9 (3) the name of the petitioner;
10 (4) that the adoptee has been counseled
11 regarding the consent pursuant to department [~~regulation~~]
12 rules;
13 (5) that the adoptee has been advised of the
14 legal consequences of the consent;
15 (6) that the adoptee is voluntarily and
16 unequivocally consenting to the adoption;
17 (7) that the consent or relinquishment cannot
18 be withdrawn;
19 (8) that a counseling narrative has been
20 prepared pursuant to department [~~regulation~~] rules and is
21 attached to the consent; and
22 (9) that the person who performed the
23 counseling meets the requirements set forth in the Adoption
24 Act.

25 C. In cases when the consent or relinquishment is

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1 in English and English is not the first language of the
2 consenting or relinquishing person, the person taking the
3 consent or relinquishment shall certify in writing that the
4 document has been read and explained to the person whose
5 consent or relinquishment is being taken in that person's first
6 language, by whom the document was so read and explained and
7 that the meaning and implications of the document are fully
8 understood by the person giving the consent or relinquishment.

9 D. Unconditional consents or relinquishments are
10 preferred, and, therefore, conditional consents or
11 relinquishments shall be for good cause and approved by the
12 court. However, if the condition is for a specific petitioner
13 or the condition requires the other parent to consent before
14 the decree of adoption is entered, the condition shall be
15 deemed for good cause. In any event, all conditions permitted
16 under this subsection shall be met within one hundred eighty
17 days of the execution of the conditional consent or
18 relinquishment or the conclusion of any litigation concerning
19 the petition for adoption. The court may grant an extension of
20 this time for good cause.

21 E. Agency or department consents required pursuant
22 to the provisions of Section 32A-5-17 NMSA 1978 shall state the
23 following:

- 24 (1) the date, place and time of execution;
25 (2) the date and place of birth of the adoptee

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1 and any names by which the adoptee has been known;

2 (3) the name of the petitioner; and

3 (4) the consent of the agency or department.

4 F. A consent or relinquishment taken by an
5 individual appointed to take consents or relinquishments by an
6 agency shall be notarized, except that a consent or
7 relinquishment signed in the presence of a judge need not be
8 notarized. A hearing before the court for the purpose of
9 taking a consent or relinquishment shall be heard by the court
10 within seven days of request for setting.

11 G. No consent to adoption or relinquishment of
12 parental rights shall be valid if executed within forty-eight
13 hours after the adoptee's birth. Consent to adoption or
14 relinquishment of parental rights involving an Indian child
15 shall comply with the more stringent requirements of the
16 federal Indian Child Welfare Act of 1978 and the State Indian
17 Child Welfare Act.

18 H. The requirements of a consent to adoption or
19 relinquishment of parental rights involving an Indian child
20 and the rights of a parent of an Indian child to withdraw the
21 consent or relinquishment shall be governed by the relevant
22 provisions of the federal Indian Child Welfare Act of 1978 and
23 the State Indian Child Welfare Act.

24 I. For non-Indian children, a consent to or
25 relinquishment for adoption shall not be withdrawn prior to the

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1 entry of a decree of adoption unless the court finds, after
2 notice and opportunity to be heard is afforded to the
3 petitioner, to the person seeking the withdrawal and to the
4 agency placing a child for adoption, that the consent or
5 relinquishment was obtained by fraud. In no event shall a
6 consent or relinquishment be withdrawn after the entry of a
7 decree of adoption."

8 SECTION 54. Section 32A-5-26 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 153, as amended by Laws 2003, Chapter 294,
10 Section 4 and by Laws 2003, Chapter 321, Section 4) is amended
11 to read:

12 "32A-5-26. PETITION--CONTENT.--A petition for adoption
13 shall be filed and verified by the petitioner and shall allege:

14 A. the full name, age and place and duration of
15 residence of the petitioner and, if married, the place and date
16 of marriage; the date and place of any prior marriage,
17 separation or divorce; and the name of any present or prior
18 spouse;

19 B. the date and place of birth of the adoptee, if
20 known;

21 C. the places where the adoptee has lived within
22 the past three years and the names and addresses of the persons
23 with whom the adoptee has lived, unless the adoptee is in the
24 custody of an agency or the department, in which case the
25 petitioner shall state the name and address of the agency or

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1 the department's county office from which the child was placed;

2 D. the birth name of the adoptee, any other names
3 by which the adoptee has been known and the adoptee's proposed
4 new name; provided that in the case of an agency adoption, if
5 the petitioner and the biological parents have not agreed to
6 the release of the adoptee's identity to the other person, the
7 birth name and any other names by which the adoptee has been
8 known shall be filed with the court as separate documents at
9 the time the petition is filed;

10 E. where the adoptee is residing at the time of the
11 filing of the petition and, if the adoptee is not living with
12 the petitioner, when the adoptee will commence living with the
13 petitioner;

14 F. that the petitioner desires to establish a
15 parent and child relationship with the adoptee and that the
16 petitioner is a fit and proper person able to care and provide
17 for the adoptee's welfare;

18 G. the existence of any court orders, including
19 placement orders, that are known to the petitioner and that
20 regulate custody, visitation or access to the adoptee, copies
21 of which shall accompany and be attached to the petition as
22 exhibits;

23 H. the relationship, if any, of the petitioner to
24 the adoptee;

25 I. the name and address of the placing agency, if

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1 any;

2 J. the names and addresses of all persons from whom
3 consents or relinquishments are required, attaching copies of
4 those obtained and alleging the facts that excuse or imply the
5 consents or relinquishments of the others; provided that if the
6 petitioner has not agreed to the release of ~~[his]~~ the
7 petitioner's identity to the parent or if the parent has not
8 agreed to the release of ~~[his]~~ the parent's identity to the
9 petitioner, the names and addresses of all persons from whom
10 consents or relinquishments are required shall be filed with
11 the court as separate documents at the time the petition for
12 adoption is filed;

13 K. whether the adoption will be an open adoption,
14 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

15 L. when consent of the child's father is alleged to
16 be unnecessary, the results of a search of the putative father
17 registry;

18 M. whether the adoptee is an Indian child and, if
19 so, the petition shall ~~[allege:~~

20 ~~(1) the tribal affiliation of the adoptee's~~
21 ~~parents;~~

22 ~~(2) what specific actions have been taken and~~
23 ~~by whom to notify the parents' tribe and the results of the~~
24 ~~contact, including the names, addresses, titles and telephone~~
25 ~~numbers of the persons contacted. Copies of any correspondence~~

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1 ~~with the Indian tribe shall be attached as exhibits to the~~
2 ~~petition; and~~

3 ~~(3) what specific efforts were made to comply~~
4 ~~with the placement preferences set forth in the federal Indian~~
5 ~~Child Welfare Act of 1978 or the placement preferences of the~~
6 ~~appropriate Indian tribe] include any specific allegations as~~
7 ~~required pursuant to the federal Indian Child Welfare Act of~~
8 ~~1978 and the State Indian Child Welfare Act;~~

9 N. whether the adoption is subject to the
10 Interstate Compact on the Placement of Children and, if so, a
11 copy of the interstate compact form indicating approval shall
12 be attached as an exhibit to the petition;

13 O. whether the adoptee is foreign-born and, if so,
14 copies of the child's passport and United States visa and of
15 all documents demonstrating that the adoptee is legally free
16 for adoption, including a certificate from the United States
17 secretary of state that certifies that the adoption is a
18 convention adoption;

19 P. whether the adoption is a convention adoption
20 and, if so, the petition shall allege:

21 (1) that the country in which the child has
22 been residing is a party to the Hague Convention on Protection
23 of Children and Co-operation in Respect of Intercountry
24 Adoption;

25 (2) that the agency or person who is providing

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1 the adoption service has been approved as an accrediting
2 entity; and

3 (3) that the certificate issued by the United
4 States secretary of state that certifies the adoption as a
5 convention adoption has been filed with the court; and

6 Q. the name, address and telephone number of the
7 agency or individual who has agreed to conduct the post-
8 placement report in accordance with Section 32A-5-31 NMSA 1978,
9 if different than the agency or individual who prepared the
10 pre-placement study in accordance with Section 32A-5-13 NMSA
11 1978."

12 SECTION 55. Section 32A-5-27 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 154, as amended) is amended to read:

14 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

15 A. The petition for adoption shall be served by the
16 petitioner on the following, unless it has been previously
17 waived in writing:

18 (1) the department, by providing a copy to the
19 court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

20 (2) any person, agency or institution whose
21 consent or relinquishment is required by Section 32A-5-17 NMSA
22 1978, unless the notice has been previously waived;

23 (3) any acknowledged father of the adoptee;

24 (4) the legally appointed custodian or
25 guardian of the adoptee;

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1 (5) the spouse of any petitioner who has not
2 joined in the petition;

3 (6) the spouse of the adoptee;

4 (7) the surviving parent of a deceased parent
5 of the adoptee;

6 (8) any person known to the petitioner having
7 custody of or visitation with the adoptee under a court order;

8 (9) any person in whose home the child has
9 resided for at least two months within the preceding six
10 months;

11 (10) the agency or individual authorized to
12 investigate the adoption under Section 32A-5-13 NMSA 1978; and

13 (11) any other person designated by the court.

14 B. Notice shall not be served on the following:

15 (1) an alleged father; and

16 (2) a person whose parental rights have been
17 relinquished or terminated.

18 C. The petitioner shall provide the clerk of the
19 court with a copy of the petition for adoption, to be mailed to
20 the department pursuant to the provisions of Section 32A-5-7
21 NMSA 1978.

22 D. In an adoption in which the adoptee is an Indian
23 child, in addition to the notice required pursuant to
24 Subsection A of this section, notice of pendency of the
25 adoption proceeding shall be served by the petitioner on the

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1 appropriate Indian tribe and on a parent, a guardian or an
2 "Indian custodian" pursuant to the provisions of the federal
3 Indian Child Welfare Act of 1978 and the State Indian Child
4 Welfare Act.

5 E. The notice shall state that the person served
6 shall respond to the petition within twenty days if the person
7 intends to contest the adoption and shall state that the
8 failure to so respond shall be treated as a default and the
9 person's consent to the adoption shall not be required.

10 Provided, however, that this provision shall not apply to an
11 agency, the department or an investigator preparing the post-
12 placement report pursuant to Section 32A-5-31 NMSA 1978. If an
13 agency, the department or an investigator preparing the post-
14 placement report wants to contest the adoption, it shall notify
15 the court within twenty days after completion of the post-
16 placement report.

17 F. Service shall be made pursuant to the Rules of
18 Civil Procedure for the District Courts. If the whereabouts of
19 a parent whose consent is required is unknown, the
20 investigator, department or agency charged with investigating
21 the adoption under Section 32A-5-13 NMSA 1978 shall investigate
22 the whereabouts of the parent and shall file by affidavit the
23 results of the investigation with the court. Upon a finding by
24 the court that information as to the whereabouts of a parent
25 has been sufficiently investigated and is still insufficient to

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1 effect service in accordance with the Rules of Civil Procedure
2 for the District Courts, the court shall issue an order
3 providing for service by publication.

4 G. As to any other person for whom notice is
5 required under Subsection A of this section, service by
6 certified mail, return receipt requested, shall be sufficient.
7 If the service cannot be completed after two attempts, the
8 court shall issue an order providing for service by
9 publication.

10 H. The notice required by this section may be
11 waived in writing by the person entitled to notice.

12 I. Proof of service of the notice on all persons
13 for whom notice is required by this section shall be filed with
14 the court before any hearing adjudicating the rights of the
15 persons."

16 SECTION 56. Section 32A-5-28 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 155) is amended to read:

18 "32A-5-28. RESPONSE TO PETITION.--

19 A. Any person responding to a notice of a petition
20 for adoption shall file a verified response to the petition
21 within the time limits specified in Section [~~32-5-25~~] 32A-5-25
22 NMSA 1978.

23 B. The verified response shall follow the Rules of
24 Civil Procedure for the District Courts and shall allege:

25 (1) the existence of any court orders known to

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1 the respondent that regulate custody, visitation or access to
2 the adoptee but have not been filed with the court at the time
3 the response is filed and copies of which shall be attached to
4 the response;

5 (2) the relationship, if any, of the
6 respondent to the adoptee;

7 (3) whether the adoptee is an Indian child,
8 and, if so, the response shall set forth all allegations
9 required under the federal Indian Child Welfare Act of 1978 and
10 the State Indian Child Welfare Act;

11 (4) whether the adoption is subject to the
12 Interstate Compact on the Placement of Children; and

13 (5) whether the adoption is an open adoption."

14 SECTION 57. Section 32A-5-36 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 133, as amended by Laws 2003, Chapter 294,
16 Section 5 and by Laws 2003, Chapter 321, Section 5) is amended
17 to read:

18 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
19 ADOPTION.--

20 A. The court shall conduct hearings on the petition
21 for adoption so as to determine the rights of the parties in a
22 manner that protects confidentiality. The petitioner and the
23 adoptee shall attend the hearing unless the court for good
24 cause waives a party's appearance. Good cause may include
25 burdensome travel requirements.

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1 B. The petitioner shall file all documents required
2 pursuant to the Adoption Act and serve the department with
3 copies of the documents simultaneously with the request for
4 hearing on the petition for adoption.

5 C. If any person who claims to be the biological
6 father of the adoptee has appeared before the court and filed a
7 written petition or response seeking custody and assuming
8 financial responsibility of the adoptee, the court shall hear
9 evidence as to the merits of the petition. If the court
10 determines by a preponderance of the evidence that the person
11 is not the biological father of the adoptee or that the child
12 was conceived through an act of rape or incest, the petition
13 shall be dismissed and the person shall no longer be a party to
14 the adoption. If the court determines that the person is the
15 biological father of the adoptee, the court shall further
16 determine whether the person qualifies as a presumed or
17 acknowledged father whose consent is necessary for adoption,
18 pursuant to Section 32A-5-17 NMSA 1978. If the court
19 determines that the person is the biological father, but does
20 not qualify as a presumed or acknowledged father, the court
21 shall adjudicate the person's rights pursuant to the provisions
22 of the Adoption Act.

23 D. If the mother or father of the adoptee has
24 appeared before the court and filed a written petition that
25 alleges the invalidity of the mother's or father's own consent

1 or relinquishment for adoption previously filed in the adoption
2 proceeding, the court shall hear evidence as to the merits of
3 the petition. If the court determines that the allegations
4 have not been proved by a preponderance of the evidence, the
5 petition shall be dismissed. If the court determines that the
6 allegations of the petition are true, the consent or
7 relinquishment for adoption shall be held invalid, and the
8 court shall determine, in the best interests of the adoptee,
9 the person who shall have custody of the child.

10 E. The petitioner shall present and prove each
11 allegation set forth in the petition for adoption by clear and
12 convincing evidence.

13 F. The court shall grant a decree of adoption if it
14 finds that the petitioner has proved by clear and convincing
15 evidence that:

16 (1) the court has jurisdiction to enter a
17 decree of adoption affecting the adoptee;

18 (2) the adoptee has been placed with the
19 petitioner for a period of ninety days if the adoptee is under
20 the age of one year at the time of placement or for a period of
21 one hundred eighty days if the adoptee is one year of age or
22 older at the time of placement, unless, for good cause shown,
23 the requirement is waived by the court;

24 (3) all necessary consents, relinquishments,
25 terminations or waivers have been obtained;

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1 (4) the post-placement report required by
2 Section 32A-5-31 NMSA 1978 has been filed with the court;

3 (5) service of the petition for adoption has
4 been made or dispensed with as to all persons entitled to
5 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

6 (6) at least ninety days have passed since the
7 filing of the petition for adoption, except the court may
8 shorten or waive this period of time in cases in which the
9 child is being adopted by a stepparent, a relative or a person
10 named in the child's deceased parent's will pursuant to
11 provisions of Section 32A-5-12 NMSA 1978;

12 (7) the petitioner is a suitable adoptive
13 parent and the best interests of the adoptee are served by the
14 adoption;

15 (8) if visitation between the biological
16 family and the adoptee is contemplated, that the visitation is
17 in the child's best interests;

18 (9) if the adoptee is foreign-born, the child
19 is legally free for adoption and a certificate issued by the
20 United States secretary of state that certifies the adoption as
21 a convention adoption has been filed with the court;

22 (10) the results of the criminal records check
23 required pursuant to provisions of the Adoption Act have been
24 received and considered;

25 (11) if the adoptee is an Indian child, the

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1 requirements set forth in the federal Indian Child Welfare Act
2 of 1978 and the State Indian Child Welfare Act have been met;

3 (12) when the child is an Indian child, the
4 placement preferences set forth in the federal Indian Child
5 Welfare Act of 1978, the State Indian Child Welfare Act or the
6 placement preferences of the appropriate Indian tribes have
7 been followed or, if not followed, good cause for noncompliance
8 has been clearly stated and [~~supported~~] shown by clear and
9 convincing evidence, as required by the federal Indian Child
10 Welfare Act of 1978 and the State Indian Child Welfare Act and
11 provision has been made to ensure that the Indian child's
12 cultural ties to the Indian child's tribe are protected and
13 fostered; and

14 (13) if the adoption involves the interstate
15 placement of the adoptee, the requirements of the Interstate
16 Compact on the Placement of Children have been met.

17 G. In addition to the findings required by
18 Subsection F of this section, the court in any decree of
19 adoption shall make findings with respect to each allegation of
20 the petition.

21 H. If the court determines that any of the
22 requirements for a decree of adoption pursuant to provisions of
23 Subsections E and F of this section have not been met or that
24 the adoption is not in the best interests of the adoptee, the
25 court shall deny the petition and determine, in the best

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1 interests of the adoptee, the person who shall have custody of
2 the child.

3 I. The decree of adoption shall include the new
4 name of the adoptee and shall not include any other name by
5 which the adoptee has been known or the names of the former
6 parents. The decree of adoption shall order that from the date
7 of the decree, the adoptee shall be the child of the petitioner
8 and accorded the status set forth in Section 32A-5-37 NMSA
9 1978.

10 J. A decree of adoption shall be entered within six
11 months of the filing of the petition if the adoptee is under
12 the age of one year at the time of placement or twelve months
13 if the adoptee is one year of age or older at the time of
14 placement, except that the time may be extended by the court
15 upon request of any of the parties or upon the court's own
16 motion for good cause shown.

17 K. A decree of adoption may not be attacked upon
18 the expiration of one year from the entry of the decree;
19 provided, however, that in any adoption involving an Indian
20 child, the Indian child's parent or Indian custodian may
21 petition the court pursuant to the provisions of the federal
22 Indian Child Welfare Act of 1978 and the State Indian Child
23 Welfare Act to invalidate the adoption.

24 L. In any adoption involving an Indian child, the
25 clerk of the court shall provide the secretary of the interior

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1 with a copy of any decree of adoption or adoptive placement
2 order and other information as required by the federal Indian
3 Child Welfare Act of 1978 and in accordance with the provisions
4 of the State Indian Child Welfare Act."

5 SECTION 58. Section 32A-5-40 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 167, as amended) is amended to read:

7 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

8 A. After the decree of adoption has been entered,
9 all court files containing records of judicial proceedings
10 conducted pursuant to the provisions of the Adoption Act and
11 records submitted to the court in the proceedings shall be kept
12 in separate locked files withheld from public inspection. Upon
13 application to the clerk of the court, the records shall be
14 open to inspection by a former parent if the adoptee is
15 eighteen years of age or older, by an adoptee if the adoptee is
16 eighteen years of age or older at the time application is made
17 for inspection, by the adoptive parent if the adoptee is under
18 eighteen years of age at the time application is made for
19 inspection, by the attorney of any party, by any agency that
20 has exercised guardianship over or legal custody of a child who
21 was the adoptee in the particular proceeding, by the department
22 or by an adoptee's sibling; provided that the identity of the
23 former parents and of the adoptee shall be kept confidential
24 unless the former parents and the adoptee have consented to the
25 release of identity. In the absence of consent to release

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1 identity, the inspection shall be limited to the following
2 nonidentifying information:

3 (1) the health and medical histories of the
4 adoptee's biological parents;

5 (2) the health and medical history of the
6 adoptee;

7 (3) the adoptee's general family background,
8 including ancestral information, without name references or
9 geographical designations;

10 (4) physical descriptions; and

11 (5) the length of time the adoptee was in the
12 care and custody of persons other than the petitioner.

13 B. After the entry of the decree of adoption, at
14 any time, a former parent may file with the court, with the
15 placing agency or with the department:

16 (1) a consent or refusal or an amended consent
17 or refusal to be contacted;

18 (2) a release of the former parent's identity
19 to the adoptee if the adoptee is eighteen years of age or older
20 or to the adoptive parent if the adoptee is under eighteen
21 years of age; or

22 (3) information regarding the former parent's
23 location or changes in background information.

24 C. Any changes to post-adoption access to records
25 referred to in Subsection B of this section shall be filed with

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1 the court, the placing agency and the department.

2 D. The consent or refusal referred to in Subsection
3 B of this section shall be honored by the court, the placing
4 agency or the department unless for good cause the court orders
5 to the contrary.

6 E. At any time, an adoptee who is eighteen years of
7 age or older may file with the court, a placing agency or the
8 department:

9 (1) information regarding the adoptee's
10 location; or

11 (2) a consent or refusal regarding opening of
12 the adoptee's adoption file to the adoptee's former parents.

13 F. If mutual authorizations for release of
14 identifying information by the parties are not available, an
15 adoptee who is eighteen years of age or older, the biological
16 parents if the adoptee is eighteen years of age or older or the
17 adoptive parents if the adoptee is under the age of eighteen
18 years may file a motion with the court to obtain the release of
19 identifying information for good cause shown. When hearing the
20 motion, the court shall give primary consideration to the best
21 interests of the adoptee, but shall also give due consideration
22 to the interests of the members of the adoptee's former and
23 adoptive families. In determining whether good cause exists
24 for the release of identifying information, the court shall
25 consider:

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- 1 (1) the reason the information is sought;
- 2 (2) any procedure available for satisfying the
- 3 petitioner's request without disclosing the name or identity of
- 4 another individual, including appointment of a confidential
- 5 intermediary to contact the individual and request specific
- 6 information;
- 7 (3) whether the individual about whom
- 8 identifying information is sought is alive;
- 9 (4) the preference, to the extent known, of
- 10 the adoptee, the adoptive parents, the former parents and other
- 11 members of the adoptee's former and adoptive families and the
- 12 likely effect of disclosure on those individuals;
- 13 (5) the age, maturity and expressed needs of
- 14 the adoptee;
- 15 (6) the report or recommendation of any
- 16 individual appointed by the court to assess the request for
- 17 identifying information; and
- 18 (7) any other factor relevant to an assessment
- 19 of whether the benefit to the adoptee of releasing the
- 20 information sought will be greater than the benefit to any
- 21 other individual of not releasing the information.

22 G. An adoptee shall have the right, for the purpose
23 of [~~enrolling~~] obtaining membership in the adoptee's tribe of
24 origin, to access information kept by the department.

25 Information needed by an adoptee to [~~enroll~~] obtain membership

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1 in [his] the adoptee's tribe of origin may be requested from
2 the department [~~by the following persons:~~

3 ~~(1) the adoptee, after he reaches eighteen~~
4 ~~years of age;~~

5 ~~(2) when the adoptee is a child, his adoptive~~
6 ~~parent or guardian; or~~

7 ~~(3) an adoptee's descendant or, if the~~
8 ~~adoptee's descendant is a child, an adult representative for~~
9 ~~the descendant] as provided pursuant to the State Indian Child~~
10 ~~Welfare Act and the federal Indian Child Welfare Act of 1978.~~

11 H. When the department receives a request for
12 information regarding an adoptee's tribe of origin, the
13 department shall examine its records to determine if the
14 adoptee is of Indian descent. If the department establishes
15 that an adoptee is of Indian descent, the department shall

16 [~~(1) provide the requester with the tribal~~
17 ~~affiliation of the adoptee's biological parents;~~

18 ~~(2) submit to the tribe information necessary~~
19 ~~to establish tribal enrollment for the adoptee and to protect~~
20 ~~any rights flowing from the adoptee's tribal relationship; and~~

21 ~~(3) provide notice to the requester of the~~
22 ~~department's submission of information to the adoptee's tribe]~~
23 provide any information or notice as required pursuant to the
24 State Indian Child Welfare Act and the federal Indian Child
25 Welfare Act of 1978."

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1 SECTION 59. Section 40-10B-5 NMSA 1978 (being Laws 2001,
2 Chapter 167, Section 5, as amended) is amended to read:

3 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

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

- 6 (1) a kinship caregiver;
- 7 (2) a caregiver, who has reached the age of
8 twenty-one, with whom no kinship with the child exists and who
9 has been nominated to be guardian of the child by the child,
10 and the child has reached the age of fourteen; or

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

- 14 (a) the purpose and effect of the
15 guardianship;
- 16 (b) that the parent has the right to be
17 served with the petition and notices of hearings in the action;
18 and
- 19 (c) that the parent may appear in court
20 to contest the guardianship.

21 B. A petition seeking the appointment of a guardian
22 shall be verified by the petitioner and allege the following
23 with respect to the child:

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

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1 (2) the date and place of birth of the child,
2 if known, and if not known, the reason for the lack of
3 knowledge;

4 (3) the legal residence of the child and the
5 place where the child resides, if different from the legal
6 residence;

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

8 (5) the kinship, if any, between the
9 petitioner and the child;

10 (6) the names and addresses of the parents of
11 the child;

12 (7) the names and addresses of persons having
13 legal custody of the child;

14 (8) the existence of any matters pending
15 involving the custody of the child;

16 (9) a statement that the petitioner agrees to
17 accept the duties and responsibilities of guardianship;

18 (10) the existence of any matters pending
19 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978
20 and, if so, a statement that the children, youth and families
21 department consents to the relief requested in the petition;

22 (11) whether the child is an Indian child or
23 there is reason to know that the child is an Indian child, and
24 subject to provisions of the federal Indian Child Welfare Act
25 of 1978, as that act may be amended or its sections renumbered,

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1 or the State Indian Child Welfare Act and, if so,

2 ~~[(a) the tribal affiliations of the~~
3 ~~child's parents; and~~

4 ~~(b) the specific actions taken by the~~
5 ~~petitioner to notify the parents' tribes and the results of the~~
6 ~~contacts, including the names, addresses, titles and telephone~~
7 ~~numbers of the persons contacted, and copies of correspondence~~
8 ~~with the tribe]~~ shall include any information as required of a
9 petition for a child custody proceeding pursuant to those acts;

10 and

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

13 SECTION 60. Section 40-10B-6 NMSA 1978 (being Laws 2001,
14 Chapter 167, Section 6, as amended) is amended to read:

15 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

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

19 B. The petition and a notice of the hearing shall
20 be served upon:

21 (1) the children, youth and families
22 department if there is any pending matter relating to the child
23 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

24 (2) the child if the child has reached the age
25 of fourteen;

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1 (3) the parents of the child;

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

4 (5) if the child is an Indian child as defined
5 in the federal Indian Child Welfare Act of 1978, as that act
6 may be amended or its sections renumbered, and the State Indian
7 Child Welfare Act, the [~~appropriate~~] Indian tribe and [~~any~~] the
8 child's parent or "Indian custodian", together with a notice of
9 pendency of the guardianship proceedings, pursuant to the
10 provisions of the federal Indian Child Welfare Act of 1978, as
11 that act may be amended or its sections renumbered, and the
12 State Indian Child Welfare Act.

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

17 D. The persons required to be served pursuant to
18 Subsection B of this section have a right to file a response as
19 parties to this action. Other persons may intervene pursuant
20 to Rule 1-024 NMRA."

21 SECTION 61. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
22 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
23 2005, Chapter 189, Section 37, as amended) are repealed.

24 SECTION 62. SEVERABILITY.--If any provision of the State
25 Indian Child Welfare Act, related provisions in other sections

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1 of New Mexico law or the application of such laws to any person
2 or circumstances is held invalid for any reason in a court of
3 competent jurisdiction, the invalidity does not affect other
4 provisions of the State Indian Child Welfare Act and related
5 laws.

6 SECTION 63. APPLICABILITY.--

7 A. The provisions of Section 7 of this act apply to
8 tribal-state agreements that become effective on or after July
9 1, 2022.

10 B. The provisions of this act apply to all open
11 cases prior to July 1, 2022.

12 SECTION 64. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2022.