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HOUSE BILL 717

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CHILDREN; CHANGING PROCEDURES AND TIME FRAMES FOR
HEARINGS HELD PURSUANT TO THE ABUSE AND NEGLECT ACT; AMENDING
AND ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT.

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

Section 1. Section 32A-4-19 NMSA 1978 (being Laws 1993,
Chapter 77, Section 113) is amended to read:

"32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS. --

A. The adjudicatory hearing in a neglect or abuse
proceeding shall be commenced within [~~ninety~~] sixty days after
the latest of the following dates:

(1) the date that the petition is served on the
respondent;

(2) if the trial court orders a mistrial or a
new trial, the date that the order is filed; or

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1 (3) in the event of an appeal, the date that
2 the mandate or order is filed in the district court disposing of
3 the appeal.

4 B. Prior to the adjudicatory hearing, all parties to
5 the hearing shall attend a mandatory meeting and attempt to
6 settle issues attendant to the adjudicatory hearing and develop
7 a proposed treatment plan that serves the child's best interest.

8 [~~B.-~~] C. The children's court attorney shall
9 represent the state at the adjudicatory hearing.

10 [~~C.-~~] D. When the adjudicatory hearing on any
11 petition is not begun within the time period specified in
12 Subsection A of this section or within the period of any
13 extension granted, the petition shall be dismissed with
14 prejudice. "

15 Section 2. Section 32A-4-22 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 116) is amended to read:

17 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
18 CHILD. --

19 A. If not held in conjunction with the adjudicatory
20 hearing, the dispositional hearing shall be commenced within
21 thirty days after the conclusion of the adjudicatory hearing.

22 At the conclusion of the dispositional hearing, the court shall
23 make and include in the dispositional judgment its findings on
24 the following:

25 (1) the interaction and interrelationship of

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1 the child with his parent, siblings and any other person who may
2 significantly affect the child's best interest;

3 (2) the child's adjustment to his home, school
4 and community;

5 (3) the mental and physical health of all
6 individuals involved;

7 (4) the wishes of the child as to his
8 custodian;

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

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

14 (7) the availability of services recommended in
15 the treatment plan prepared as a part of the predisposition
16 study in accordance with the provisions of Section [~~32-4-19~~]
17 32A-4-21 NMSA 1978;

18 (8) the ability of the parent to care for the
19 child in the home so that no harm will result to the child;

20 (9) whether reasonable efforts were [~~utilized~~]
21 used by the department to prevent removal of the child from the
22 home prior to placement in substitute care and whether
23 reasonable efforts were [~~utilized~~] used to attempt reunification
24 of the child with the natural parent; and

25 (10) if the child is an Indian child, whether

1 the placement preferences set forth in the federal Indian Child
2 Welfare Act of 1978 or the placement preferences of the child's
3 Indian tribe have been followed and whether the Indian child's
4 treatment plan provides for maintaining the Indian child's
5 cultural ties. When placement preferences have not been
6 followed, good cause for noncompliance shall be clearly stated
7 and supported.

8 B. If a child is found to be neglected or abused,
9 the court may enter its judgment making any of the following
10 dispositions to protect the welfare of the child:

11 (1) permit the child to remain with his parent,
12 guardian or custodian, subject to those conditions and
13 limitations the court may prescribe;

14 (2) place the child under protective
15 supervision of the department; or

16 (3) transfer legal custody of the child to any
17 of the following:

18 (a) [to] the noncustodial parent, if it
19 is found to be in the child's best interest;

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

22 (c) a child-placement agency willing and
23 able to assume responsibility for the education, care and
24 maintenance of the child and licensed or otherwise authorized by
25 law to receive and provide care for the child.

1 C. If a child is found to be neglected or abused, in
2 its dispositional judgment the court shall also order the
3 department to implement and the child's parent, guardian or
4 custodian to cooperate with any treatment plan approved by the
5 court.

6 D. Any parent, guardian or custodian of a child who
7 is placed in the legal custody of the department or other person
8 pursuant to Subsection B of this section shall have reasonable
9 rights of visitation with the child as determined by the court,
10 unless the court finds that the best interests of the child
11 preclude any visitation.

12 E. The court may order reasonable visitation between
13 a child placed in the custody of the department and the child's
14 siblings or any other person who may significantly affect the
15 child's best interest, if the court finds the visitation to be
16 in the child's best interest.

17 F. Unless a child found to be neglected or abused is
18 also found to be delinquent, the child shall not be confined in
19 an institution established for the long-term care and
20 rehabilitation of delinquent children.

21 G. When the court vests legal custody in an agency,
22 institution or department, the court shall transmit with the
23 dispositional judgment copies of the clinical reports, the
24 predisposition study and report and any other information it has
25 pertinent to the care and treatment of the child.

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1 H. Prior to any child being placed in the custody or
2 protective supervision of the department, the department shall
3 be provided with reasonable oral or written notification and an
4 opportunity to be heard. At any hearing held pursuant to this
5 subsection, the department may appear as a party.

6 I. When a child is placed in the custody of the
7 department, the department shall investigate whether the child
8 is eligible for enrollment as a member of an Indian tribe and,
9 if so, the department shall pursue the enrollment on the child's
10 behalf."

11 Section 3. Section 32A-4-25 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 119, as amended) is amended to read:

13 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

14 A. Within [~~six months~~] sixty days of any original
15 dispositional order and within six months of any subsequent
16 continuation of the order, including a subsequent continuation
17 of a dispositional order ordered by the court during a
18 permanency hearing. the department shall petition the court for
19 a review of the disposition of an adjudicated neglected or
20 abused child. Prior to the review, the department shall submit
21 a progress report to the local substitute care review board for
22 that judicial district created under the Citizen Substitute Care
23 Review Act. Prior to any judicial review by the court pursuant
24 to this section, the local substitute care review board may
25 review the dispositional order or the continuation of the order

1 and the department's progress report and report its findings and
2 recommendations to the court. The review may be carried out by
3 either of the following:

4 (1) a judicial review hearing conducted by the
5 court; or

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

9 B. The children's court attorney shall give notice
10 to all parties, the child's guardian ad litem, the child's CASA,
11 a contractor administering the local substitute care review
12 board and the child's foster parent or substitute care provider
13 of the time, place and purpose of any judicial review hearing
14 held pursuant to Subsection A of this section.

15 C. At any judicial review hearing held pursuant to
16 Subsection A of this section, the department, the child's
17 guardian ad litem and all parties given notice under Subsection
18 B of this section shall have the opportunity to present evidence
19 and to cross-examine witnesses. At the hearing, the department
20 shall show that it has made reasonable effort to implement any
21 treatment plan approved by the court in its dispositional order
22 and shall present a treatment plan consistent with the purposes
23 of the Children's Code for any period of extension of the
24 dispositional order. The respondent shall demonstrate to the
25 court that efforts to comply with the treatment plan approved by

1 the court in its dispositional order and efforts to maintain
2 contact with the child were diligent and made in good faith.
3 The court shall determine the extent of compliance with the
4 treatment plan and whether progress is being made toward
5 establishing a stable and permanent placement for the child.

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

10 E. At the conclusion of any hearing held pursuant to
11 this section, the court shall make findings of fact and
12 conclusions of law.

13 F. When the child is an Indian child, the court
14 shall determine during review of a dispositional order whether
15 the placement preferences set forth in the federal Indian Child
16 Welfare Act of 1978 or the placement preferences of the child's
17 Indian tribe were followed and whether the child's treatment
18 plan provides for maintaining the child's cultural ties. When
19 placement preferences have not been followed, good cause for
20 noncompliance shall be clearly stated and supported.

21 G. Based on its findings, the court shall order one
22 of the following dispositions:

23 (1) dismiss the action and return the child to
24 his parent without supervision if the court finds that
25 conditions in the home that led to abuse have been corrected and

1 it is now safe for the return of the abused child;

2 (2) permit the child to remain with his parent,
3 guardian or custodian subject to those conditions and
4 limitations the court may prescribe, including protective
5 supervision of the child by the department;

6 (3) return the child to his parent and place
7 the child under the protective supervision of the department;

8 (4) transfer or continue legal custody of the
9 child to:

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

12 (b) a relative or other individual who,
13 after study by the department or other agency designated by the
14 court, is found by the court to be qualified to receive and care
15 for the child and is appointed as a permanent guardian of the
16 child; or

17 (c) the department, subject to the
18 provisions of Paragraph (6) of this subsection;

19 (5) continue the child in the legal custody of
20 the department with or without any required parental involvement
21 in a treatment plan;

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

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1 abused its discretion in the placement or proposed placement of
2 the child; or

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

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

9 (b) a hearing on the merits of
10 terminating parental rights.

11 H. Dispositional orders entered pursuant to this
12 section shall remain in force for a period of six months, except
13 for orders that provide for transfer of the child to the child's
14 noncustodial parent or to a permanent guardian.

15 I. The report of the local substitute care review
16 board submitted to the court pursuant to Subsection A of this
17 section shall become a part of the child's permanent court
18 record. "

19 Section 4. A new section of the Abuse and Neglect Act is
20 enacted to read as follows:

21 " [NEW MATERIAL] PERMANENCY HEARINGS--REBUTTABLE
22 PRESUMPTIONS. --

23 A. A permanency hearing shall be commenced within
24 six months of the initial judicial review of the child's
25 dispositional order. Prior to the permanency hearing, all

1 parties to the hearing shall attend a mandatory meeting and
2 attempt to settle issues attendant to the permanency hearing and
3 develop a proposed treatment plan that serves the child's best
4 interest.

5 B. During a permanency hearing, there shall be a
6 rebuttable presumption that the child's best interest will be
7 served by returning the child to his parent, guardian or
8 custodian. At the hearing, all parties shall have the
9 opportunity to present evidence and to cross-examine witnesses.
10 At the conclusion of the permanency hearing, the court shall
11 determine if sufficient evidence was presented to rebut the
12 presumption.

13 C. If insufficient evidence is presented to rebut,
14 by clear and convincing evidence, the presumption set forth in
15 Subsection B of this section, the court shall order one of the
16 following dispositions:

17 (1) dismiss the case and return the child to
18 his parent, guardian or custodian; or

19 (2) return the child to his parent, guardian or
20 custodian, subject to those conditions and limitations the court
21 may prescribe, including protective supervision of the child by
22 the department and continuation of the treatment plan for not
23 more than six months.

24 D. If sufficient evidence is presented to rebut, by
25 clear and convincing evidence, the presumption set forth in

1 Subsection B of this section, the court shall order that the
2 child remain in the legal custody of the department and make
3 additional orders regarding the treatment plan. Within three
4 months of a permanency hearing order issued pursuant to this
5 subsection, if a motion to terminate parental rights or appoint
6 a permanent guardian has not been filed, a subsequent permanency
7 hearing shall be commenced.

8 E. During a subsequent permanency hearing, there
9 shall be a rebuttable presumption that the child's best interest
10 will be served by initiating proceedings for adoption of the
11 child, permanent guardianship for the child or long-term care
12 for the child. At the hearing, all parties shall have the
13 opportunity to present evidence and cross-examine witnesses. At
14 the conclusion of the hearing, the court shall determine if
15 sufficient evidence was presented to rebut the presumption.

16 F. If insufficient evidence is presented to rebut,
17 by a preponderance of the evidence, the presumption set forth in
18 Subsection E of this section, the court shall order that:

19 (1) proceedings be initiated for adoption of
20 the child, permanent guardianship for the child or long-term
21 care for the child; and

22 (2) reunification of the parent and the child
23 is not in the child's best interest.

24 G. If sufficient evidence is presented to rebut, by
25 a preponderance of the evidence, the presumption set forth in

1 Subsection E of this section, the court shall order one of the
2 following dispositions:

3 (1) dismiss the case and return the child to
4 his parent, guardian or custodian; or

5 (2) return the child to his parent, guardian or
6 custodian, subject to those conditions and limitations the court
7 may prescribe, including protective supervision of the child by
8 the department and continuation of the treatment plan for not
9 more than six months.

10 H. The children's court attorney shall give notice
11 to all parties, the child's guardian ad litem, the child's CASA,
12 a contractor administering the local substitute care review
13 board and the child's foster parent or substitute care provider
14 of the time, place and purpose of any permanency hearing held
15 pursuant to this section.

16 I. The Rules of Evidence shall not apply to
17 permanency hearings. The court may admit testimony by any
18 person given notice of the permanency hearing who has
19 information about the status of the child or the status of the
20 treatment plan.

21 J. At the conclusion of any permanency hearing held
22 pursuant to this section, the court shall make findings of fact
23 and conclusions of law. "

24 Section 5. Section 32A-4-28 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 122, as amended) is amended to read:

1 "32A-4-28. TERMINATION OF PARENTAL RIGHTS-- ADOPTION

2 DECREE. --

3 A. In proceedings to terminate parental rights, the
4 court shall give primary consideration to the physical, mental
5 and emotional welfare and needs of the child, including the
6 likelihood of the child being adopted if parental rights are
7 terminated.

8 B. The court shall terminate parental rights with
9 respect to a child when:

10 (1) there has been an abandonment of the child
11 by his parents;

12 (2) the child has been a neglected or abused
13 child as defined in the Abuse and Neglect Act and the court
14 finds that the conditions and causes of the neglect and abuse
15 are unlikely to change in the foreseeable future despite
16 reasonable efforts by the department or other appropriate agency
17 to assist the parent in adjusting the conditions that render the
18 parent unable to properly care for the child. [~~provided~~] The
19 court may find in some cases that efforts by the department or
20 another agency [~~would be~~] are unnecessary, when there is a clear
21 showing that the efforts would be futile or when a parent has
22 caused great bodily harm or death to the child or the child's
23 sibling; or

24 (3) the child has been placed in the care of
25 others, including care by other relatives, either by a court

. 113174.3

1 order or otherwise and the following conditions exist:

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

4 (b) the parent-child relationship has
5 disintegrated;

6 (c) a psychological parent-child
7 relationship has developed between the substitute family and the
8 child;

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

12 (e) the substitute family desires to
13 adopt the child; and

14 (f) a presumption of abandonment created
15 by the conditions described in Subparagraphs (a) through (e) of
16 this paragraph has not been rebutted.

17 C. A finding by the court that all of the conditions
18 set forth in Subparagraphs (a) through (e) of Paragraph (3) of
19 Subsection B of this section exist shall create a rebuttable
20 presumption of abandonment.

21 D. The termination of parental rights involving a
22 child subject to the federal Indian Child Welfare Act of 1978
23 shall comply with the requirements of that act.

24 E. [~~When~~] If the court finds that parental rights
25 should be terminated; that the requirements for the adoption of

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1 a child have been satisfied; that the prospective adoptive
2 parent is a party to the action; and that [the] good cause
3 exists to waive the filing of a separate petition for adoption,
4 the court may proceed to grant adoption of the child, absent an
5 appeal of the termination of parental rights. The court shall
6 not waive any time requirements set forth in the Adoption Act,
7 unless the termination of parental rights occurred pursuant to
8 the provisions of Paragraph (3) of Subsection B of this section.
9 The court may enter a decree of adoption only after finding that
10 the party seeking to adopt the child has satisfied all of the
11 requirements set forth in the Adoption Act. Unless otherwise
12 stipulated by all parties, an adoption decree shall take effect
13 sixty days after the termination of parental rights, to allow
14 the department sufficient time to provide counseling for the
15 child and otherwise prepare the child for the adoption. The
16 adoption decree shall conform to the requirements of the
17 Adoption Act and shall have the same force and effect as other
18 adoption decrees entered pursuant to that act. The court clerk
19 shall assign an adoption case number to the adoption decree. "

20 Section 6. Section 32A-4-29 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 123) is amended to read:

22 "32A-4-29. TERMINATION PROCEDURE. --

23 A. A motion to terminate parental rights may be
24 filed at any stage of the abuse or neglect proceeding. The
25 proceeding may be initiated by any of the following:

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- 1 (1) the department;
- 2 (2) a licensed child placement agency; or
- 3 (3) any other person having a legitimate
- 4 interest in the matter, including the child's guardian ad litem,
- 5 a petitioner for adoption, a foster parent or a relative of the
- 6 child.

7 B. The motion for termination of parental rights
8 shall be signed, verified by the moving party and filed with the
9 court. The motion shall set forth:

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

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

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

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

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

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

23 (7) whether the child is subject to the federal
24 Indian Child Welfare Act of 1978 and, if so:

25 (a) the tribal affiliations of the

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1 child's parents;

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

8 (c) what specific efforts were made to
9 comply with the placement preferences set forth in the federal
10 Indian Child Welfare Act of 1978 or the placement preferences of
11 the appropriate Indian tribes.

12 C. A parent who has not previously been a party to
13 the proceeding shall be named in the motion and shall become a
14 party to the proceeding.

15 D. Notice of the filing of the motion, accompanied
16 by a copy of the motion, shall be served by the moving party on
17 the parents of the child, any parent who has not previously been
18 made a party to the proceeding, foster parents with whom the
19 child is residing, foster parents with whom the child has
20 resided for six months within the previous twelve months, the
21 custodian of the child, the department, any person appointed to
22 represent any party, including the child's guardian ad litem,
23 and any other person the court orders. Service shall be in
24 accordance with the Rules of Civil Procedure for the District
25 Courts for the service of process in a civil action in this

. 113174.3

1 state, except that foster parents and attorneys of record in
2 this proceeding may be served by certified mail. The notice
3 shall state specifically that the person served [~~must~~] shall
4 file a written response to the motion within twenty days if the
5 person intends to contest the termination. In any case
6 involving a child subject to the federal Indian Child Welfare
7 Act of 1978, notice shall also be served upon the tribes of the
8 child's parents and upon any "Indian custodian" as that term is
9 defined in 25 U.S.C. Section 1903(6).

10 E. If the identity or whereabouts of a person
11 entitled to service are unknown, the moving party shall file a
12 motion for an order granting service by publication supported by
13 the affidavit of the moving party or his agent or attorney
14 detailing the efforts made to locate the person entitled to
15 service. Upon being satisfied that reasonable efforts to locate
16 the person entitled to service have been made and that
17 information as to the identity or whereabouts of the person is
18 still insufficient to effect service in accordance with the
19 Rules of Civil Procedure for the District Courts, the court
20 shall order service by publication pursuant to the Rules of
21 Civil Procedure for the District Courts.

22 F. After a motion for the termination of parental
23 rights is filed, the parent shall be advised of the right to
24 counsel, unless the parent is already represented by counsel.
25 Counsel shall be appointed, upon request, for any parent who is

1 unable to obtain counsel due to financial reasons or, if in the
2 court's discretion, the interests of justice require appointment
3 of counsel.

4 G. The court shall assure that a guardian ad litem
5 represents the child in all proceedings for the termination of
6 parental rights.

7 H. When a motion to terminate parental rights is
8 filed, the moving party shall request a hearing on the motion.
9 The hearing date shall be at least thirty days, but no more than
10 sixty days, after service is effected upon the parties entitled
11 to service under this section.

12 I. In any action for the termination of parental
13 rights brought by a party other than the department and
14 involving a child in the custody of the department, the
15 department may:

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

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

20 J. The grounds for any attempted termination shall
21 be proved by clear and convincing evidence. In any proceeding
22 involving a child subject to the federal Indian Child Welfare
23 Act of 1978, the grounds for any attempted termination shall be
24 proved beyond a reasonable doubt and shall meet the requirements
25 set forth in 25 U.S.C. Section 1912(f).

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

February 22, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 717

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL
717

DO PASS, amended as follows:

1. On page 10, line 10, strike the word "Subsection" and insert in lieu thereof "Subsections A or".
2. On page 17, line 21 strike the second occurrence of the word "or".
3. On page 17, line 22, strike the word "death" and after

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJCS/HB 717

Page 23

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the first occurrence of the word "or" insert "great bodily harm or death to".

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Rios, Sanchez

Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 717

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO CHILDREN; CHANGING PROCEDURES AND TIME FRAMES FOR
HEARINGS HELD PURSUANT TO THE ABUSE AND NEGLECT ACT; AMENDING
AND ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT.

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

Section 1. Section 32A-4-19 NMSA 1978 (being Laws 1993,
Chapter 77, Section 113) is amended to read:

"32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS. --

A. The adjudicatory hearing in a neglect or abuse
proceeding shall be commenced within [~~ninety~~] sixty days after
the latest of the following dates:

(1) the date that the petition is served on the
respondent;

(2) if the trial court orders a mistrial or a
new trial, the date that the order is filed; or

(3) in the event of an appeal, the date that

Underscored material = new
[bracketed material] = delete

the mandate or order is filed in the district court disposing of the appeal.

B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

~~[B.]~~ C. The children's court attorney shall represent the state at the adjudicatory hearing.

~~[C.]~~ D. When the adjudicatory hearing on any petition is not begun within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed with prejudice. "

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

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

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

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

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. Those 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 that they refrain from divulging any information that would identify the child or family involved in the proceedings.

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1 D. Accredited representatives of the news media shall
2 be allowed to be present at closed hearings, subject to the
3 condition that they refrain from divulging information that would
4 identify any child involved in the proceedings or the parent,
5 guardian or custodian of that child and subject to enabling
6 regulations as the court finds necessary for the maintenance of
7 order and decorum and for the furtherance of the purposes of the
8 Children's Code.

9 E. If the court finds that it is in the best interest
10 of the child, the child may be excluded from a neglect or an abuse
11 hearing. Under the same conditions, a child may be excluded by the
12 court during a hearing on dispositional issues.

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

16 G. The court shall determine if the allegations of the
17 petition are admitted or denied. If the allegations are denied,
18 the court shall proceed to hear evidence on the petition. The
19 court after hearing all of the evidence bearing on the allegations
20 of neglect or abuse shall make and record its findings on whether
21 the child is a neglected child, an abused child or both.

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

. 116541. 2

Underscored material = new
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1 immediately or at a postponed hearing to make disposition of the
 2 case. If the court does not find that the child is neglected or
 3 abused, the court shall dismiss the petition and may refer the
 4 family to the department for appropriate services.

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

12 J. On the court's motion or that of a party, the court
 13 may continue the hearing on the petition for a ~~[reasonable time]~~
 14 period not to exceed thirty days to receive reports and other
 15 evidence in connection with disposition. The court shall continue
 16 the hearing pending the receipt of the predisposition study and
 17 report if that document has not been prepared and received. During
 18 any continuances under this subsection, the court shall make an
 19 appropriate order for legal custody."

20 Section 3. Section 32A-4-22 NMSA 1978 (being Laws 1993,
 21 Chapter 77, Section 116) is amended to read:

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

24 A. If not held in conjunction with the adjudicatory
 25 hearing, the dispositional hearing shall be commenced within thirty

. 116541.2

1 days after the conclusion of the adjudicatory hearing. At the
2 conclusion of the dispositional hearing, the court shall make and
3 include in the dispositional judgment its findings on the
4 following:

5 (1) the interaction and interrelationship of the
6 child with his parent, siblings and any other person who may
7 significantly affect the child's best interest;

8 (2) the child's adjustment to his home, school
9 and community;

10 (3) the mental and physical health of all
11 individuals involved;

12 (4) the wishes of the child as to his custodian;

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

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

18 (7) the availability of services recommended in
19 the treatment plan prepared as a part of the predisposition study
20 in accordance with the provisions of Section [~~32-4-19~~] 32A-4-21
21 NMSA 1978;

22 (8) the ability of the parent to care for the
23 child in the home so that no harm will result to the child;

24 (9) whether reasonable efforts were [~~utilized~~]
25 used by the department to prevent removal of the child from the

. 116541. 2

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1 home prior to placement in substitute care and whether reasonable
2 efforts were [~~utilized~~] used to attempt reunification of the child
3 with the natural parent; and

4 (10) if the child is an Indian child, whether the
5 placement preferences set forth in the federal Indian Child Welfare
6 Act of 1978 or the placement preferences of the child's Indian
7 tribe have been followed and whether the Indian child's treatment
8 plan provides for maintaining the Indian child's cultural ties.
9 When placement preferences have not been followed, good cause for
10 noncompliance shall be clearly stated and supported.

11 B. If a child is found to be neglected or abused, the
12 court may enter its judgment making any of the following
13 dispositions to protect the welfare of the child:

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

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

19 (3) transfer legal custody of the child to any of
20 the following:

21 (a) [~~to~~] the noncustodial parent, if it is
22 found to be in the child's best interest;

23 (b) an agency responsible for the care of
24 neglected or abused children; or

25 (c) a child-placement agency willing and

. 116541. 2

Underscored material = new
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1 able to assume responsibility for the education, care and
2 maintenance of the child and licensed or otherwise authorized by
3 law to receive and provide care for the child.

4 C. If a child is found to be neglected or abused, in
5 its dispositional judgment the court shall also order the
6 department to implement and the child's parent, guardian or
7 custodian to cooperate with any treatment plan approved by the
8 court.

9 D. Any parent, guardian or custodian of a child who is
10 placed in the legal custody of the department or other person
11 pursuant to Subsection B of this section shall have reasonable
12 rights of visitation with the child as determined by the court,
13 unless the court finds that the best interests of the child
14 preclude any visitation.

15 E. The court may order reasonable visitation between a
16 child placed in the custody of the department and the child's
17 siblings or any other person who may significantly affect the
18 child's best interest, if the court finds the visitation to be in
19 the child's best interest.

20 F. Unless a child found to be neglected or abused is
21 also found to be delinquent, the child shall not be confined in an
22 institution established for the long-term care and rehabilitation
23 of delinquent children.

24 G. When the court vests legal custody in an agency,
25 institution or department, the court shall transmit with the

. 116541. 2

Underscored material = new
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1 dispositional judgment copies of the clinical reports, the
 2 predisposition study and report and any other information it has
 3 pertinent to the care and treatment of the child.

4 H. Prior to any child being placed in the custody or
 5 protective supervision of the department, the department shall be
 6 provided with reasonable oral or written notification and an
 7 opportunity to be heard. At any hearing held pursuant to this
 8 subsection, the department may appear as a party.

9 I. When a child is placed in the custody of the
 10 department, the department shall investigate whether the child is
 11 eligible for enrollment as a member of an Indian tribe and, if so,
 12 the department shall pursue the enrollment on the child's behalf."

13 Section 4. Section 32A-4-25 NMSA 1978 (being Laws 1993,
 14 Chapter 77, Section 119, as amended) is amended to read:

15 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

16 A. ~~[Within six months of any original dispositional~~
 17 ~~order and within six months of any subsequent continuation of the~~
 18 ~~order, the department shall petition the court for a review of the~~
 19 ~~disposition of an adjudicated neglected or abused child.]~~ The
 20 initial judicial review shall be held within sixty days of the
 21 disposition. At the initial review, the parties shall demonstrate
 22 to the court efforts made to implement the treatment plan approved
 23 by the court in its dispositional order. The court shall determine
 24 the extent to which the treatment plan has been implemented and
 25 make supplemental orders as necessary to assure compliance with the

. 116541. 2

1 treatment plan and the safety of the child. Prior to the initial
2 judicial review, the department shall submit a copy of the
3 adjudicatory order, the dispositional order and notice of the
4 initial judicial review to the local substitute care review board
5 for that judicial district created under the Citizen Substitute
6 Care Review Act. A representative of the local substitute care
7 review board shall be permitted to attend and comment to the court.

8 B. Subsequent periodic reviews of dispositional orders
9 shall be held within six months of the conclusion of the permanency
10 hearing or, if a motion has been filed for termination of parental
11 rights or permanent guardianship, within six months of the decision
12 on that motion and every six months thereafter. Prior to the
13 review, the department shall submit a progress report to the local
14 substitute care review board for that judicial district created
15 under the Citizen Substitute Care Review Act. Prior to any
16 judicial review by the court pursuant to this section, the local
17 substitute care review board may review the dispositional order or
18 the continuation of the order and the department's progress report
19 and report its findings and recommendations to the court. The
20 review may be carried out by either of the following:

21 (1) a judicial review hearing conducted by the
22 court; or

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

. 116541. 2

1 ~~[B-]~~ C. The children's court attorney shall give notice
 2 to all parties, the child's guardian ad litem, the child's CASA, a
 3 contractor administering the local substitute care review board and
 4 the child's foster parent or substitute care provider of the time,
 5 place and purpose of any judicial review hearing held pursuant to
 6 Subsection [A] B of this section.

7 ~~[C-]~~ D. At any judicial review hearing held pursuant to
 8 Subsection [A] B of this section, the department, the child's
 9 guardian ad litem and all parties given notice under Subsection [~~B~~]
 10 C of this section shall have the opportunity to present evidence
 11 and to cross-examine witnesses. At the hearing, the department
 12 shall show that it has made reasonable effort to implement any
 13 treatment plan approved by the court in its dispositional order and
 14 shall present a treatment plan consistent with the purposes of the
 15 Children's Code for any period of extension of the dispositional
 16 order. The respondent shall demonstrate to the court that efforts
 17 to comply with the treatment plan approved by the court in its
 18 dispositional order and efforts to maintain contact with the child
 19 were diligent and made in good faith. The court shall determine
 20 the extent of compliance with the treatment plan and whether
 21 progress is being made toward establishing a stable and permanent
 22 placement for the child.

23 ~~[D-]~~ E. The Rules of Evidence shall not apply to
 24 hearings held pursuant to this section. The court may admit
 25 testimony by any person given notice of the hearing who has

. 116541. 2

1 information about the status of the child or the status of the
2 treatment plan.

3 ~~[E.]~~ F. At the conclusion of any hearing held pursuant
4 to this section, the court shall make findings of fact and
5 conclusions of law.

6 ~~[F.]~~ G. When the child is an Indian child, the court
7 shall determine during review of a dispositional order whether the
8 placement preferences set forth in the federal Indian Child Welfare
9 Act of 1978 or the placement preferences of the child's Indian
10 tribe were followed and whether the child's treatment plan provides
11 for maintaining the child's cultural ties. When placement
12 preferences have not been followed, good cause for noncompliance
13 shall be clearly stated and supported.

14 ~~[G.]~~ H. Based on its findings at a judicial review
15 hearing held pursuant to Subsection B of this section, the court
16 shall order one of the following dispositions:

17 (1) dismiss the action and return the child to
18 his parent without supervision if the court finds that conditions
19 in the home that led to abuse have been corrected and it is now
20 safe for the return of the abused child;

21 (2) permit the child to remain with his parent,
22 guardian or custodian subject to those conditions and limitations
23 the court may prescribe, including protective supervision of the
24 child by the department;

25 (3) return the child to his parent and place the

. 116541. 2

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1 child under the protective supervision of the department;

2 (4) transfer or continue legal custody of the
3 child to:

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

6 (b) a relative or other individual who,
7 after study by the department or other agency designated by the
8 court, is found by the court to be qualified to receive and care
9 for the child and is appointed as a permanent guardian of the
10 child; or

11 (c) the department, subject to the
12 provisions of Paragraph (6) of this subsection;

13 (5) continue the child in the legal custody of
14 the department with or without any required parental involvement in
15 a treatment plan;

16 (6) make additional orders regarding the
17 treatment plan or placement of the child to protect the child's
18 best interests if the court determines the department has failed in
19 implementing any material provision of the treatment plan or abused
20 its discretion in the placement or proposed placement of the child;
21 or

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

25 (a) the child's parent, guardian or

. 116541.2

Underscored material = new
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1 custodian to show cause why he should not be held in contempt of
2 court; or

3 (b) a hearing on the merits of terminating
4 parental rights.

5 [~~H-~~] I. Dispositional orders entered pursuant to this
6 section shall remain in force for a period of six months, except
7 for orders that provide for transfer of the child to the child's
8 noncustodial parent or to a permanent guardian.

9 [~~I-~~] J. The report of the local substitute care review
10 board submitted to the court pursuant to Subsection [~~A~~] B of this
11 section shall become a part of the child's permanent court record."

12 Section 5. A new section of the Abuse and Neglect Act is
13 enacted to read as follows:

14 "[NEW MATERIAL] PERMANENCY HEARINGS--REBUTTABLE
15 PRESUMPTIONS.--

16 A. A permanency hearing shall be commenced within six
17 months of the initial judicial review of the child's dispositional
18 order. Prior to the initial permanency hearing, all parties to the
19 hearing shall attend a mandatory meeting and attempt to settle
20 issues attendant to the permanency hearing and develop a proposed
21 treatment plan that serves the child's best interest. Prior to the
22 initial permanency hearing, the department shall submit a progress
23 report regarding the child to the local substitute care review
24 board for that judicial district. The local substitute care review
25 board may review the child's dispositional order, any continuation

. 116541.2

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1 of that order and the department's progress report and report its
2 findings and recommendations to the court.

3 B. During a permanency hearing, there shall be a
4 rebuttable presumption that the child's best interest will be
5 served by returning the child to his parent, guardian or custodian.
6 At the hearing, all parties shall have the opportunity to present
7 evidence and to cross-examine witnesses. At the conclusion of the
8 permanency hearing, the court shall determine if sufficient
9 evidence was presented to rebut the presumption.

10 C. If insufficient evidence is presented to rebut, by a
11 preponderance of the evidence, the presumption set forth in
12 Subsection B of this section, the court shall order one of the
13 following dispositions:

14 (1) dismiss the case and return the child to his
15 parent, guardian or custodian; or

16 (2) return the child to his parent, guardian or
17 custodian, subject to those conditions and limitations the court
18 may prescribe, including protective supervision of the child by the
19 department and continuation of the treatment plan for not more than
20 six months.

21 D. If sufficient evidence is presented to rebut, by a
22 preponderance of the evidence, the presumption set forth in
23 Subsection B of this section, the court shall order that the child
24 remain in the legal custody of the department and make additional
25 orders regarding the treatment plan. Within three months of a

. 116541. 2

Underscored material = new
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1 permanency hearing order issued pursuant to this subsection, if a
2 motion to terminate parental rights or appoint a permanent guardian
3 has not been filed or if the child's permanency plan has not been
4 formally changed to provide for emancipation of the child, a
5 subsequent permanency hearing shall be commenced.

6 E. During a subsequent permanency hearing, there shall
7 be a rebuttable presumption that the child's best interest will be
8 served by changing the child's permanency plan to provide for
9 adoption of the child, emancipation of the child, permanent
10 guardianship for the child or long-term foster care for the child.
11 At the hearing, all parties shall have the opportunity to present
12 evidence and cross-examine witnesses. At the conclusion of the
13 hearing, the court shall determine if sufficient evidence was
14 presented to rebut the presumption.

15 F. If insufficient evidence is presented to rebut, by a
16 preponderance of the evidence, the presumption set forth in
17 Subsection E of this section, the court shall order:

18 (1) the department to change the child's
19 permanency plan to provide for adoption of the child, emancipation
20 of the child, permanent guardianship for the child or long-term
21 foster care for the child; and

22 (2) that additional efforts to reunite the child
23 and his parent shall not be attempted.

24 G. If sufficient evidence is presented to rebut, by a
25 preponderance of the evidence, the presumption set forth in

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1 Subsection E of this section, the court shall order one of the
2 following dispositions:

3 (1) dismiss the case and return the child to his
4 parent, guardian or custodian; or

5 (2) return the child to his parent, guardian or
6 custodian, subject to those conditions and limitations the court
7 may prescribe, including protective supervision of the child by the
8 department and continuation of the treatment plan for not more than
9 six months.

10 H. The children's court attorney shall give notice to
11 all parties, the child's guardian ad litem, the child's CASA, a
12 contractor administering the local substitute care review board and
13 the child's foster parent or substitute care provider of the time,
14 place and purpose of any permanency hearing held pursuant to this
15 section.

16 I. The Rules of Evidence shall not apply to permanency
17 hearings. The court may admit testimony by any person given notice
18 of the permanency hearing who has information about the status of
19 the child or the status of the treatment plan. All testimony shall
20 be subject to cross-examination. "

21 Section 6. Section 32A-4-28 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 122, as amended) is amended to read:

23 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
24 DECREE. --

25 A. In proceedings to terminate parental rights, the
. 116541. 2

Underscored material = new
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1 court shall give primary consideration to the physical, mental and
2 emotional welfare and needs of the child, including the likelihood
3 of the child being adopted if parental rights are terminated.

4 B. The court shall terminate parental rights with
5 respect to a child when:

6 (1) there has been an abandonment of the child by
7 his parents;

8 (2) the child has been a neglected or abused
9 child as defined in the Abuse and Neglect Act and the court finds
10 that the conditions and causes of the neglect and abuse are
11 unlikely to change in the foreseeable future despite reasonable
12 efforts by the department or other appropriate agency to assist the
13 parent in adjusting the conditions that render the parent unable to
14 properly care for the child. [~~provided~~] The court may find in some
15 cases that efforts by the department or another agency [~~would be~~]
16 are unnecessary, when there is a clear showing that the efforts
17 would be futile or when a parent has caused great bodily harm or
18 death to the child or the child's sibling; or

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

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

24 (b) the parent-child relationship has
25 disintegrated;

. 116541. 2

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1 (c) a psychological parent-child
2 relationship has developed between the substitute family and the
3 child;

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

7 (e) the substitute family desires to adopt
8 the child; and

9 (f) a presumption of abandonment created by
10 the conditions described in Subparagraphs (a) through (e) of this
11 paragraph has not been rebutted.

12 C. A finding by the court that all of the conditions
13 set forth in Subparagraphs (a) through [~~(e)~~] (f) of Paragraph (3)
14 of Subsection B of this section exist shall create a rebuttable
15 presumption of abandonment.

16 D. The termination of parental rights involving a child
17 subject to the federal Indian Child Welfare Act of 1978 shall
18 comply with the requirements of that act.

19 E. [~~When~~] If the court finds that parental rights
20 should be terminated; that the requirements for the adoption of a
21 child have been satisfied; that the prospective adoptive parent is
22 a party to the action; and that [~~the~~] good cause exists to waive
23 the filing of a separate petition for adoption, the court may
24 proceed to grant adoption of the child, absent an appeal of the
25 termination of parental rights. The court shall not waive any time

. 116541. 2

Underscored material = new
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1 requirements set forth in the Adoption Act, unless the termination
2 of parental rights occurred pursuant to the provisions of Paragraph
3 (3) of Subsection B of this section. The court may enter a decree
4 of adoption only after finding that the party seeking to adopt the
5 child has satisfied all of the requirements set forth in the
6 Adoption Act. Unless otherwise stipulated by all parties, an
7 adoption decree shall take effect sixty days after the termination
8 of parental rights, to allow the department sufficient time to
9 provide counseling for the child and otherwise prepare the child
10 for the adoption. The adoption decree shall conform to the
11 requirements of the Adoption Act and shall have the same force and
12 effect as other adoption decrees entered pursuant to that act. The
13 court clerk shall assign an adoption case number to the adoption
14 decree. "

15 Section 7. Section 32A-4-29 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 123) is amended to read:

17 "32A-4-29. TERMINATION PROCEDURE. --

18 A. A motion to terminate parental rights may be filed
19 at any stage of the abuse or neglect proceeding. The proceeding
20 may be initiated by any of the following:

- 21 (1) the department;
 - 22 (2) a licensed child placement agency; or
 - 23 (3) any other person having a legitimate interest
- 24 in the matter, including the child's guardian ad litem, a
25 petitioner for adoption, a foster parent or a relative of the

. 116541. 2

1 child.

2 B. The motion for termination of parental rights shall
3 be signed, verified by the moving party and filed with the court.
4 The motion shall set forth:

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

7 (2) the grounds for termination and the facts and
8 circumstances supporting the grounds for termination;

9 (3) the names and addresses of the persons or
10 authorized agency or agency officer to whom custody might be
11 transferred;

12 (4) whether the child resides or has resided with
13 a foster parent who desires to adopt this child;

14 (5) whether the motion is in contemplation of
15 adoption;

16 (6) the relationship or legitimate interest of
17 the moving party to the child; and

18 (7) whether the child is subject to the federal
19 Indian Child Welfare Act of 1978 and, if so:

20 (a) the tribal affiliations of the child's
21 parents;

22 (b) the specific actions taken by the moving
23 party to notify the parents' [~~tribe~~] tribes and the results of the
24 contacts, including the names, addresses, titles and telephone
25 numbers of the persons contacted. Copies of any correspondence

. 116541. 2

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1 with the tribes shall be attached as exhibits to the petition; and

2 (c) what specific efforts were made to
3 comply with the placement preferences set forth in the federal
4 Indian Child Welfare Act of 1978 or the placement preferences of
5 the appropriate Indian tribes.

6 C. A parent who has not previously been a party to the
7 proceeding shall be named in the motion and shall become a party to
8 the proceeding.

9 D. Notice of the filing of the motion, accompanied by a
10 copy of the motion, shall be served by the moving party on the
11 parents of the child, any parent who has not previously been made a
12 party to the proceeding, foster parents with whom the child is
13 residing, foster parents with whom the child has resided for six
14 months within the previous twelve months, the custodian of the
15 child, the department, any person appointed to represent any party,
16 including the child's guardian ad litem, and any other person the
17 court orders. Service shall be in accordance with the Rules of
18 Civil Procedure for the District Courts for the service of process
19 in a civil action in this state, except that foster parents and
20 attorneys of record in this proceeding may be served by certified
21 mail. The notice shall state specifically that the person served
22 [~~must~~] shall file a written response to the motion within twenty
23 days if the person intends to contest the termination. In any case
24 involving a child subject to the federal Indian Child Welfare Act
25 of 1978, notice shall also be served upon the tribes of the child's

. 116541. 2

1 parents and upon any "Indian custodian" as that term is defined in
2 25 U.S.C. Section 1903(6).

3 E. If the identity or whereabouts of a person entitled
4 to service are unknown, the moving party shall file a motion for an
5 order granting service by publication supported by the affidavit of
6 the moving party or his agent or attorney detailing the efforts
7 made to locate the person entitled to service. Upon being
8 satisfied that reasonable efforts to locate the person entitled to
9 service have been made and that information as to the identity or
10 whereabouts of the person is still insufficient to effect service
11 in accordance with the Rules of Civil Procedure for the District
12 Courts, the court shall order service by publication pursuant to
13 the Rules of Civil Procedure for the District Courts.

14 F. After a motion for the termination of parental
15 rights is filed, the parent shall be advised of the right to
16 counsel, unless the parent is already represented by counsel.
17 Counsel shall be appointed, upon request, for any parent who is
18 unable to obtain counsel due to financial reasons or, if in the
19 court's discretion, the interests of justice require appointment of
20 counsel.

21 G. The court shall assure that a guardian ad litem
22 represents the child in all proceedings for the termination of
23 parental rights.

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

. 116541. 2

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1 hearing date shall be at least thirty days, but no more than sixty
2 days, after service is effected upon the parties entitled to
3 service under this section.

4 I. In any action for the termination of parental rights
5 brought by a party other than the department and involving a child
6 in the custody of the department, the department may:

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

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

11 J. The grounds for any attempted termination shall be
12 proved by clear and convincing evidence. In any proceeding
13 involving a child subject to the federal Indian Child Welfare Act
14 of 1978, the grounds for any attempted termination shall be proved
15 beyond a reasonable doubt and shall meet the requirements set forth
16 in 25 U.S.C. Section 1912(f).

17 K. When the court terminates parental rights, it shall
18 appoint a custodian for the child and fix responsibility for the
19 child's support.

20 L. In any termination proceeding involving a child
21 subject to the federal Indian Child Welfare Act of 1978, the court
22 shall in any termination order make specific findings that the
23 requirements of that act have been met.

24 M A judgment of the court terminating parental rights
25 divests the parent of all legal rights and privileges and dispenses

. 116541.2

1 with both the necessity for the consent to or receipt of notice of
2 any subsequent adoption proceeding concerning the child. A
3 judgment of the court terminating parental rights shall not affect
4 the child's rights of inheritance from and through the child's
5 biological parents. "

6 Section 8. EFFECTIVE DATE. --The effective date of the
7 provisions of this act is July 1, 1997.

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FORTY-THIRD LEGISLATURE HJC/HB 717/a
FIRST SESSION, 1997

March 8, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 717, as amended

has had it under consideration and reports same with recommendation
that it DO PASS, amended as follows:

1. On page 1, line 11, after the semicolon insert "CLARIFYING
DUTIES TO REPORT ALLEGED ABUSE OR NEGLECT OF A CHILD;".

2. On page 1, line 12, after the semicolon insert "CLARIFYING
ADOPTION PROCEDURES; CLARIFYING THE DUTIES OF THE QUALITY ASSURANCE
OFFICE;".

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 49

3. On page 1, between lines 15 and 16, insert the following new sections:

"Section 1. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96) is amended to read:

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

A. "abandonment" includes, but is not limited to, 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;

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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SJC/HJC 717

B. "abused child" means a child:

(1) who is at risk of suffering serious harm;

~~[(1)]~~ (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted by the child's parent, guardian or custodian;

~~[(2)]~~ (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

~~[(3)]~~ (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

~~[(4)]~~ (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "neglected child" means a child:

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

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 51

(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 neglect 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 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 his responsibilities to and for the child because of incarceration, hospitalization or other 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

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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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;

D. "physical abuse" includes, but is not limited to, 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 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;

E. "sexual abuse" includes, but is not limited to, criminal sexual contact, incest or criminal sexual penetration, as those acts

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 53

are defined by state law; and

F. "sexual exploitation" includes, but is not limited to:

(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."

Section 2. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97) is amended to read:

**"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY.--**

A. Every person, including but not limited to a licensed physician, a resident or an intern examining, attending or treating a child, a law enforcement officer, a judge presiding during any

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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proceeding, a registered nurse, a visiting nurse, a schoolteacher or a school official or social worker acting in an official capacity who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

(1) a local law enforcement agency;

(2) the department office in the county where the child resides; or

(3) tribal law enforcement or social services agencies for any Indian child residing in Indian country.

B. Any law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department office in the county where the child resides and shall transmit the same information in writing within forty-eight hours. Any office of the department receiving a report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours.

The written report shall contain the names and addresses of the child

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 55

and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person [~~or persons~~] responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. If an alleged perpetrator of abuse or neglect of a child is not a parent, guardian or custodian of the child or a member of the child's family, a local law enforcement agency is primarily responsible for investigating the case of alleged abuse or neglect.

D. If an alleged perpetrator of abuse or neglect of a child is a parent, guardian or custodian of the child or a member of the child's family, the department is primarily responsible for investigating the case of alleged abuse or neglect.

[~~C.~~] E. The recipient of the report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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under the same care who may be in danger of abuse or neglect. A
Local law enforcement agency is responsible for investigating reports
of alleged child abuse or neglect at schools, day care facilities or
child care facilities.

~~[D. Upon a determination by the department that any child~~
~~may have suffered or is in imminent danger of suffering abuse or~~
~~neglect while in the care or control of or in a child care facility~~
~~or family day care home, the department shall immediately notify the~~
~~parents of the child and the agency responsible for licensing the~~
~~child care facility or family day care home. No determination shall~~
~~be made prior to consultation with the facility.~~

~~E.]~~ F. If the child alleged to be abused or neglected is in
the care or control of or in a facility administratively connected to
the department, the report shall be investigated ~~[through the office~~
~~of the district attorney]~~ by local law enforcement. The
investigation shall ensure that immediate steps are taken to protect
the health or welfare of the alleged abused or neglected child, as
well as that of any other child under the same care who may be in
danger of abuse or neglect.

~~[F.]~~ G. A law enforcement agency or the department shall

Underscored material = new
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 57

have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

[G-] H. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. "".

4. Renumber the succeeding sections accordingly.

5. On page 4, between lines 23 and 24, insert the following new section:

"Section 3. Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115) is amended to read:

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

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

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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

(1) a statement of the specific ~~[harm to the child that intervention is designed to alleviate]~~ reasons for intervention by the department or for placing the child in the department's custody and a statement of the parent's ability to care for the child in the parent's home without causing harm to the child;

~~[(2) if removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from the child's parents; and~~

~~(3) a treatment plan consisting of:~~

~~(a) a description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, the reasons why the program is likely to be useful, the availability of any proposed services and the department's overall plan for ensuring that the services will be delivered;~~

Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/HJC 717

Page 59

~~(b) if removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs that have been considered and rejected;~~

~~(c) a description of the steps that will be taken to minimize any harm to the child that may result if separation from the child's parent occurs or continues;~~

~~(d) a description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary; and~~

~~(e) if removal from or continued residence outside the home is recommended and the child is sixteen years of age or older, a description of the specific skills the child requires for successful transition into independent living as an adult, what program, educational or otherwise, will provide the skills, the reasons why the program is likely to be useful, the availability of any proposed programs and the department's overall plan for ensuring that the child will be adequately prepared for adulthood]~~

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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

(3) the wishes of the child as to his custodian;

(4) whether the child has a family member who, subsequent to study by the department, is determined to be qualified to care for the child;

(5) a description of services offered to the child, his family and his foster care family and a summary of reasonable efforts made to prevent removal of the child from his family or reasonable efforts made to reunite the child with his family;

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 61

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

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

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

(9) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties;

(10) a treatment plan that sets forth steps to ensure that the child's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child and his parents to facilitate permanent placement of the child in the parent's home; and

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

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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successful transition into independent living as an adult, regardless of whether the child is returned to his parent's home.

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

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

6. Renumber the succeeding sections accordingly.

7. On pages 19 through 24, strike Section 7 in its entirety and insert in lieu thereof the following new sections:

"Section 7. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123) is amended to read:

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

A. A motion to terminate parental rights may be filed at

Underscored material = new
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 63

any stage of the abuse or neglect proceeding. The proceeding may be initiated by any of the following:

(1) the department;

(2) a licensed child placement agency; or

(3) any other person having a legitimate interest in the matter, including the child's guardian ad litem, a petitioner for adoption, a foster parent or a relative of the child.

B. The motion for termination of parental rights shall be signed, verified by the moving party and filed with the court. The motion shall set forth:

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

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

(3) the names and addresses of the persons or authorized agency or agency officer to whom custody might be

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/HJC 717

transferred;

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

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

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

(7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

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

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

Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/HJC 717

Page 65

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. A parent who has not previously been a party to the proceeding shall be named in the motion and shall become a party to the proceeding, unless the court determines that the parent has not established a protected liberty interest in his relationship with the child.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on ~~the parents of the child, any parent who has not previously been made a party to the proceeding~~ all other parties, foster parents with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, ~~the department~~ any person appointed to represent any party ~~including the child's guardian ad litem~~ and any other person the court orders. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of ~~process~~ motions in a civil action in this state, except that foster parents and attorneys of record in this proceeding ~~may~~ shall be served by

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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certified mail. The notice shall state specifically that the person served ~~[must]~~ shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be ~~[served upon]~~ sent by certified mail to the tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-2-17 NMSA 1978 and who failed to make an appearance.

E. If the identity or whereabouts of a person entitled to service are unknown, the moving party shall file a motion for an order granting service by publication supported by the affidavit of the moving party or his agent or attorney detailing the efforts made to locate the person entitled to service. Upon being satisfied that reasonable efforts to locate the person entitled to service have been made and that information as to the identity or whereabouts of the person is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall order service by publication pursuant to the Rules of Civil Procedure for the District Courts.

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 67

F. After a motion for the termination of parental rights is filed, the parent shall be advised of the right to counsel, unless the parent is already represented by counsel. Counsel shall be appointed, upon request, for any parent who is unable to obtain counsel due to financial reasons or, if in the court's discretion, the interests of justice require appointment of counsel.

G. The court shall assure that a guardian ad litem represents the child in all proceedings for the termination of parental rights.

H. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section.

I. In any action for the termination of parental rights brought by a party other than the department and involving a child in the custody of the department, the department may:

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

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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

J. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U. S. C. Section 1912(f).

K. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

L. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

M A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 69

of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological parents. "

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

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

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

(1) the department;

(2) an agency; or

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

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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B. Any petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

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

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

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

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

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

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

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

(a) the tribal affiliations of the child's

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 71

parents;

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

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, any person with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served ~~must~~ shall file a written response to the

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/HJC 717

petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for any parent who is unable to obtain counsel for financial reasons or if, in the court's discretion, appointment of counsel is required in the interest of justice. Payment for the appointed counsel shall be made

Underscored material = new
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 73

by the petitioner.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights.

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

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

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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adoption. In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

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

Section 9. Section 32A-5-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 146) is amended to read:

"32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED. --The consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act shall not be required from:

A. a parent whose rights with reference to the adoptee have been terminated pursuant to law;

B. a parent who has relinquished the child to an agency for an adoption;

Underscored material = new
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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 75

C. a biological father of an adoptee conceived as a result of rape or incest;

D. any person who has failed to respond when given notice pursuant to the provisions of Section [~~32-5-27~~] 32A-5-27 NMSA 1978; [~~or~~]

E. any putative father who has failed to register with the putative father registry within [~~90~~] ninety days of the child's birth; or

F. any alleged father. "

Section 10. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167, as amended) is amended to read:

"32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS. --

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/HJC 717

the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a child who was the adoptee in the particular proceeding, ~~[or]~~ by the department or by an adoptee's sibling; provided that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

(1) the health and medical histories of the adoptee's biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background, including ancestral information, without name references or geographical designations;

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 77

(4) physical descriptions; and

(5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing agency or the department, unless for good cause the court orders to the contrary.

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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D. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

E. If mutual authorizations for release of identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

(1) the reason the information is sought;

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 79

(2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including appointment of a confidential intermediary to contact the individual and request specific information;

(3) whether the individual about whom identifying information is sought is alive;

(4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families and the likely effect of disclosure on those individuals;

(5) the age, maturity and expressed needs of the adoptee;

(6) the report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing the information

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/HJC 717

sought will be greater than the benefit to any other individual of not releasing the information.

F. An adoptee shall have the right, for the purpose of enrolling in the adoptee's tribe of origin, to access information kept by the department. Information needed by an adoptee to enroll in his tribe of origin may be requested from the department by the following persons:

(1) the adoptee, after he reaches eighteen years of age;

(2) when the adoptee is a child, his adoptive parent or guardian; or

(3) an adoptee's descendant or, if the adoptee's descendant is a child, an adult representative for the descendant.

G. When the department receives a request for information regarding an adoptee's tribe of origin, the department shall examine its records to determine if the adoptee is of Indian descent. If the department establishes that an adoptee is of Indian descent, the department shall:

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 81

(1) provide the requestor with the tribal affiliation of the adoptee's biological parents;

(2) submit to the tribe information necessary to establish tribal enrollment for the adoptee and to protect any rights flowing from the adoptee's tribal relationship; and

(3) provide notice to the requestor of the department's submission of information to the adoptee's tribe."

Section 11. Section 32A-5-41 NMSA 1978 (being Laws 1993, Chapter 77, Section 168, as amended) is amended to read:

"32A-5-41. APPOINTMENT OF CONFIDENTIAL INTERMEDIARY. --

A. The court may appoint a confidential intermediary to ascertain whether an individual is willing to be contacted, is willing to release his name or identity or is willing to meet or otherwise communicate about any condition that may affect the moving party's physical or mental health, upon petition to the court by:

(1) an adoptee who is eighteen years of age or older;

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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(2) an adoptive parent of an adoptee who is less than
eighteen years of age; [~~or~~]

(3) an adoptee's former parent, when the adoptee is
eighteen years of age or older; or

(4) an adoptee's sibling.

B. The confidential intermediary shall make a reasonable
effort to determine if the individual whose identity is sought by the
petitioner has filed a signed document authorizing or refusing to
authorize the release of the individual's name or identity.

C. When the confidential intermediary finds a signed
authorization for a party to be contacted or for the release of
identifying information, the intermediary shall release that
information to the petitioner. Upon the petitioner's written
request, the intermediary may assist the petitioner in locating the
individual who authorized the release of identifying information, in
ascertaining whether the individual is willing to meet or communicate
with the petitioner and in facilitating a meeting or other
communication.

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 83

D. When the confidential intermediary finds a signed refusal to authorize the release of identifying information, the intermediary shall report this to the petitioner and the court and shall not attempt to locate or contact the individual who has refused to authorize contact or the release of identifying information. The petitioner may then withdraw the petition or request the release of identifying information for good cause shown, pursuant to the provisions of Section 32A-5-40 NMSA 1978.

E. When the confidential intermediary does not find any documents concerning the release of identifying information or if the intermediary finds a document indicating that an individual whose identity is sought by the petitioner is undecided about whether to release identifying information, the intermediary shall make a reasonable search for and discreetly contact the individual to ascertain whether the individual is willing to release information to the petitioner or willing to meet or communicate with the petitioner, whom the intermediary may describe to the individual only in general, nonidentifying terms. When the individual consents in writing to the release of information, the intermediary shall release the information to the petitioner, and upon the mutual written request and consent of the petitioner and the individual, the intermediary shall facilitate a meeting or other communication between the

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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petitioner and the individual. If the individual refuses to authorize the release of information sought by the petitioner, the intermediary shall report this to the petitioner and the court and the petitioner may withdraw the motion or file a motion with the court for an order to release identifying information for good cause shown, pursuant to provisions of Section 32A-5-40 NMSA 1978.

F. When an individual sought by the confidential intermediary is deceased, the intermediary shall report this to the petitioner and the court and, upon the petitioner's request, the court shall determine on the basis of the factors listed in Section 32A-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

G. When an individual sought by the confidential intermediary cannot be located within a year, the intermediary shall report this to the petitioner and the court. The court may authorize an additional search for a specified period of time or determine on the basis of the factors listed in Section 32A-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

H. A confidential intermediary may charge the petitioner

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 85

for actual expenses incurred in providing a service requested under this section. Upon motion by the intermediary, the court may authorize a reasonable fee in addition to the expenses.

I. A confidential intermediary shall complete training provided by the department or any other entity approved by the court and shall file an oath of confidentiality in every court in which the intermediary expects to serve.

J. The confidential intermediary oath shall state:

"I, _____, signing under penalty of perjury, affirm that I have completed the requisite training for a confidential intermediary in this state.

I will not disclose to the petitioner, directly or indirectly, any identifying information in sealed records except under the conditions specified in this section.

I will conduct a reasonable search for an individual being sought and make a discreet and confidential inquiry as to whether the individual consents to the release of identifying or medical information to the petitioner or to meeting or communicating with the petitioner. I will report to the petitioner or the court the results

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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of my search and inquiry, along with any signed request or consent I receive from the individual.

If the individual and the petitioner request and consent in writing to meet or communicate with each other, I will act in accordance with the instructions of the petitioner or the court to facilitate any meeting or communication between them.

I will not charge or accept any fee for my services except for reimbursement from the petitioner for actual expenses incurred in performing my services or as authorized by the court.

I recognize that unauthorized release of information is a violation of the Adoption Act and subjects me to penalties pursuant to the provisions of Section 32A-5-42 NMSA 1978 and may subject me to being found in contempt of court with penalties, dismissal by the court and civil liability."."

8. Renumber the succeeding section accordingly.

9. On page 24, between lines 9 and 10, insert the following new section:

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/HJC 717

Page 87

"Section 8. Section 32A-19-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 228) is amended to read:

"32A-19-1. QUALITY ASSURANCE OFFICE. --

A. [~~By August 1, 1993~~] The department shall [~~establish~~] maintain a quality assurance office under the office of the secretary.

B. The purpose of the quality assurance office shall be to [~~assist~~] facilitate department efforts to efficiently [~~achieve~~] implement the purposes of the Children's Code.

C. In order to measure the quality of services provided, to facilitate satisfactory outcomes for children and families that receive services and to provide a continuing opportunity to [~~change and~~] improve service delivery, the quality assurance office shall:

(1) [~~establish an accessible~~] monitor the system for receiving and resolving complaints and grievances;

[~~(2) perform periodic investigations and evaluations to assure compliance with the Children's Code and other applicable~~

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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~~state and federal laws and regulations;~~

~~(3) monitor~~ (2) facilitate monitoring of indicators
of the department's performance ~~[and]~~ to determine whether the
department is:

(a) providing children and families with
individualized, needs-based service plans;

(b) providing services in a timely manner; and

(c) in compliance with applicable state and
federal laws and regulations;

~~(4)~~ (3) identify any deficiencies and recommend
corrective action to the secretary of the department; ~~[and]~~

~~(5)~~ (4) have access to any records maintained by the
department, including confidential information; and

(5) promote continuous improvement of all department
processes serving children and families.

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/HJC 717

Page 89

D. The quality assurance office shall ~~[annually produce]~~ contribute to and facilitate the publication of public reports assessing the performance of the department. The ~~[report]~~ reports shall not disclose the identity of any individual mentioned in the report, including children or families that receive or are eligible for services or any department employee. "".

10. Renumber the succeeding section accordingly.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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HJC/HB 717

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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SJC/HJC 717

Page 90

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Tsosie, McSorley

Excused: Sanchez

Absent: None

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