

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 128

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10 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

11 AN ACT

12 RELATING TO CHILDREN; PROVIDING TRANSITIONAL SUPPORT FOR FOSTER
13 YOUTH IN THE STATE'S CUSTODY; AMENDING AND ENACTING SECTIONS OF
14 THE ABUSE AND NEGLECT ACT; AMENDING THE MOTOR VEHICLE CODE TO
15 ALLOW FOSTER YOUTH TO OBTAIN DRIVER'S LICENSES; MAKING
16 APPROPRIATIONS.

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

18 Section 1. A new section of the Abuse and Neglect Act is
19 enacted to read:

20 "[NEW MATERIAL] TRANSITION SERVICES.--

21 A. For a child in the custody of the children,
22 youth and families department, prior to a child's reaching
23 seventeen years of age, the department shall meet with the
24 child, the child's attorney and other individuals of the
25 child's choosing to develop a transition living plan. The

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1 department shall assist the child in identifying and planning
2 to meet the child's needs for services and support after the
3 child leaves state custody, in the areas of:

- 4 (1) housing;
- 5 (2) education;
- 6 (3) employment;
- 7 (4) health; and
- 8 (5) mental health.

9 B. The department shall provide the proposed
10 transition living plan, based upon the child's stated
11 preferences, to the child and the child's attorney within ten
12 days of the meeting to develop the plan. If the child, after
13 opportunity for consultation with the child's attorney, agrees
14 to the plan, the department shall file the child's plan with
15 the court as part of the child's proposed transition living
16 plan.

17 C. In the event the child wishes to contest the
18 plan proposed by the department, the child may request a
19 transition living plan review hearing or raise the child's
20 concern with the plan at the next regularly scheduled hearing,
21 after which the court may order the transition living plan
22 proposed by the department or make additional modifications of
23 the transition living plan that the court determines
24 appropriate.

25 D. The court shall review the department's

1 implementation of the transition living plan approved by the
2 court, whether by agreement of the parties or after a contested
3 hearing, at every subsequent judicial review hearing. At any
4 time, the child may also request a hearing to review or modify
5 the plan or to enforce the plan."

6 Section 2. A new section of the Abuse and Neglect Act is
7 enacted to read:

8 "[NEW MATERIAL] DISCHARGE HEARING.--

9 A. The court shall hold a discharge hearing ninety
10 days before the child reaches eighteen years of age or at the
11 last judicial review or permanency hearing prior to the child's
12 eighteenth birthday. The child shall be present at the
13 discharge hearing unless the court finds a reason for the
14 child's absence and states a factual basis for the finding.

15 B. At the discharge hearing, the court shall
16 determine whether the parties have implemented the transition
17 living plan and whether the department has verified in writing
18 that the following information, documents and services have
19 been provided to the child:

20 (1) written information concerning the child's
21 case, including the child's family history, the child's
22 placement history, the whereabouts of any sibling under the
23 jurisdiction of the children's court, unless the court
24 determines that the sibling contact would jeopardize the safety
25 or welfare of the sibling and the date on which the

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1 jurisdiction of the court would be terminated;

2 (2) if applicable, the child's social security
3 card, certified birth certificate, health and education
4 summary, state-issued identification card, death certificate of
5 the parent and proof of citizenship or residence;

6 (3) assistance in obtaining medicaid, unless
7 ineligible; assistance in applying for other health insurance
8 if the child is ineligible for medicaid, and for other public
9 benefits identified in the child's transition living plan;

10 (4) transitional living services pursuant to
11 the child's transition living plan;

12 (5) assistance in maintaining relationships
13 with individuals who are important to the child if the child
14 has been in an out-of-home placement in a group home for six
15 months or longer from the date the child entered foster care,
16 based on the child's best interests;

17 (6) referral for a guardianship or limited
18 guardianship if the child is incapacitated, including referral
19 for a treatment guardian; and

20 (7) a written transition living plan and a
21 transition coordinator.

22 C. If the court finds that the department has not
23 made reasonable efforts to meet all the requirements of
24 Subsection B of this section and that termination of
25 jurisdiction could be harmful to the best interests of the

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1 child, the court shall continue to exercise its jurisdiction
2 until it finds the department has met all the requirements of
3 Subsection B of this section, unless:

4 (1) the child informs the court that the child
5 waives the child's right to implementation of the transition
6 living plan and the child elects to have the case dismissed; or

7 (2) the court finds other good cause for
8 dismissal."

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

11 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
12 Act:

13 A. "abandonment" includes instances when the
14 parent, without justifiable cause:

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

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

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

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

25 B. "abused child" means a child:

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

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

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

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

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

16 C. "aggravated circumstances" [~~include~~] includes
17 those circumstances in which the parent, guardian or custodian
18 has:

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

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

25 (3) attempted, conspired to subject or has

1 subjected the child to torture, chronic abuse or sexual abuse;
2 or

3 (4) had [~~his~~] parental rights over a sibling
4 of the child terminated involuntarily;

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

10 E. "neglected child" means a child:

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

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

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

23 (4) whose parent, guardian or custodian is
24 unable to discharge [~~his~~] that person's responsibilities to and
25 for the child because of incarceration, hospitalization or

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1 physical or mental disorder or incapacity; or

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

12 F. "physical abuse" includes but is not limited to
13 any case in which the child exhibits evidence of skin bruising,
14 bleeding, malnutrition, failure to thrive, burns, fracture of
15 any bone, subdural hematoma, soft tissue swelling or death and:

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

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

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

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

24 G. "sexual abuse" includes but is not limited to
25 criminal sexual contact, incest [~~or~~] and criminal sexual

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1 penetration, as those acts are defined by state law; ~~and~~

2 H. "sexual exploitation" includes but is not
3 limited to:

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

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

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

11 I. "transition living plan" means an individualized
12 written plan that is designed to provide adequate transitional
13 living services to a person, based on the unique needs of the
14 person, and that is designed to increase independent living
15 skills that will maximize the person's ability to be
16 self-sufficient; and

17 J. "transitional living services" means services
18 that help a person arrange for adult living, including services
19 necessary to access food; clothing; housing; and vocational,
20 educational, medical and mental health services. "Transitional
21 living services" includes:

22 (1) identification of programs and services
23 appropriate for the person's needs;

24 (2) help in obtaining the identified programs
25 or services;

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1 (3) coordination of delivery of services when
2 multiple providers or programs are involved in the provision of
3 care; and

4 (4) determination of whether services were
5 appropriate and whether additional services are warranted."

6 Section 4. Section 32A-4-25.1 NMSA 1978 (being Laws 1997,
7 Chapter 34, Section 8, as amended) is amended to read:

8 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
9 HEARINGS.--

10 A. A permanency hearing shall be commenced within
11 six months of the initial judicial review of a child's
12 dispositional order or within twelve months of a child entering
13 foster care pursuant to Subsection E of this section, whichever
14 occurs first. Prior to the initial permanency hearing, all
15 parties to the hearing shall attend a mandatory meeting and
16 attempt to settle issues attendant to the permanency hearing
17 and develop a proposed treatment plan that serves the child's
18 best interest. Prior to the initial permanency hearing, the
19 department shall submit a progress report regarding the child
20 to the local substitute care review board for that judicial
21 district. The local substitute care review board may review
22 the child's dispositional order, any continuation of that order
23 and the department's progress report and report its findings
24 and recommendations to the court.

25 B. At the permanency hearing, all parties shall

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1 have the opportunity to present evidence and to cross-examine
2 witnesses. At the conclusion of the permanency hearing, the
3 court shall order one of the following permanency plans for the
4 child:

5 (1) reunification;

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

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

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

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

18 C. If the court adopts a permanency plan of
19 reunification, the court shall adopt a plan for transitioning
20 the child home and schedule a permanency review hearing within
21 three months. If the child is reunified, the subsequent
22 hearing may be vacated.

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

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1 Based on the evidence, the court shall:

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

5 (2) dismiss the case and return custody of the
6 child to [~~his~~] the child's parent, guardian or custodian; or

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

20 E. The court shall hold a permanency hearing and
21 adopt a permanency plan for a child within twelve months of the
22 child entering foster care. For purposes of this section, a
23 child shall be considered to have entered foster care on the
24 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) sixty days after the date on which the
3 child was removed from the home.

4 F. The court shall hold permanency hearings every
5 twelve months when a child is in the legal custody of the
6 department.

7 G. Prior to the first permanency hearing after the
8 child turns fourteen years of age, the department shall request
9 that a next-step meeting be scheduled to develop an educational
10 plan for the child. The department shall coordinate with staff
11 from the child's school to arrange for the meeting and to
12 provide notice to the child, the child's attorney and the
13 person authorized to make educational decisions on behalf of
14 the child. The educational plan shall be based on the
15 individual needs of the child and shall be designed to support
16 the child's identified post-secondary goals, including
17 vocational goals.

18 H. The educational plan shall be reviewed at the
19 first permanency hearing after the child turns fourteen years
20 of age. Based on its review, the court may adopt the
21 educational plan or may order the department to request another
22 planning meeting to revise the educational plan. The
23 educational plan shall be reviewed at every subsequent
24 permanency hearing.

25 I. At the permanency hearing prior to the child's

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1 turning seventeen years of age, the court shall explain to the
2 child the requirement for a transition living plan.

3 ~~[G.]~~ J. The children's court attorney shall give
4 notice to all parties, the child's guardian ad litem, the
5 child's CASA, a contractor administering the local substitute
6 care review board and the child's foster parent or substitute
7 care provider of the time, place and purpose of any permanency
8 hearing or permanency review hearing held pursuant to this
9 section.

10 ~~[H.]~~ K. The rules of evidence shall not apply to
11 permanency hearings. The court may admit testimony by any
12 person given notice of the permanency hearing who has
13 information about the status of the child or the status of the
14 treatment plan. All testimony shall be subject to cross-
15 examination."

16 Section 5. Section 66-5-11 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 233, as amended) is amended to read:

18 "66-5-11. APPLICATION OF MINORS.--

19 A. The application of any person under the age of
20 eighteen years for an instruction permit, provisional license
21 or driver's license shall be signed and verified by the father,
22 mother or guardian or, in the event there is no parent or
23 guardian, by another responsible adult who is willing to assume
24 the obligation imposed under this article upon a person signing
25 the application of a minor.

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1 B. The application of a minor who is in the custody
2 of the state may be signed and verified by a grandparent; a
3 sibling over the age of eighteen years; an aunt; an uncle; a
4 foster parent with whom the minor resides; or, as authorized by
5 the secretary of children, youth and families, a child
6 protective services worker or probation officer; provided that
7 the child protective services worker or juvenile probation
8 officer first notifies a foster parent or other responsible
9 party of the intent to sign.

10 ~~[B.]~~ C. Any negligence or willful misconduct of a
11 minor under the age of eighteen years when driving a motor
12 vehicle upon a highway shall be imputed to the person who has
13 signed the application of the minor for a permit or license,
14 which person shall be jointly and severally liable with the
15 minor for [any] damages caused by the negligence or willful
16 misconduct except as otherwise provided in [Subsection C]
17 Subsections D and E of this section.

18 D. Liability shall not be imposed under this
19 section or under the Mandatory Financial Responsibility Act on
20 the state, on the secretary of children, youth and families or
21 on a juvenile probation officer or child protective services
22 worker for damages caused by the negligence or willful
23 misconduct of a minor driver whose application for an
24 instruction permit, provisional license or driver's license was
25 signed by the child protective services worker or juvenile

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1 probation officer with the authorization of the children, youth
2 and families department while the minor was in the custody of
3 the state.

4 [~~G.~~] E. In the event a minor deposits or there is
5 deposited upon [~~his~~] the minor's behalf proof of financial
6 responsibility in respect to the operation of a motor vehicle
7 owned by [~~him~~] the minor or, if not the owner of a motor
8 vehicle, with respect to the operation of any motor vehicle, in
9 form and in amounts as required under the motor vehicle
10 financial responsibility laws of this state, the division may
11 accept the application of the minor when signed by one parent
12 or the guardian of the minor, and, while such proof is
13 maintained, the parent or guardian is not subject to the
14 liability imposed under Subsection [~~B~~] C of this section."

15 Section 6. APPROPRIATIONS.--

16 A. The following appropriations are made to the
17 following departments for expenditure in fiscal year 2009 for
18 the implementation of transitional living services for youth:

19 (1) three million six hundred thirty thousand
20 dollars (\$3,630,000) to the children, youth and families
21 department for the following purposes:

22 (a) one million six hundred eighty
23 thousand dollars (\$1,680,000) for contracts with private
24 transitional living services contractors to provide
25 transitional living services for youth in transition, including

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1 options for provisions of housing;

2 (b) seven hundred fifty thousand dollars
 3 (\$750,000) for provision of supportive housing for youth in
 4 transition;

5 (c) six hundred fifty thousand dollars
 6 (\$650,000) for recruitment, training and provision of
 7 specialized foster homes for older youth to support youth in
 8 transition;

9 (d) four hundred thousand dollars
 10 (\$400,000) to add five full-time employees as transition
 11 coordinators to provide transitional living services for youth
 12 in transition;

13 (e) one hundred thousand dollars
 14 (\$100,000) for provision of a discretionary fund allotment for
 15 up to one thousand dollars (\$1,000) per eligible youth; and

16 (f) fifty thousand dollars (\$50,000) for
 17 development and implementation of a youth-designed peer mentor
 18 program to be available for all youth in transition;

19 (2) to the aging and long-term services
 20 department, four hundred eighty thousand dollars (\$480,000) for
 21 six new full-time employees as transition coordinators to
 22 provide transitional living services for youth with
 23 disabilities; and

24 (3) one hundred fifty thousand dollars
 25 (\$150,000) to the administrative office of the courts for the

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1 court-appointed special advocate program for recruitment and
2 training of court-appointed special advocates to be adult
3 mentors for youth in transition.

4 B. Any unexpended or unencumbered balance remaining
5 at the end of fiscal year 2009 shall revert to the general
6 fund.