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AN ACT

RELATING TO THE ABUSE AND NEGLECT ACT; PROVIDING A RIGHT OF IMMEDIATE APPEAL FROM THE CHILDREN'S COURT FOR CERTAIN ORDERS.

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

SECTION 1. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

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

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

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

C. At the custody hearing, the court shall return legal custody of the child to the child's parent, guardian or

1 custodian unless probable cause exists to believe that:

2 (1) the child is suffering from an illness
3 or injury, and the parent, guardian or custodian is not
4 providing adequate care for the child;

5 (2) the child is in immediate danger from
6 the child's surroundings, and removal from those surroundings
7 is necessary for the child's safety or well-being;

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

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

12 (5) the parent, guardian or custodian is not
13 able or willing to provide adequate supervision and care for
14 the child.

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

18 (1) return legal custody of the child to the
19 child's parent, guardian or custodian upon such conditions as
20 will reasonably ensure the safety and well-being of the
21 child, including protective supervision by the department; or

22 (2) award legal custody of the child to the
23 department.

24 E. Reasonable efforts shall be made to preserve
25 and reunify the family, with the paramount concern being the

1 child's health and safety.

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

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

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

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

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

25 Copies of any diagnostic or evaluation reports ordered by the

1 court shall be provided to the parties at least five days
2 before the adjudicatory hearing is scheduled. The reports
3 shall not be sent to the court.

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

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

16 J. Nothing in this section shall be construed to
17 abridge the rights of Indian children pursuant to the federal
18 Indian Child Welfare Act of 1978."

19 SECTION 2. Section 32A-4-20 NMSA 1978 (being
20 Laws 1993, Chapter 77, Section 114, as amended) is amended to
21 read:

22 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
23 DISPOSITIONAL MATTERS--PENALTY.--

24 A. The proceedings shall be recorded by
25 stenographic notes or by electronic, mechanical or other

1 appropriate means.

2 B. All abuse and neglect hearings shall be closed
3 to the general public.

4 C. Only the parties, their counsel, witnesses and
5 other persons approved by the court may be present at a
6 closed hearing. The foster parent, preadoptive parent or
7 relative providing care for the child shall be given notice
8 and an opportunity to be heard at the dispositional phase.

9 Those other persons the court finds to have a proper interest
10 in the case or in the work of the court may be admitted by
11 the court to closed hearings on the condition that they
12 refrain from divulging any information that would identify
13 the child or family involved in the proceedings.

14 D. Accredited representatives of the news media
15 shall be allowed to be present at closed hearings, subject to
16 the condition that they refrain from divulging information
17 that would identify any child involved in the proceedings or
18 the parent, guardian or custodian of that child and subject
19 to enabling regulations as the court finds necessary for the
20 maintenance of order and decorum and for the furtherance of
21 the purposes of the Children's Code. A child who is the
22 subject of an abuse and neglect proceeding and is present at
23 a hearing may object to the presence of the media. The court
24 may exclude the media if it finds that the presence of the
25 media is contrary to the best interests of the child.

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

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

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

22 H. If the court finds on the basis of a valid
23 admission of the allegations of the petition or on the basis
24 of clear and convincing evidence, competent, material and
25 relevant in nature, that the child is neglected or abused,

1 the court shall enter an order finding that the child is
2 neglected or abused and may proceed immediately or at a
3 postponed hearing to make disposition of the case. If the
4 court does not find that the child is neglected or abused,
5 the court shall dismiss the petition and may refer the family
6 to the department for appropriate services.

7 I. A party aggrieved by an order entered pursuant
8 to Subsection H of this section may file an immediate appeal
9 to the court of appeals.

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

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

1 legal custody."

2 SECTION 3. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2014. _____

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