

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 31

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO GUARDIANSHIPS; PROVIDING RULEMAKING AUTHORITY TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; AMENDING AND CHANGING THE NAME OF THE FAMILY SERVICES ACT; AMENDING THE KINSHIP GUARDIANSHIP ACT; PROVIDING FOR VOLUNTARY PLACEMENT OF CHILDREN; PROVIDING FOR FINANCIAL SUBSIDIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

.224588.3AIC February 8, 2023 (2:57pm)

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SECTION 1. Section 22-12A-14 NMSA 1978 (being Laws 2019, Chapter 223, Section 14, as amended) is amended to read:

"22-12A-14. TIMELY GRADUATION AND SUPPORT FOR STUDENTS WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has experienced a disruption in the student's education" means a student who experiences one or more changes in public school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Voluntary Placement and Family Services Act; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act or placement in treatment foster care.

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B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving public school or school district shall communicate with the sending public school or school district within two days of the student's enrollment. The sending public school or school district shall provide the receiving public school or school district with any requested records within two days of having received the receiving public school's or school district's communication.

C. A student who has experienced a disruption in the student's education because of transferring to a new public school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous public school or schools as soon as the public school or school district receives verification from the student's records.

D. For a student who has experienced a disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state

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graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career readiness; and

(4) that the student receives all special education services to which the student is entitled.

E. A student who has experienced a disruption in the student's education and has transferred between public schools in different school districts or between public schools within the same school district shall receive credit for any work completed prior to the transfer, regardless of whether the transfer occurred at the end of a grading period. The department shall promulgate and adopt a rule to determine how credit shall be awarded for courses that are partially completed, and school districts shall follow the department rule."

SECTION 2. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

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

A. "active efforts" means efforts that are

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affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts;

B. "adult" means a person who is eighteen years of age or older;

C. "child" means a person who is less than eighteen years old;

D. "council" means the substitute care advisory council established pursuant to Section 32A-8-4 NMSA 1978;

E. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;

F. "court-appointed special advocate" means a person appointed pursuant to the provisions of the Children's Court Rules to assist the court in determining the best interests of the child by investigating the case and submitting a report to the court;

G. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;

H. "department" means the children, youth and families department, unless otherwise specified;

I. "disproportionate minority contact" means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower

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than that group's proportion in the general population;

~~Sf11→J. "fictive kin" means a person:~~

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

~~(2) chosen by a child who is fourteen years of age or older, when it is in the best interest of the child to identify that person as fictive kin;~~←Sf11

[J.] Sf11→K.←Sf11 Sf11→J.←Sf11 "federal Indian Child Welfare Act of 1978" means the federal Indian Child Welfare Act of 1978, as that act may be amended or its sections renumbered;

[K.] Sf11→L.←Sf11 Sf11→K.←Sf11 "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

[L.] Sf11→M.←Sf11 Sf11→L.←Sf11 "guardian" means a person appointed as a guardian by a court or Indian tribal authority [~~or a person authorized to care for the child by a parental power of attorney as permitted by law~~];

[M.] Sf11→N.←Sf11 Sf11→M.←Sf11 "guardian ad litem" means an attorney appointed by the children's court to

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represent and protect the best interests of the child in a case; provided that no party or employee or representative of a party to the case shall be appointed to serve as a guardian ad litem;

[N-] Sf11→O.←Sf11 Sf11→N.←Sf11 "Indian" means, whether an adult or child, a person who is:

- (1) a member of an Indian tribe; or
- (2) eligible for membership in an Indian tribe;

[O-] Sf11→P.←Sf11 Sf11→O.←Sf11 "Indian child" means an Indian person, or a person whom there is reason to know is an Indian person, under eighteen years of age, who is neither:

- (1) married; or
- (2) emancipated;

[P-] Sf11→Q.←Sf11 Sf11→P.←Sf11 "Indian child's tribe" means:

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

[Q-] Sf11→R.←Sf11 Sf11→Q.←Sf11 "Indian custodian" means an Indian who, pursuant to tribal law or custom or

pursuant to state law:

(1) is an adult with legal custody of an Indian child; or

(2) has been transferred temporary physical care, custody and control by the parent of the Indian child;

[R.] Sfl1→**S.**←Sfl1 Sfl1→**R.**←Sfl1 "Indian tribe" means an Indian nation, tribe, pueblo or other band, organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c) or a regional corporation as defined in 43 U.S.C. Section 1606. For the purposes of notification to and communication with a tribe as required in the Indian Family Protection Act, "Indian tribe" also includes those tribal officials and staff who are responsible for child welfare and social services matters;

[S.] Sfl1→**T.**←Sfl1 Sfl1→**S.**←Sfl1 "judge", when used without further qualification, means the judge of the court;

[T.] Sfl1→**U.**←Sfl1 Sfl1→**T.**←Sfl1 "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary

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and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

[U.] Sf11→V.←Sf11 Sf11→U.←Sf11 "member" or "membership" means a determination made by an Indian tribe that a person is a member of or eligible for membership in that Indian tribe;

[V.] Sf11→W.←Sf11 Sf11→V.←Sf11 "parent" or "parents" means a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child or a person who has lawfully adopted an Indian child pursuant to state law or tribal law or tribal custom;

[W.] Sf11→X.←Sf11 Sf11→W.←Sf11 "permanency plan" means a determination by the court that the child's interest will be served best by:

- (1) reunification;
- (2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;
- (3) placement with a person who will be the child's permanent guardian;

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

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

[X.] Sf11→Y.←Sf11 Sf11→X.←Sf11 "person" means an individual or any other form of entity recognized by law;

[Y.] Sf11→Z.←Sf11 Sf11→Y.←Sf11 "plan of care" means a plan created by a health care professional intended to ensure the safety and well-being of a substance-exposed newborn by addressing the treatment needs of the child and any of the child's parents, relatives, guardians, family members or caregivers to the extent those treatment needs are relevant to the safety of the child;

[Z.] Sf11→AA.←Sf11 Sf11→Z.←Sf11 "preadoptive parent" means a person with whom a child has been placed for adoption;

[AA.] Sf11→BB.←Sf11 Sf11→AA.←Sf11 "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

[BB.] Sf11→CC.←Sf11 Sf11→BB.←Sf11 "relative" means a person related to another person:

- (1) by blood within the fifth degree of

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consanguinity or through marriage by the fifth degree of affinity; or

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

[~~CC.~~] Sf11→~~DD.~~←Sf11 Sf11→~~CC.~~←Sf11 "reservation" means:

(1) "Indian country" as defined in 18 U.S.C. Section 1151;

(2) any lands to which the title is held by the United States in trust for the benefit of an Indian tribe or individual; or

(3) any lands held by an Indian tribe or individual subject to a restriction by the United States against alienation;

[~~DD.~~] Sf11→~~EE.~~←Sf11 Sf11→~~DD.~~←Sf11 "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

[~~EE.~~] Sf11→~~FF.~~←Sf11 Sf11→~~EE.~~←Sf11 "secretary" means the United States secretary of the interior;

[~~FF.~~] Sf11→~~GG.~~←Sf11 Sf11→~~FF.~~←Sf11 "tribal court" means a court with jurisdiction over child custody proceedings that is either a court of Indian offenses, a court established and operated under the law or custom of an Indian tribe or any

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other administrative body that is vested by an Indian tribe with authority over child custody proceedings;

[~~GG.~~] Sfl1→HH.←Sfl1 Sfl1→GG.←Sfl1 "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

[~~HH.~~] Sfl1→II.←Sfl1 Sfl1→HH.←Sfl1 "tribunal" means any judicial forum other than the court."

SECTION 3. Section 32A-3A-15 NMSA 1978 (being Laws 2019, Chapter 247, Section 14) is recompiled as Section 32A-1-22 NMSA 1978 and is amended to read:

"32A-1-22. MEDICAL CANNABIS PROGRAM--REMOVAL OF CHILDREN--FAMILY SERVICES INTERVENTION--SCHOOL ENROLLMENT--MEDICAL CARE.--

A. An individual's participation in the state's medical cannabis program established pursuant to the Lynn and Erin Compassionate Use Act shall not in itself constitute grounds for:

(1) intervention, removal or placement into state custody of a child in that individual's care pursuant to the Abuse and Neglect Act; or

(2) the provision of state prevention, diversion or intervention services to that individual's family pursuant to the Voluntary Placement and Family Services Act.

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B. A person shall not be denied custody of or visitation or parenting time with a child, and there is no presumption of neglect or child endangerment, for conduct allowed under the Lynn and Erin Compassionate Use Act.

C. A school shall not refuse to enroll or otherwise penalize a person solely for conduct allowed pursuant to the Lynn and Erin Compassionate Use Act, unless failing to do so would cause the school to lose a monetary or licensing-related benefit under federal law or regulation.

D. For the purposes of medical care, including an organ transplant, a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care."

SECTION 4. Section 32A-3A-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 63, as amended) is amended to read:

"32A-3A-1. SHORT TITLE [PURPOSE].--~~[A.]~~ Chapter 32A, Article 3A NMSA 1978 may be cited as the "Voluntary Placement and Family Services Act".

~~[B. The Family Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:~~

~~(1) to recognize that many instances of a~~

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~~child's behavior are symptomatic of a family in need of family services; and~~

~~(2) to provide prevention, diversion and intervention services for a child or family.]"~~

SECTION 5. Section 32A-3A-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 64, as amended) is amended to read:

"32A-3A-2. DEFINITIONS.--As used in the Voluntary Placement and Family Services Act:

A. "child or family in need of family services" means a family:

(1) whose child's behavior endangers the child's health, safety, education or well-being;

(2) whose child is excessively absent from public school as defined in the Attendance for Success Act;

(3) whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;

(4) in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or

(5) in which the child refuses to live with the child's parent, guardian or custodian; [~~and~~]

B. "family services" means services that address specific needs of the child or family;

C. "guardian" means a person appointed as a

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guardian by a court or Indian tribal authority;

D. "guardianship assistance agreement" means a written agreement entered into by the prospective guardian and the department or Indian tribe prior to the establishment of the guardianship by a court;

E. "guardianship assistance payments" means payments made by the department to a kinship guardian or successor guardian on behalf of a child pursuant to the terms of a guardianship assistance agreement;

F. "guardianship assistance program" means the financial subsidy program provided for in the Voluntary Placement and Family Services Act;

G. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

H. "subsidized guardianship" means a guardianship that meets subsidy eligibility criteria pursuant to the Voluntary Placement and Family Services Act; and

I. "voluntary placement agreement" means a written agreement between the department and the parent or guardian of a child."

SECTION 6. Section 32A-3A-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 68) is amended to read:

"32A-3A-6. VOLUNTARY PLACEMENT [~~OF CHILD~~] OUTSIDE HOME--

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[DOCUMENTATION] VOLUNTARY PLACEMENT AGREEMENT.--

A. [~~Upon written application by a parent, guardian or custodian and, if good cause is shown]~~ The department may accept legal custody of a minor child from a parent or guardian for temporary voluntary placement outside the home through a voluntary placement agreement.

~~[B. Prior to accepting any child for voluntary placement, the department shall document the following:~~

~~(1) the efforts made by the department to provide or arrange for services by other public or private agencies that would be affordable to the family and that would alleviate the conditions leading to the placement request;~~

~~(2) any determination that the services are not available;~~

~~(3) any refusal by the parent, guardian or custodian to accept the services; and~~

~~(4) the fact that conditions leading to the placement request could not be alleviated by services aimed at keeping the child in the home.~~

G. ~~If the department accepts custody of a child, the department shall provide the child with shelter in an appropriate facility, pursuant to the provisions of Section 32-3B-6 NMSA 1978, that is located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults~~

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~~charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children.]~~

B. When a parent is considering a voluntary placement agreement, the department shall notify the office of family representation and advocacy. The office of family representation and advocacy shall assign the parent or guardian legal counsel prior to the signing and for the duration of the voluntary placement agreement. Prior to the signing of the voluntary placement agreement, counsel shall explain to the parent or guardian:

(1) the terms and consequences of the consent to the voluntary placement agreement, in detail;

(2) that the parent or guardian can withdraw consent at any time and the child shall be returned within forty-eight hours of when the written or verbal demand was made; and

(3) that before the expiration of the forty-eight hours, the department may prevent the immediate return of the child by filing a petition alleging neglect or abuse and by obtaining a court order granting the department temporary custody of the child.

C. The department shall notify the office of family representation and advocacy when the voluntary placement agreement is terminated or expires.

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D. The parent or guardian may request a collaborative meeting with the department prior to signing or at any point throughout the duration of the voluntary placement agreement. The department shall schedule the collaborative meeting in a timely manner.

E. Upon the signing of a voluntary placement agreement, the department shall notify the office of family representation and advocacy. The office of family representation and advocacy shall assign the child a guardian ad litem. Only an attorney with appropriate experience shall be appointed as guardian ad litem of the child. When a voluntary placement agreement is subject to court review, the guardian ad litem shall inform the court as to the child's wishes.

F. The parent or guardian, child or department may file a petition for court review of the voluntary placement agreement prior to the signing or at any point throughout the duration of the voluntary placement agreement.

G. If court review is requested prior to signing the voluntary placement agreement, before approving the voluntary placement agreement, the court shall ensure that the voluntary placement agreement is executed in writing. The court shall certify on the record that:

(1) the terms and consequences of the consent were fully explained in detail and in a manner that is

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understandable to the parent or guardian;

(2) the child's parent or guardian fully understands the English language or that the voluntary placement agreement was interpreted into the primary language of the child's parent or guardian;

(3) the child's parent or guardian is voluntarily entering into the voluntary placement agreement;

(4) confidentiality has been requested or indicated and execution of consent was made in a closed court proceeding not open to the public; and

(5) the child's parent or guardian is of sound mind and judgment."

SECTION 7. Section 32A-3A-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 69, as amended) is amended to read:

"32A-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

~~[A. No child shall remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court after the filing of a petition by the department for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.]~~

A. A child may remain in voluntary placement for up

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to one hundred eighty consecutive days.

B. Prior to the expiration of the voluntary placement agreement, if the parent or guardian agrees in writing that the child is to remain in voluntary placement for up to an additional one hundred eighty days, the department shall file a petition to extend the voluntary placement. The department shall provide notice of the hearing on the petition for extension to the parent or guardian.

C. The court shall hold a hearing and enter a written final order within thirty days of the filing of the petition. If the court grants an extension of up to one hundred eighty days, the order shall contain findings that proper notice was given, the parent or guardian consents to the extension of the voluntary placement and the voluntary placement agreement is in the child's best interest. If an extension is denied, the court shall enter a written order denying the extension and directing the department to immediately return the child to the parent or guardian.

[B.] D. In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

[G.] E. Any placement described in this section shall not be considered abandonment by a parent, guardian or custodian or other family member."

SECTION 8. Section 32A-3A-8 NMSA 1978 (being Laws 1993,

Chapter 77, Section 70, as amended) is amended to read:

"32A-3A-8. [~~DUTY TO FILE A PETITION~~] VOLUNTARY
PLACEMENT--RETURN OF CHILD TO PARENT--DEPARTMENT DUTY UPON
PARENT REFUSAL TO REGAIN CUSTODY.--

A. At any time, a parent or guardian may demand and obtain the return of a child voluntarily placed outside the home without seeking or obtaining court approval. The child shall be returned within forty-eight hours of when the written or verbal demand was made. However, before the expiration of the forty-eight-hour period, the department may prevent the immediate return of the child by filing a petition pursuant to the Family in Need of Court-Ordered Services Act or the Abuse and Neglect Act and proceeding under the applicable act.

B. If [~~any child has remained in voluntary placement for longer than three hundred sixty-five days in any two-year period and~~] the parent or guardian [~~or custodian~~] of the child refuses to or cannot accept the child back into the parent's or guardian's [~~or custodian's~~] custody, [~~the department shall immediately file~~] before the department files a petition alleging that the child is a neglected child or that the child's family needs court-ordered family services, the department shall:

(1) make reasonable efforts to place the child back in the custody of the parent or guardian and tailor the reasonable efforts to the facts and circumstances of the case

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and shall:

(a) document in writing the details demonstrating the quality and quantity of services and assistance provided to alleviate the causes and conditions leading to the parent or guardian's refusal or inability to accept the child back into the parent or guardian's custody, on the court record;

(b) assist the child's parent or guardian through the steps of a department case plan and with accessing or developing the resources necessary to satisfy the department case plan; and

(c) conduct a comprehensive assessment of the circumstances of the child's family with a goal of reunification;

(2) make reasonable efforts to maintain or reunite a child with the child's family by:

(a) identifying and establishing appropriate services and assisting the child's parent or guardian to overcome barriers to reunification, including assisting the parent or guardian in obtaining those services;

(b) conducting or causing to be conducted a diligent search for the child's extended family members and contacting and consulting with the child's extended family members and adult relatives to provide family structure and support for the child and the child's parent or guardian;

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(c) offering and employing culturally appropriate family preservation strategies;

(d) taking steps to keep the child and the child's siblings together whenever possible; and

(e) identifying community resources, including housing, financial assistance, transportation, mental health services, health care, substance use prevention and treatment and peer support services, and assisting the child's parent or guardian; and

(3) record all efforts made toward reasonable efforts and report them to the court."

SECTION 9. Section 32A-3A-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 72) is amended to read:

"32A-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--~~[Any parent, guardian or custodian whose child is in voluntary placement shall have the following rights with respect to the child:~~

~~A. the right of reasonable visitation with the child;~~

~~B. the right to be informed of changes in the child's school or of changes in the child's placement by the department; and~~

~~C. the right of decision as to all nonemergency and nonroutine medical care provided for the child]~~ The parent or guardian whose child is in voluntary placement shall have the

following rights to:

A. have visitation with the child;

B. be informed of changes in the child's school or of changes in the child's placement by the department;

C. authorize decisions regarding medical and dental care and behavioral health services, including decisions that affect the daily care, support, safety and well-being of the child;

D. permit the department to consent to emergency services to ensure the safety and well-being of the child, including medical, dental or behavioral health treatment, if the department is unable to make immediate prior contact with the parent or guardian. The department shall notify the parent or guardian within two hours of making emergency decisions due to inability to make prior contact;

E. consent to all nonemergency and nonroutine medical care provided for the child;

F. make decisions regarding participation and attendance in cultural and religious events;

G. make decisions of substantial legal significance; and

H. serve as the educational decision maker unless the department determines that doing so would be contrary to the best interests of the child, in which case the foster parent or other substitute care provider will serve as the

educational decision maker."

SECTION 10. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY.--

A. All records or information, whether on file with the court, an agency, the department, an attorney or other provider of professional services, concerning a party to a voluntary placement proceeding shall be confidential and closed to the public.

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act.

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to the parties and:

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

(2) the attorney, including a public defender, representing the child in any child proceeding pursuant to the Children's Code;

(3) department personnel and persons or entities authorized by contract with the department to review, inspect or otherwise have access to records or information in

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the department's possession;

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

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

(6) any state government social services agency in any state or, when in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;

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

(8) school personnel involved with the child if the records concern the child's cultural, social or educational needs;

(9) a grandparent, parent of a sibling, relative or fictive kin, if the records or information pertain to a child being considered for placement with that grandparent, parent of a sibling, relative or fictive kin and the records or information concern the cultural, social, medical, psychological or educational needs of the child;

(10) health care or mental health professionals involved in the evaluation or treatment of the

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child or of the child's parents, guardian, custodian or other family members;

(11) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

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

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

(14) any person or entity attending a meeting arranged by the department to discuss the safety, well-being and permanency of a child when the parent, guardian or child over the age of fourteen years has consented to the disclosures occurring during the meeting; and

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

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Voluntary Placement and Family Services Act or releases or

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makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

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

SECTION 11. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] CONDUCT OF HEARINGS.--

A. All hearings held pursuant to the Voluntary Placement and Family Services Act shall be closed to the general public.

B. Only the parties to a proceeding, their counsel and other persons approved by the court may be present at a closed hearing. Other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition they refrain from divulging any information that would identify the child or family involved in the proceedings."

SECTION 12. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] VOLUNTARY PLACEMENT--PLACEMENT.--

A. If the department accepts legal custody of a child, the child shall be placed in the least restrictive

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setting that most closely approximates a family in which the child's special needs, if any, may be met. The child shall be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to placement with:

- (1) a relative of the child;
- (2) a licensed foster home or any home authorized by law for the provision of foster care or group care or use as a protective residence;
- (3) a facility operated by a licensed child welfare services agency; or
- (4) a facility provided for in the Children's Shelter Care Act.

B. The department shall provide the child with shelter in an appropriate facility, pursuant to the provisions of Section 32A-3B-6 NMSA 1978, that is located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children.

C. If the child is placed in an evaluation facility or out-of-home treatment or rehabilitation program, the child shall be admitted pursuant to the provisions of Sections 32A-6A-19 through 32A-6A-22 NMSA 1978.

D. The department shall make reasonable efforts to place siblings in custody by court order or voluntary placement agreement together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings."

SECTION 13. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--ELIGIBILITY.--

A. Prior to a guardianship being granted pursuant to the Kinship Guardianship Act or the Abuse and Neglect Act and in order to be eligible for guardianship assistance payments, the following conditions shall be satisfied:

(1) the child shall be in the custody of the department and have been removed from the child's home:

(a) pursuant to a voluntary placement agreement; or

(b) as a result of a judicial determination that the placement and care of the child should be vested in the department;

(2) the child shall be eligible for foster care maintenance payments while in the home of the prospective guardian;

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(3) the child shall have been placed by the department and shall have lived with the prospective guardian for at least six consecutive months following the prospective guardian's licensure as a foster parent;

(4) the child has a strong attachment to the prospective guardian and the prospective guardian is a relative or fictive kin of the child;

(5) the prospective guardian has a strong commitment to caring permanently for the child, documented via a meeting held prior to the proposed guardianship between the prospective guardian and the department discussing the prospective guardian's long-term commitment;

(6) if the child is fourteen years of age or older, the child has been consulted by the department and consents to the guardianship arrangement; and

(7) a fully executed guardianship assistance agreement is approved by the department; or

(8) the child is a sibling of a child who meets the eligibility criteria set forth in this subsection.

B. The department shall promulgate rules for guardianship assistance payments and payment of nonrecurring expenses."

SECTION 14. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--NONRECURRING

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EXPENSES.--Nonrecurring expenses incurred by a prospective guardian associated with establishing a subsidized guardianship may be reimbursed for each eligible child, up to an amount established by the department, and also for any of an eligible child's siblings."

SECTION 15. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--GUARDIANSHIP ASSISTANCE AGREEMENT.--

A. In order for a prospective guardian to receive guardianship assistance payments, the department shall negotiate and enter into a written guardianship assistance agreement before the guardianship is finalized with the prospective guardian of an eligible child. The agreement shall specify the following:

- (1) the amount of and manner in which guardianship assistance payments will be provided;
- (2) additional services and assistance for which the child and the prospective guardian will be eligible;
- (3) a procedure by which the prospective guardian may apply for additional services;
- (4) the responsibility of the prospective guardian to report changes in the needs of the child or the circumstances of the prospective guardian that affect guardianship assistance payments;

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(5) reasonable and verified nonrecurring expenses associated with establishing a subsidized guardianship pursuant to the provisions of Section 14 of this 2023 act; and

(6) terms by which the guardianship assistance agreement may be terminated and the ability of the department to recoup funds received due to improper payment.

B. A copy of the fully executed guardianship assistance agreement shall be given to the prospective guardian and to the department."

SECTION 16. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--SUCCESSOR GUARDIANS.--

A. In order for a successor guardian to be eligible for guardianship assistance payments if the successor guardian serves as guardian in the event the guardian dies or is incapacitated, the successor guardian shall be named in the guardianship assistance agreement and any amendments thereto.

B. The department may pay the cost of nonrecurring expenses associated with the successor guardian obtaining a subsidized guardianship of the child, up to an amount established by the department.

C. The successor guardian does not need to be a relative and does not need to be licensed as a foster parent to receive guardianship assistance payments."

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SECTION 17. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--DISCONTINUANCE OF GUARDIANSHIP ASSISTANCE PAYMENTS.--

A. The department shall immediately discontinue guardianship assistance payments when the department is advised or determines a child or guardian no longer meets the criteria to be eligible for guardianship assistance payments.

B. The department shall notify the guardian in writing of a discontinuation of guardianship assistance payments and the reasons for discontinuation.

C. The discontinuance of guardianship assistance payments does not terminate a guardianship or a guardian's legal responsibility that has been established by a court."

SECTION 18. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] FINANCIAL SUBSIDIES--ADMINISTRATIVE APPEAL OF DECISIONS.--A child or prospective guardian may appeal a decision by the department to establish, deny, reduce or discontinue guardianship assistance payments within thirty days of the department's decision."

SECTION 19. A new section of the Voluntary Placement and Family Services Act is enacted to read:

"[NEW MATERIAL] DEPARTMENT DUTIES--RULEMAKING.--The department shall promulgate rules as necessary to implement the

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provisions of the Voluntary Placement and Family Services Act."

SECTION 20. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

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

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

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

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

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

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

B. "abused child" means a child:

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

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

(3) who has suffered sexual abuse or sexual

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exploitation inflicted by the child's parent, guardian or custodian;

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

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

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

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

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

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

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

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

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educational setting, and the development and implementation of an individual education plan for the child;

Sf11→~~E. "fictive kin" means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship;~~←Sf11 Sf11→E. "fictive kin" means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship;←Sf11

F.] Sf11→~~E.~~←Sf11 Sf11→F.←Sf11 "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

[G.] Sf11→~~F.~~←Sf11 Sf11→G.←Sf11 "neglected child" means a child:

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

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

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or

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should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

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

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

[H.] Sfl1→~~G.~~←Sfl1 Sfl1→~~H.~~←Sfl1 "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

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

(2) the explanation given for the condition is

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at variance with the degree or nature of the condition;

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

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

[F.] Sf11→**H.**←Sf11 Sf11→**I.**←Sf11 "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity;

[G.] Sf11→**I.**←Sf11 Sf11→**J.**←Sf11 "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

[K.] Sf11→**J.**←Sf11 Sf11→**K.**←Sf11 "sexual exploitation" includes:

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

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

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

[H.] Sf11→**K.**←Sf11 Sf11→**L.**←Sf11 "sibling" means a brother or sister having one or both parents in common by birth or adoption;

[M.] Sf11→**L.**←Sf11 Sf11→**M.**←Sf11 "strangulation" has the same meaning as set forth in Section 30-3-11 NMSA 1978;

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[N.] Sfl1→M.←Sfl1 Sfl1→N.←Sfl1 "suffocation" has the same meaning as set forth in Section 30-3-11 NMSA 1978; and

[O.] Sfl1→N.←Sfl1 Sfl1→O.←Sfl1 "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation."

SECTION 21. Section 32A-28-2 NMSA 1978 (being Laws 2022, Chapter 41, Section 2) is amended to read:

"32A-28-2. DEFINITIONS.--As used in the Indian Family Protection Act:

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

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

C. "child custody proceeding" means an action for foster care placement, termination of parental rights, permanent guardianship or adoptive placement or an action pursuant to Section 32A-3A-8 NMSA 1978 or the Family in Need of Court-Ordered Services Act and includes investigations and other preliminary activities preceding the formal initiation of

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an action, but does not include:

- (1) delinquency proceedings; and
- (2) custodial proceedings or kinship

guardianships pursuant to Chapter 40 NMSA 1978;

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

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

- (2) the Indian child's tribe;

E. "discussion with an Indian tribe" means documented good faith efforts to actively communicate and work with an Indian tribe;

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

G. "fictive kin" means a person:

- (1) who is not a relative or an extended

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family member of an Indian child and who has a significant, family-like relationship with the child or the child's family, which relationship existed prior to the child's entry into foster care;

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

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

H. "foster care placement" means:

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

(2) the temporary placement of an Indian child in foster care pursuant to a voluntary agreement entered into between a parent, guardian or Indian custodian and the department pursuant to the Voluntary Placement and Family Services Act."

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SECTION 22. Section 40-10B-3 NMSA 1978 (being Laws 2001, Chapter 167, Section 3, as amended) is amended to read:

"40-10B-3. DEFINITIONS.--As used in the Kinship Guardianship Act:

A. "caregiver" means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;

B. "child" means an individual who is a minor;

C. "department" means the children, youth and families department;

D. "guardian" means a person appointed as a guardian by a court or Indian tribal authority; ~~[or a person authorized to care for the child by a parental power of attorney as permitted by law;~~

E. ~~"guardianship assistance agreement" means a written agreement entered into by the prospective kinship guardian and the protective services division or juvenile justice division of the department or Indian tribe prior to the establishment of the guardianship by a court;~~

F. ~~"guardianship assistance payments" means payments made by the department to a kinship guardian or successor guardian on behalf of a child pursuant to the terms of a guardianship assistance agreement;~~

G. ~~"guardianship assistance program" means the~~

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~~financial subsidy program provided for in the Kinship Guardianship Act;]~~

E. "Indian" means, whether an adult or child, a person who is:

(1) a member of an Indian tribe; or

(2) eligible for membership in an Indian tribe;

F. "Indian child" means an Indian person, or a person whom there is reason to know is an Indian person, under eighteen years of age, who is neither:

(1) married; or

(2) emancipated;

G. "Indian child's tribe" means:

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

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

H. "Indian custodian" means an Indian who, pursuant to tribal law or custom or pursuant to state law:

(1) is an adult with legal custody of an Indian child; or

(2) has been transferred temporary physical care, custody and control by the parent of the Indian child;

I. "Indian tribe" means an Indian nation, tribe, pueblo or other band, organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c) or a regional corporation as defined in 43 U.S.C. Section 1606. For the purposes of notification to and communication with a tribe as required in the Indian Family Protection Act, "Indian tribe" also includes those tribal officials and staff who are responsible for child welfare and social services matters;

[H.] J. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

~~[I. "legal custody" means a legal status that vests in a person, department or agency the rights and obligations that would otherwise vest by law in a parent;~~

J.] K. "parent" means a biological or adoptive parent of a child whose parental rights have not been terminated and includes an individual identified as a parent under the New Mexico Uniform Parentage Act; and

[K.] L. "relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle,

aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of the persons specified

~~L. "subsidized guardianship" means a guardianship that meets subsidy eligibility criteria pursuant to the Kinship Guardianship Act; and~~

~~M. "voluntary placement agreement" means a written agreement between either the protective services division or juvenile justice division of the department or Indian tribe that has entered into a joint powers agreement and the parents or guardians of a child, which agreement shall not exceed one hundred eighty days unless there has been a judicial determination that such placement is in the best interests of the child, in which case the agreement may be extended for an additional one hundred eighty days, that specifies at least the following:~~

~~(1) whether the parent or guardian agrees to give legal custody of the child to the department;~~

~~(2) the rights and obligations of the parents or guardians, the child and the department, including that the parent or guardian has the right to revoke or terminate the placement agreement and grant of legal custody to the department at any time; and~~

~~(3) such other criteria as set forth by rule promulgated by the department as necessary to comply with state~~

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~~and federal law]."~~

SECTION 23. Section 40-10B-5 NMSA 1978 (being Laws 2001, Chapter 167, Section 5, as amended) is amended to read:

"40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

A. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists ~~[and]~~ who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen; ~~[or]~~

(3) a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:

(a) the purpose and effect of the guardianship;

(b) that the parent has the right to be served with the petition and notices of hearings in the action; and

(c) that the parent may appear in court to contest the guardianship; or

(4) a caregiver with whom the department has placed the child pursuant to the Children's Code Sfl1 ~~→and who has obtained the written consent of the department to file the petition~~ ←Sfl1 .

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B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:

(1) facts that, if proved, will meet the requirements of Subsection B of Section 40-10B-8 NMSA 1978;

(2) the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;

(3) the legal residence of the child and the place where the child resides, if different from the legal residence;

(4) the name and address of the petitioner;

(5) the kinship, if any, between the petitioner and the child;

(6) the names and addresses of the parents of the child;

(7) the names and addresses of persons having legal custody of the child;

(8) the existence of any matters pending involving the custody of the child;

(9) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;

(10) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the [~~children, youth and families~~]

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department consents to the relief requested in the petition;

(11) whether the child is an Indian child or there is reason to know that the child is an Indian child, and subject to provisions of the Indian Family Protection Act and, if so:

(a) the Indian child's tribe;

~~[(a)]~~ (b) the tribal affiliations of the Indian child's parents; and

~~[(b) the specific actions taken by the petitioner to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted, and copies of correspondence with the tribe]~~

(c) active efforts made to comply with the notice requirements pursuant to the Indian Family Protection Act, including results of the contact and the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian child's tribe shall be attached as exhibits to the petition;

and

(12) other facts in support of the guardianship sought."

SECTION 24. Section 40-10B-6 NMSA 1978 (being Laws 2001, Chapter 167, Section 6, as amended) is amended to read:

"40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

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A. The court shall set a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

B. The petition and a notice of the hearing shall be served upon:

(1) the [~~children, youth and families~~] department if there is any pending matter relating to the child pursuant to the provisions of [~~Chapter 32A, Article 4 NMSA 1978~~] the Children's Code;

(2) the child if the child has reached the age of fourteen;

(3) the parents of the child;

(4) a person having custody of the child or visitation rights pursuant to a court order; and

(5) if the child is an Indian child or there is reason to know the child is an Indian child [~~as defined in the Children's Code~~] subject to the provisions of the Indian Family Protection Act, the appropriate Indian tribe and [~~the child's parent or~~] any "Indian custodian", together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the Indian Family Protection Act.

C. Service of process required by Subsection A of this section shall be made in accordance with the requirements for giving notice of a hearing pursuant to Subsection A of Section 45-1-401 NMSA 1978.

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D. The persons required to be served pursuant to Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to Rule 1-024 NMRA."

SECTION 25. Section 40-10B-7 NMSA 1978 (being Laws 2001, Chapter 167, Section 7) is amended to read:

"40-10B-7. TEMPORARY GUARDIANSHIP PENDING HEARING.--

A. After the filing of the petition, upon motion of the petitioner or a person required to be served pursuant to Subsection B of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA 1978, or upon its own motion, the court may appoint a temporary guardian to serve for not more than one hundred eighty days or until the case is decided on the merits, whichever occurs first.

B. A motion for temporary guardianship shall be heard within twenty days of the date the motion is filed. The motion and notice of hearing shall be served on all persons required to be served pursuant to Subsection B of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA 1978.

C. An order pursuant to Subsection A of this section may be entered ex parte upon good cause shown. If the order is entered ex parte, a copy of the order shall be served on the persons required to be served pursuant to Subsection B of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA 1978. If a person files an objection to the order, the court

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immediately shall schedule a hearing to be held within ten days of the date the objection is filed. Notice of the hearing shall be given to the petitioner and all persons required to be served pursuant to Subsection B of Section [~~6 of the Kinship Guardianship Act~~] 40-10B-6 NMSA 1978."

SECTION 26. Section 40-10B-8 NMSA 1978 (being Laws 2001, Chapter 167, Section 8, as amended) is amended to read:

"40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--JUDGMENT--CHILD SUPPORT.--

A. Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of Subsection B of this section have been proved and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the minor.

B. A guardian may be appointed pursuant to the Kinship Guardianship Act only if:

(1) a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;

(2) a parent of the child is living but all parental rights in regard to the child have been terminated or

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suspended by prior court order; or

(3) the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and

(4) no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code.

C. The burden of proof shall be by clear and convincing evidence.

D. As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. ~~[The court shall consider the potential impact of financial payments pursuant to this subsection on the relationship of the parent and child and on the prospects of family reunification.]~~ The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

E. The court may order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child."

SECTION 27. Section 40-10B-11 NMSA 1978 (being Laws 2001, Chapter 167, Section 11) is amended to read:

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"40-10B-11. NOMINATION OBJECTION BY CHILD.--In a proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act:

A. the court shall appoint a person nominated by a child who has reached [~~his fourteenth birthday~~] the age of fourteen unless the court finds the nomination contrary to the best interests of the child; and

B. the court shall not appoint a person as guardian if a child who has reached [~~his fourteenth birthday~~] the age of fourteen files a written objection in the proceeding before the person accepts appointment as guardian unless the court makes a specific finding that it is in the best interest of the child."

SECTION 28. Section 40-10B-12 NMSA 1978 (being Laws 2001, Chapter 167, Section 12) is amended to read:

"40-10B-12. REVOCATION OF GUARDIANSHIP.--

A. Any person, including a child who has reached [~~his fourteenth birthday~~] the age of fourteen, may move for revocation of a guardianship created pursuant to the Kinship Guardianship Act. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A transition plan shall take into consideration the child's age, development and any bond with the guardian.

B. If the court finds that a preponderance of the evidence proves a change in circumstances and the revocation is

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in the best interests of the child, it shall grant the motion and:

(1) adopt a transition plan proposed by a party or the guardian ad litem;

(2) propose and adopt its own transition plan;

or

(3) order the parties to develop a transition plan by consensus if they will agree to do so."

SECTION 29. REPEAL.--Sections 32A-3A-9 and 40-10B-16 through 40-10B-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 71 and Laws 2020, Chapter 51, Sections 4 through 9) are repealed.

SECTION 30. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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