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AN ACT

RELATING TO CHILDREN; AMENDING THE ABUSE AND NEGLECT ACT TO PROVIDE FOR THE ESTABLISHMENT OF A MULTILEVEL RESPONSE SYSTEM; PROVIDING THAT THE MULTILEVEL RESPONSE SYSTEM MAY BE USED AS AN ALTERNATIVE TO INVESTIGATION FOR CERTAIN REPORTS ALLEGING CHILD ABUSE OR NEGLECT; CLARIFYING THAT THE COURT MAY ORDER PARTICIPATION IN PROGRAMS OR SERVICES PENDING THE OUTCOME OF A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.

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

SECTION 1. Section 32A-4-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 98, as amended) is amended to read:

"32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

A. Reports alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a court order.

B. If a report alleging neglect or abuse meets the criteria established pursuant to Section 32A-4-4.1 NMSA 1978, the department may assign the case to the multilevel response system.

C. During the investigation of a report alleging

1 neglect or abuse, the matter may be referred to another
2 appropriate agency and conferences may be conducted for the
3 purpose of effecting adjustments or agreements that will
4 obviate the necessity for filing a petition. A
5 representative of the department shall, at the initial time
6 of contact with the party subject to the investigation,
7 advise the party of the reports or allegations made, in a
8 manner that is consistent with laws protecting the rights of
9 the informant. The parties shall be advised of their basic
10 rights and no party may be compelled to appear at any
11 conference, to produce any papers or to visit any place. The
12 investigation shall be completed within a reasonable period
13 of time from the date the report was made.

14 D. After completion of the investigation on a
15 neglect or abuse report, the department shall either
16 recommend or refuse to recommend the filing of a petition.

17 E. When a child is taken into custody, the
18 department shall file a petition within two days. If a
19 petition is not filed in a timely manner, the child shall be
20 released to the child's parent, guardian or custodian."

21 SECTION 2. A new section of the Children's Code,
22 Section 32A-4-4.1 NMSA 1978, is enacted to read:

23 "32A-4-4.1. MULTILEVEL RESPONSE SYSTEM.--

24 A. The department shall establish a multilevel
25 response system to evaluate and provide services to a child

1 or the family, relatives, caretakers or guardians of a child
2 with respect to whom a report alleging neglect or abuse has
3 been made. The multilevel response system may include an
4 alternative to investigation upon completion of an evaluation
5 that may be completed at intake by the department, the
6 results of which indicate that there is no immediate concern
7 for the child's safety; provided, however, that an
8 investigation shall be conducted for any report:

9 (1) alleging sexual abuse of a child or
10 serious or imminent harm to a child;

11 (2) indicating a child fatality;

12 (3) requiring law enforcement involvement,
13 as identified pursuant to rules promulgated by the
14 department; or

15 (4) requiring a specialized assessment or a
16 traditional investigative approach, as determined pursuant to
17 rules promulgated by the department.

18 B. The department may remove a case from the
19 multilevel response system and conduct an investigation if
20 imminent danger of serious harm to the child becomes evident.
21 The department may reassign a case from investigation to the
22 multilevel response system at the discretion of the
23 department.

24 C. For each family, including the child who is the
25 subject of a report to the department and that child's

1 relatives, caretakers or guardians, that receives services
2 under the multilevel response system, the department shall
3 conduct a family assessment. Based on the results of the
4 family assessment, the department may offer or provide
5 referrals for counseling, training or other services aimed at
6 addressing the underlying causative factors jeopardizing the
7 safety or well-being of the child who is the subject of a
8 report to the department. A family member, relative,
9 caretaker or guardian may choose to accept or decline any
10 services or programs offered under the multilevel response
11 system; provided, however, that if a family member, relative,
12 caretaker or guardian declines services, the department may
13 choose to proceed with an investigation.

14 D. The department shall employ licensed social
15 workers to provide services to families, relatives,
16 caretakers or guardians participating in the multilevel
17 response system to the extent that licensed social workers
18 are available for employment.

19 E. The department may pilot the multilevel
20 response system prior to statewide implementation.

21 F. The department may limit implementation of the
22 multilevel response system to areas of the state where
23 appropriate services are available and operate the system
24 within available state and federal resources.

25 G. The department shall:

1 (1) provide an annual report of system
2 implementation and outcomes to the legislative finance
3 committee and the department of finance and administration as
4 part of the department's budget submission;

5 (2) arrange for an independent evaluation of
6 the multilevel response system, including examining outcomes
7 for child safety and well-being and cost-effectiveness;

8 (3) incorporate the multilevel response
9 system into the department's quality assurance review
10 process;

11 (4) develop performance measures, as
12 provided in the Accountability in Government Act, for the
13 multilevel response system; and

14 (5) no later than July 1, 2022, if the
15 department pilots or otherwise geographically limits the
16 multilevel response system, submit a plan to the legislative
17 finance committee and the department of finance and
18 administration setting forth how the system could be expanded
19 statewide, including a plan to address service availability,
20 and identifying costs that would be incurred by the
21 department.

22 H. The department shall promulgate rules to
23 implement the provisions of this section.

24 I. As used in this section, "family assessment"
25 means a comprehensive, evidence-based assessment tool used by

1 the department to determine the needs of a child and the
2 child's family, relatives, caretakers or guardians at the
3 time the department receives a report of child abuse and
4 neglect, including an assessment of the likelihood of:

5 (1) imminent danger to a child's well-being;

6 (2) the child becoming an abused child or a
7 neglected child; and

8 (3) the strengths and needs of the child's
9 family members, relatives, caretakers or guardians with
10 respect to providing for the health and safety of the child."

11 SECTION 3. Section 32A-4-18 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 112, as amended) is amended to read:

13 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
14 PROBABLE CAUSE.--

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

25 B. The parent, guardian or custodian of the child

1 alleged to be abused or neglected shall be given reasonable
2 notice of the time and place of the custody hearing.

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

6 (1) the child is suffering from an illness
7 or injury, and the parent, guardian or custodian is not
8 providing adequate care for the child;

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

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

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

16 (5) the parent, guardian or custodian is not
17 able or willing to provide adequate supervision and care for
18 the child.

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

22 (1) return legal custody of the child to the
23 child's parent, guardian or custodian upon such conditions as
24 will reasonably ensure the safety and well-being of the
25 child, including protective supervision or maintenance at

1 home by the department or participation in programs or
2 services aimed at addressing the underlying causative factors
3 that impact the safety or well-being of the child; or

4 (2) award legal custody of the child to the
5 department.

6 E. Reasonable efforts shall be made to preserve
7 and reunify the family, with the paramount concern being the
8 child's health and safety. When the department determines
9 that the home of an adult relative of the child meets all
10 relevant child protection and licensing standards and
11 placement in the home would be in the best interest of the
12 child, the department shall give a preference to placement of
13 the child in that home. The department shall make reasonable
14 efforts to conduct home studies on appropriate relatives who
15 express an interest in providing placement for the child.

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

19 (1) retain jurisdiction and, unless the
20 court permits otherwise, order that the respondent and child
21 remain in the jurisdiction of the court pending the
22 adjudication;

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

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

4 G. At the conclusion of the custody hearing, the
5 court may order the respondent or the child alleged to be
6 neglected or abused, or both, to undergo appropriate
7 diagnostic examinations or evaluations. If the court
8 determines that probable cause does not exist, the court may
9 order the respondent or the child alleged to be neglected or
10 abused, or both, to undergo appropriate diagnostic
11 examinations or evaluations as necessary to protect the
12 child's best interests, based upon the allegations in the
13 petition and the evidence presented at the custody hearing.
14 Copies of any diagnostic or evaluation reports ordered by the
15 court shall be provided to the parties at least five days
16 before the adjudicatory hearing is scheduled. The reports
17 shall not be sent to the court.

18 H. The Rules of Evidence shall not apply to
19 custody hearings.

20 I. Notwithstanding any other provision of law, a
21 party aggrieved by an order entered pursuant to this section
22 shall be permitted to file an immediate appeal as a matter of
23 right. If the order appealed from grants the legal custody
24 of the child to or withholds it from one or more of the
25 parties to the appeal, the appeal shall be expedited and

1 shall be heard at the earliest practicable time. While an
2 appeal pursuant to this section is pending, the court shall
3 have jurisdiction to take further action in the case pursuant
4 to Subsection B of Section 32A-1-17 NMSA 1978.

5 J. Nothing in this section shall be construed to
6 abridge the rights of Indian children pursuant to the federal
7 Indian Child Welfare Act of 1978."

8 SECTION 4. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2020. _____

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